

Commissioners Court -October 27, 2009  
NOTICE OF A MEETING OF THE  
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS



This Notice is posted pursuant to the Texas Open Meetings Act. (VERNON'S TEXAS CODES ANN. GOV. CODE CH.551). The Hays County Commissioners Court will hold a meeting at **9:00 A.M.** on the **27<sup>TH</sup> day of October, 2009**, in the Hays County Courthouse, Room 301, San Marcos, Texas. An Open Meeting will be held concerning the following subjects:

**INVOCATION:**

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

**PRESENTATIONS & PROCLAMATIONS**

1	3-4	Adopt a proclamation recognizing November 8 – November 14, 2009 as Hunger Awareness week. <b>CONLEY</b>
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**PUBLIC COMMENTS**

At this time **3-MINUTE** comments will be taken from the audience on Non-Agenda related topics. To address the Court, please submit a Public Participation/ Witness Form to the County Clerk. Please Complete the Public Participation/ Witness Form in its Entirety.  
**NO ACTION MAY BE TAKEN BY THE COURT DURING PUBLIC COMMENTS.**

**CONSENT ITEMS**

The following may be acted upon in one motion. A Commissioner, the County Judge, or a Citizen  
May request items be pulled for separate discussion and/or action

2	5	Approve payments of county invoices. <b>HERZOG</b>
3	6-9	Approve Commissioner Court Minutes of October 20, 2009. <b>SUMTER/FRITSCHKE</b>
4	10-34	Approve specifications for IFB #B2010 "Fischer Store Road Widening and Intersection Improvements" and authorize Purchasing to solicit for bid and advertise. <b>SUMTER/HERZOG/MAIORKA/BORCHERDING</b>
5	35-37	Approve budget amendment 10-01. FY09 EMC grant awards not expended need to be rolled over into FY2010. Personal Health & Cedar Oaks Mesa grant awards need to be budgeted for FY2010. <b>SUMTER/HERZOG</b>

**SUBDIVISIONS**

6	38-39	09-4-28 Replat of Lot 9, Mountain Oaks Subdivision. Hold public hearing; discussion and possible action to consider approval of final plat. <b>FORD/GARZA</b>
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**MISCELLANEOUS**

7	40-47	Discussion and possible action to approve Out of State Travel for Jeff Turner, Emergency Management Coordinator, to attend Emergency Management Institute/Center for Domestic Preparedness course, 10-05 (PIPP) Pandemic Influenza Planning and Preparedness, Anniston, Alabama 12/6-10/2009. <b>SUMTER/TURNER</b>
8	48-49	Discussion and possible action to accept award from the Bureau of Justice Assistance (BJA) for FY2009 State Criminal Alien Assistance Program (SCAAP) in the amount of \$84,808 and to amend the budget accordingly. <b>SUMTER/RATLIFF/HAUFF</b>
9	50-62	Discussion and possible action to authorize the payment of \$6,292.67 to the City Of Kyle for work performed at the Pct 2 offices and amend the budget if necessary. <b>BARTON</b>
10	63	Discussion and possible action to accept donations to the Hays County Historical Commission for the Jack C. Hays documentary film and amend the budget accordingly. <b>SUMTER/ HERZOG</b>
11	64-70	Discussion and possible action to approve a contract with City-County Benefits Services (CCBS) for an updated actuarial analysis for compliance with Governmental Accounting Standards Board GASB 43 & 45. <b>SUMTER/HERZOG</b>
12	71-73	Discussion and possible action to consider overtime funding for the Constable Precinct 1, 3, and 4 offices due to the Attorney General Child Support Warrant Roundup.

		<b>INGALSBE/PETERSON</b>
13	74-106	Discussion and possible action to authorize the County Judge to execute a grant contract with the Texas Water Development Board, in the amount of \$214,225.00, to initiate a flood protection planning study in northern Hays County. <b>FORD/HAUFF</b>
14	107-108	Discussion and possible action to authorize Mark Kennedy to execute a Quit Claim Deed from Hays County to the West Cave Estates HOA, Inc. regarding ROW at the entrance to West Cave Estates in order to accurately reflect the perimeters of the community-owned park. <b>FORD</b>
15	109-110	Discussion and possible action to amend the Office of Emergency Management budget for the purchase of a vehicle. <b>SUMTER/TURNER</b>
16	111-115	Discussion and possible action to authorize contract amendment for MRB Group for geotechnical engineering and site survey on the RPTP building addition and amend the budget accordingly. <b>SUMTER/BORCHERDING</b>
17	116-120	Discussion and possible action to establish a Local Data Advisory Board pursuant to HB2730 by November 1, 2009. <b>SUMTER</b>
18	121	Discussion and possible action to approve Road Bond Construction signage. <b>SUMTER/CHERNOW</b>
19	122-173	Discussion and possible action to authorize the County Judge to execute a Design/Build Contract with Balfour-Beatty Construction, LLC for Design and Construction of the new Hays County Government Center Facility. <b>INGALSBE</b>
20	174-185	Discussion and possible action to authorize the County Judge to execute an Automated Clearing House Processing Agreement between Hays County and Teledraft, Inc. for the processing of electronic checks in the Office of Tax Assessor/Collector. <b>SUMTER/CARAWAY</b>
21	186-187	Discussion and possible action to adopt a resolution supporting the 4-H Club and the use of the Civic Center on designated dates. <b>CONLEY/INGALSBE</b>

#### **WORKSHOP**

22	188	Hays County Website update and development. <b>SUMTER/BAEN</b>
23	189	Discussion of performance appraisal system, evaluation forms, format and schedules, as well as overall County goals and objectives and their relation to department goals. Possible action may follow. <b>FORD/BAEN</b>

#### **EXECUTIVE SESSIONS**

The Commissioners Court will announce it will go into Executive Session, if necessary, pursuant to Chapter 551 of the Texas Government Code, to receive advice from Legal Counsel to discuss matters of land acquisition, litigation, and personnel matters as specifically listed on this agenda. The Commissioners' Court may also announce it will go into Executive Session, if necessary, to receive advice from Legal Counsel regarding any other item on this agenda.

#### **STANDING AGENDA ITEM**

24		Discussion of issues related to proposed capital construction projects in Hays County, including but not limited to the government center; precinct offices; Resources Protection Transportation and Planning Department; and space needs projections for the Hays County Jail and related criminal justice analysis. Possible action may follow. <b>INGALSBE</b>
25		Discussion of issues related to the road bond projects, including updates from Mike Weaver, Prime Strategies and Jeff Curren, HDR. Possible action may follow. <b>SUMTER</b>
26		Discussion and possible action to execute a Resolution declaring a Burn Ban in Hays County effective immediately. <b>SUMTER</b>

#### **ADJOURNMENT**

Posted by 5:00 o'clock P.M. on the 23<sup>rd</sup> day of October, 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

## *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: ACTION:**

Proclamation recognizing November 8 – November 14, 2009 as Hunger Awareness week.

**CHECK ONE:**

CONSENT

☒ ACTION

☐ EXECUTIVE SESSION

☐ WORKSHOP

☐ PROCLAMATION

☐ PRESENTATION

**PREFERRED MEETING DATE REQUESTED:** November 10, 2009

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:** Pat Tessaro

**SPONSORED BY:** Commissioner Will Conley

**SUMMARY:**



**111 E. San Antonio Street  
San Marcos, Texas 78666**

**Proclamation Declaring the Week of November 8<sup>th</sup> – November 14<sup>th</sup>, 2009  
Hays County "Tackle Hunger" Week**

WHEREAS, the Hays County Area Food Bank represents a community-wide effort to feed the hungry that depends upon the generous support of the Community; and

WHEREAS in 2008 the Food Bank provided Thanksgiving meals to 1,376 needy families; and

WHEREAS, the Hays County Area Food Bank represents a county-wide effort to feed the hungry that depends upon the generous support of the Community; and

WHEREAS, the Hays County Area Food Bank has begun an effort to raise enough support to assist 1,600 families this Thanksgiving by coordinating a campaign called Turkeys Tackling Hunger whereby citizens can sponsor a family for Thanksgiving for \$20 from October 5<sup>th</sup> through November 30<sup>th</sup>, in cooperation with the citizens and organizations throughout Hays County ; and

WHEREAS the Hays County Commissioners' Court wishes to demonstrate our support for the important work accomplished throughout the year by the Hays County Area Food Bank in reaching out to the most needy and hungry in our community;

NOW, THEREFORE, BE IT RESOLVED THAT the Hays County Commissioners' Court does hereby proclaim the week of November 8 – November 14, 2009 as

**Tackle Hunger Week**

And calls upon citizens of Hays County to support and participate in this worthwhile project by helping feed impoverished families and individuals in San Marcos and Hays County.

**PROCLAIMED THIS THE 10th DAY OF November, 2009**

\_\_\_\_\_  
Elizabeth Sumter  
Hays County Judge

\_\_\_\_\_  
Debbie Gonzales Ingalsbe, Precinct 1

\_\_\_\_\_  
Jeff Barton, Precinct 2

\_\_\_\_\_  
Will Conley, Precinct 3

\_\_\_\_\_  
Karen Ford, Precinct 4

Attest:

\_\_\_\_\_  
Linda Fritsche, County Clerk



# *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: 10/27/09**

**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

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

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

**AGENDA ITEM: APPROVE COMMISSIONERS COURT MINUTES OF OCTOBER 20, 2009**

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

**PREFERRED MEETING DATE REQUESTED: OCTOBER 27, 2009**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: FRITSCHÉ**

**SPONSORED BY: SUMTER**

**SUMMARY:**



OCTOBER 20, 2009

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STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 20<sup>TH</sup> DAY OF OCTOBER A.D., 2009, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

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

WITH COUNTY JUDGE ELIZABETH "LIZ" SUMTER ABSENT; AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

Commissioner Barton gave the invocation and Commissioner Ford led the court in the Pledge of Allegiance to the flags. Commissioner Ingalsbe presided over the meeting and called the meeting to order.

**26554 ADOPT A PROCLAMATION DECLARING OCTOBER 25, 2009 AS LIVESTRONG CHALLENGE DAY IN HAYS COUNTY**

A motion was made by Commissioner Ford, seconded by Commissioner Conley to adopt a Proclamation declaring October 25, 2009 as LiveSTRONG Challenge Day in Hays County. All present voting "Aye". MOTION PASSED

**PUBLIC COMMENT**

Todd Purcell, Dripping Springs Mayor, made public comment regarding Harrison Ranch Park project in Dripping Springs and Wildwest Fest being held this weekend. Mark Key made public comment regarding Nutty Brown Road.

**26555 APPROVE PAYMENTS OF COUNTY INVOICES**

A motion was made by Commissioner Barton, seconded by Commissioner Ford to approve payments of county invoices in the amount of \$987,758.60 as submitted by the County Auditor. All present voting "Aye". MOTION PASSED

**26556 APPROVE COMMISSIONER COURT MINUTES OF OCTOBER 13, 2009**

A motion was made by Commissioner Barton, seconded by Commissioner Ford to approve Commissioner Court Minutes of October 13, 2009 as presented by the County Clerk. All present voting "Aye". MOTION PASSED

**26557 APPROVE RENEWAL OF BID #2008-B15 ANNUAL DUMPSTERS FOR HAYS COUNTY WITH TEXAS DISPOSAL SERVICES FOR ONE (1) ADDITIONAL YEAR AS PROVIDED IN THE ORIGINAL BID**

A motion was made by Commissioner Barton, seconded by Commissioner Ford to approve renewal of Bid #2008-B15 Annual Dumpsters for Hays County with Texas Disposal Services for one (1) additional year as provided in the original bid. All present voting "Aye". MOTION PASSED

**26558 MUSTANG VALLEY SUBDIVISION SECTION 4 [09-3-33 - 24 LOTS] APPROVE FINAL PLAT AND ACCEPT CONSTRUCTION FISCAL SURETY IN THE AMOUNT OF \$393,406.34 FOR STREET AND DRAINAGE IMPROVEMENTS [T1-339]**

Subdivision Coordinator Clint Garza gave staff recommendation for final plat approval. A motion was made by Commissioner Conley, seconded by Commissioner Barton to approve final plat and accept construction fiscal surety in the amount of \$393,406.34 for street and drainage improvements for Mustang Valley Subdivision Section 4. All present voting "Aye". MOTION PASSED



- 26559 HOLD A PUBLIC HEARING REGARDING APPROVAL OF THE PLAN FOR THE PRESERVATION AND RESTORATION OF THE DISTRICT COURT RECORDS ARCHIVE, PURSUANT TO CHAPTER 51 OF THE TEXAS GOVERNMENT CODE [T1-358]**

Commissioner Ingalsbe declared the public hearing open. No public input was received and the public hearing was closed. Cecelia Adair Hays County District Clerk explained the preservation plan. A motion was made by Commissioner Barton, seconded by Commissioner Ford to approve the plan for the preservation and restoration of the District Court Records Archive, Pursuant to Chapter 51 of the Texas Government Code. All present voting "Aye". MOTION PASSED

- 26560 ACCEPT A GRANT AWARD FROM THE BUREAU OF JUSTICE ASSISTANCE (BJA) FOR THE BULLETPROOF VEST PARTNERSHIP (BVP) IN THE AMOUNT OF \$6,137.00 [T1-463]**

Grants Administrator Jeff Hauff explained the grant which will provide 50% funding for 17 bulletproof vests. A motion was made by Commissioner Conley, seconded by Commissioner Ford to accept a Grant Award from the Bureau of Justice Assistance (BJA) for the Bulletproof Vest Partnership (BVP) in the amount of \$6,137.00. All present voting "Aye". MOTION PASSED

- 26561 AUTHORIZE THE COUNTY JUDGE TO ACCEPT AND EXECUTE A SUB-GRANT AWARD CONTRACT FROM THE GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT, HOMELAND SECURITY GRANT PROGRAM FOR \$2,575.00 [T1-470]**

Grants Administrator Jeff Hauff explained the grant which will provide vests to identify assigned shelter management team and command staff in housing individuals during times when local sheltering is necessary. A motion was made by Commissioner Ford, seconded by Commissioner Barton to authorize the County Judge to accept and execute a Sub-Grant Award Contract from the Governor's Division of Emergency Management, Homeland Security Grant Program for \$2,575.00. All present voting "Aye". MOTION PASSED

- 26562 AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE NEW CUSTOMER AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF INFORMATION RESOURCES (DIR), TEXAS NICUSA, LLC (VENDOR), AND HAYS COUNTY [T1-504]**

District Clerk Cecelia Adair advised that the State changed vendors for this service, therefore, a new agreement needs to be executed. She spoke of need to change a word in Exhibit A fee schedule: from "monthly" payment to "daily". A motion was made by Commissioner Barton, seconded by Commissioner Ford to authorize the County Judge to execute the new customer Agreement between the Texas Department of Information Resources (DIR), Texas NICUSA, LLC (Vendor), and Hays County with change as requested. All present voting "Aye". MOTION PASSED

- 26563 APPOINT COMMISSIONER WILL CONLEY AS THE COMMISSIONERS' COURT REPRESENTATIVE OF THE EMERGENCY SERVICES COMMITTEE TO ADDRESS 911 ISSUES [T1-578]**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Ford to appoint Commissioner Will Conley as the Commissioners' Court Representative of the Emergency Services Committee to address 911 issues. All present voting "Aye". MOTION PASSED

- 26564 AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN ADDITIONAL SERVICES AGREEMENT WITH LAND DESIGN PARTNERS TO PREPARE A WATER POLLUTION ABATEMENT PLAN FOR THE SPRING LAKE PRESERVE PROJECT, IN THE AMOUNT OF \$3,575.00 [T1-598]**

A motion was made by Commissioner Conley, seconded by Commissioner Ford to authorize the County Judge to execute an additional Services Agreement with Land Design Partners to prepare a water pollution abatement plan for the Spring Lake Preserve Project, in the amount of \$3,575.00. All present voting "Aye". MOTION PASSED



OCTOBER 20, 2009

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- 26565 REQUEST CIVIL DIVISION OF HAYS COUNTY DISTRICT ATTORNEY'S OFFICE TO PREPARE AN OFFICIAL RESPONSE FROM THE COMMISSIONERS COURT IN RELATION TO REQUEST FOR ATTORNEY GENERAL'S OPINION #RQ-0822-GA RELATING TO THE ABILITY OF TYPE A GENERAL LAW MUNICIPALITIES TO IMPOSE AND ENFORCE NONPOINT SOURCE POLLUTION (NPS) ORDINANCES WITHIN THE ETJ [T1-625]**

Public comment was made by Eric Eskelund, Mayor of Woodcreek. Special Counsel/Assistant District Attorney Mark Zuniga spoke. A motion was made by Commissioner Ford, seconded by Commissioner Conley to request Civil Division of Hays County District Attorney's Office to prepare an Official Response from the Commissioners Court in relation to request for Attorney General's Opinion #RQ-0822-GA relating to the ability of Type A General Law Municipalities to impose and enforce Nonpoint Source Pollution (NPS) Ordinances within the ETJ. All present voting "Aye". MOTION PASSED

- 26566 WAIVE THE FEES FOR THE ROTARY CLUB OF SAN MARCOS EVENT THAT WILL BE HELD IN THE HAYS COUNTY CIVIC CENTER ON OCTOBER 22, 2009 [T1-847]**

The Rotary Club of San Marcos will be holding the Early Act First Knight Tournament for 1300 school children, teachers and community observers (a 2 hour event). A motion was made by Commissioner Conley, seconded by Commissioner Ford to waive the fees for the Rotary Club of San Marcos event that will be held in the Hays County Civic Center on October 22, 2009. All voting "Aye". MOTION PASSED

- 26567 EXECUTIVE SESSION PURSUANT TO SECTION 551.087 OF THE TEXAS GOVERNMENT CODE, RELATED TO A POSSIBLE OFFER OF ECONOMIC DEVELOPMENT INCENTIVES TO GRIFOLS, INC. FOR THE DEVELOPMENT OF A BIOMEDICAL FACILITY IN HAYS COUNTY [T1-908]**

Court convened into closed executive session at 10:15 a.m. and reconvened into open meeting at 10:35 a.m. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Conley to authorize the County Judge to execute a Chapter 381 Economic Development Incentive Agreement with Grifols, Inc. for the development of a Biomedical Facility in Hays County. All present voting "Aye". MOTION PASSED

**EXECUTIVE SESSION PURSUANT TO SECTION 551.074, TEXAS GOVERNMENT CODE TO DISCUSS EMPLOYMENT, EVALUATION AND/OR DUTIES OF ALL INDIVIDUAL DEPARTMENT HEADS**

Court convened into closed executive session at 10:45 a.m. and reconvened into open meeting at 3:45 p.m. No action taken.

**Clerk's Agenda Item #16 RE: DISCUSSION OF ISSUES RELATED TO PROPOSED CAPITAL CONSTRUCTION PROJECTS IN HAYS COUNTY, INCLUDING BUT NOT LIMITED TO THE GOVERNMENT CENTER; PRECINCT OFFICES; RESOURCES PROTECTION TRANSPORTATION AND PLANNING DEPARTMENT; AND SPACE NEEDS PROJECTIONS FOR THE HAYS COUNTY JAIL AND RELATED CRIMINAL JUSTICE ANALYSIS was PULLED**

**Clerk's Agenda Item #17 RE: DISCUSSION OF ISSUES RELATED TO THE ROAD BOND PROJECTS, INCLUDING UPDATES FROM MIKE WEAVER, PRIME STRATEGIES AND JEFF CURREN, HDR was PULLED.**

**Clerk's Agenda Item #18 Re: DISCUSSION AND POSSIBLE ACTION TO EXECUTE A RESOLUTION DECLARING A BURN BAN IN HAYS COUNTY EFFECTIVE IMMEDIATELY was PULLED.**

Court was adjourned.

I, LINDA C. FRITSCHKE, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on OCTOBER 20, 2009.



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



## *Agenda Item Request Form*

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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: Approve specifications for IFB #B2010 "Fischer Store Road Widening and Intersection Improvements" and authorize Purchasing to solicit for bid and advertise.**

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: Herzog/Maiorka/Borcherding**

**SPONSORED BY:**

**SUMMARY: see attached specifications**

**CONTRACT DOCUMENTS**  
**FOR**  
**FISCHER STORE ROAD WIDENING AND**  
**INTERSECTION IMPROVEMENTS**



**CONTACT:**  
**MS. CINDY MAIORKA**  
**(512) 393-2273**  
**FAX: (512) 393-2276**  
**[cindym@co.hays.tx.us](mailto:cindym@co.hays.tx.us)**

**CONTRACT DOCUMENTS**  
**FOR**  
**FISCHER STORE ROAD WIDENING**  
**AND INTERSECTION IMPROVEMENTS**

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**00020 Invitations For Bids**

## INVITATIONS FOR BIDS

HAYS COUNTY, TEXAS (OWNER) will receive sealed BIDS for **FISCHER STORE ROAD WIDENING AND INTERSECTION IMPROVEMENTS** until **2:00 PM** local time on **Thursday, November 19, 2009** at the Hays County Purchasing Office, 111 E. San Antonio St., Suite 101, San Marcos, Texas 78666. The BIDS shall be sealed and addressed to:

Hays County Purchasing  
Attn: Cindy Maiorka  
111 E. San Antonio St., Suite 101  
San Marcos, Texas 78666

The BIDS will be publicly opened and read aloud at the Hays County Purchasing Office on **Thursday, November 19, 2009 at 2:00 PM local time.**

BIDS received after the closing time will be returned. An optional pre-bid meeting will be held at the Hays County Road Department located at 2271 Yarrington Road on Thursday, November 5, 2009 at 10:00 AM local time.

BIDS are invited for the several items and quantities of work as follows:

*The FISCHER STORE ROAD WIDENING AND INTERSECTION IMPROVEMENTS project generally includes the widening of an existing two lane undivided roadway to create a right-turn lane for vehicles accessing the Stone Canyon private road. Also included are asphalt concrete overlay, signing and pavement markings, and minor storm drain improvements. Limits of the project are from Blanco River bridge to 428ft east of Stone Canyon.*

Bidding Documents may be examined at the Hays County Purchasing Office, 111 E. San Antonio St., Suite 101, San Marcos, Texas 78666.

Bidding Documents may be obtained by prospective BIDDERS or suppliers for a non-refundable fee of \$75.00 at the project engineers' offices, located at 10415 Morado Circle, Building 1 Suite 300, Austin, Texas 78759. Prospective BIDDERS should contact Chad A. Wood, P.E. at (512) 418-4517 to request bid packages. Plans will be prepared within 24-hours of request.

Bid Security in the amount not less than five percent (5%) of the total amount of the BID, issued by an acceptable surety company or in the form of a certified or cashier's check, must accompany each BID as a guarantee that the Successful Bidder will enter into a proper Contract and execute Bonds and Guaranties on the forms provided within ten (10) days after the date Contract Documents are received by the CONTRACTOR. Bid Security shall be in accordance with Section 00100 - Instructions to Bidders & General Conditions.



HAYS COUNTY reserves the right to reject any or all BIDS or to waive any informality in the bidding process. In case of ambiguity or lack of clearness in stating the prices in any BID, the OWNER reserves the right to determine which BIDS are the lowest and/or best, and to award the contract on this basis. No BID may be withdrawn within thirty (30) days after opening of BIDS. If a submitted BID is withdrawn within the said period, BID guarantee shall become property of the OWNER, not as penalty, but as liquidated damages, and OWNER may pursue other action allowed by law.

The successful BIDDER must furnish a "PERFORMANCE BOND" and "PAYMENT BOND" on forms provided with the Contract Documents. Each bond shall be issued in an amount of one hundred percent (100%) of the Contract amount from a solvent Surety company, authorized to do business in the State of Texas and acceptable to the OWNER.

Contract Time is of the essence and all Work shall be finally completed within **sixty-four (64)** Working Days after the Notice to Proceed, in accordance with article five of Section 00200 Bid Form

BIDS may be held by HAYS COUNTY for a period not to exceed thirty (30) days from the date of the bid opening for the purpose of reviewing the BIDS and investigating the BIDDERS qualifications prior to the contract award.

Questions by potential bidders may be directed to Ms. Cindy Maiorka (Hays County Purchasing Officer) at [cindym@co.hays.tx.us](mailto:cindym@co.hays.tx.us)

HAYS COUNTY, TEXAS

**00100 Instructions To Bidders & General Conditions**

**BID #2009-B19**  
**HAYS COUNTY, TEXAS**

Bids are solicited for furnishing the services set forth in this Invitation for Bid (IFB). **Completed bids must be received in the Purchasing Office before 2:00 p.m. on Thursday, November 19<sup>th</sup>, 2009.** All bids must be in a sealed envelope clearly marked in the lower left hand corner with the bid number, bid title and opening date. Mail bids: to Hays County Purchasing Office, 111 E. San Antonio St., Suite 101, San Marcos, Texas 78666. By submitting a bid, vendor hereby agrees to all of terms and provisions of the bid specifications.

Bids received in the County purchasing Office after submission deadline shall be returned unopened and will be considered void and unaccepted. Hays County is not responsible for lateness of mail, carrier, etc. and time/date stamp clock in the purchasing office shall be the official time of receipt. **Hays County does not accept fax bids.**

Bids may be withdrawn at any time **prior** to the official opening. Alterations made before opening time must be initialed by bidder guaranteeing authenticity.

The bidder agrees if this is accepted, to furnish any and all items upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period for acceptance of this bid proposal will be thirty (30) calendar days unless a different period is noted by bidder.

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

**Invoices shall be sent directly to the Hays County Auditor, 111 E. San Antonio St., Suite 100, San Marcos, Texas 78666, and attn: Accounts Payable. Payments will be processed after notification that all services have been satisfactory and no unauthorized services have been received.**

Hays County terms are net 30 days from invoice date.

The bid award shall be based on but not necessarily limited to, the following factors:

- Total price
- Special needs and requirements of Hays County
- Vendor's past performance record with Hays County
- Hays County's evaluation of vendor's ability

If bid is accepted and approved by Commissioners' Court then this bid becomes the contract and there are oral agreements either expressed or implied. No different or additional terms will become part of this contract with the exception of a change order.

The County is tax exempt; therefore tax shall not be included in this offer.

Any contract awarded pursuant to this IFB shall be contingent on sufficient funding and authority being made and available in each fiscal period by the approval of Commissioners' Court. If sufficient funding or authority is not made available, the contract shall become null and void.

Any interpretations, corrections or changes to this invitation for bid and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in Hays County Purchasing Manager. Addenda will be mailed to all who are known to have received a copy of this IFB. Bidders shall acknowledge receipt of addenda.

The County of Hays does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services.

No negotiations, decisions, or actions shall be initiated or executed by any vendor as a result of any discussions with any county employee. Only those communications that are in writing from the Purchasing Office shall be considered as a duly authorized expression on behalf of the County.

All bidders will be required to furnish proof of insurance for worker's Compensation, auto liability and general liability before any work may begin and shall remain in effect during the life of the contract.

If bidder does not wish to submit a bid at this time, but desires to remain on the bidder's list, please submit a "NO BID" by the same time and at the same location as specified in this IFB. Hays County is always very conscious and extremely appreciative of the time and effort you must expend to submit a bid. We would appreciate you indicating on any "NO BID" response the reason for submitting a no bid.

This contract shall remain in effect until contract expires or is in default. Either party may terminate this contract with a forty-five (45) day written notice to the other party prior to cancellation. The termination notice must state the reason(s) for such cancellation. The County reserves the right to terminate the contract immediately in the event the successful bidder fails to perform in accordance with the accepted IFB.

Continuing non-performance of the bidder in terms of specifications shall be a basis for the termination of the contract by the County. The County shall not pay for merchandise/services that are unsatisfactory. Vendors will be given a reasonable opportunity before termination to correct deficiencies.

This contract will be immediately canceled if it is found by the Commissioners' Court that its continued performance endangers the citizens, personnel, property of Hays County or the environment.

The vendor shall make himself familiar with and at all times shall observe and comply with all federal, state and local laws, ordinances and regulations which in any manner affect the conduct of the work and shall indemnify and save harmless the County of Hays and its representatives against any claims arising.

**References:**

Bidder will supply the name and an address of representatives where it has performed this service in the past or is now under contract for such services of the same and who may be contacted for references and performance history. The list of references will include company name, address, phone number, representative's number.

**Experience:**

Bidder certifies that it has a minimum of three (3) years experience in this field and projects of this size.

**Basis of Award:**

The County reserves the right to award a contract for named project to a bidder on the basis of total low bid and/or the best value to the County.

Bidders must bid on all items in order to be considered responsive.

**Insurance and Liability**

During the period of this contract, successful bidder will maintain at its expense, insurance with limits not less than those prescribed below. With respect to required insurance, successful bidder will:

- Name the County as additional insured/or an insured, as its interest may appear
- Provide the County with a thirty (30) day advance written notice of cancellation or material change to said insurance
- Provide the Purchasing Office a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of contract award, and at least annually thereafter in the event this contract is renewed

Required coverage is as follows: (a) worker's compensation insurance as required by applicable law; (b) employer's liability insurance with limits not less than \$1 million; (c) commercial liability, including products and completed operations and contractual liability, with a combined single limit of \$2,000,000 per occurrence; and (d) excess liability insurance with limits not less than \$2 million.



**Bid Security:** is required in the amount of 5% of the total bid amount and in the form of a certified or cashier's check or bid bond issued by a surety company authorized to do business in Texas.

**Performance & Payment Bonds:** contractor shall furnish Performance and payment bonds, each in the amount at least equal to the contract price, as security for the faithful performance and payment of all of contractor's obligations under the contract documents. The bonds are to be issued from a surety company holding a license from the State of Texas to act as a surety. These bonds shall remain in effect until final acceptance by the Engineer and until a maintenance bond which will run for a period of two (2) years after the date of acceptance of Hays County upon completion of all work under the contract a maintenance bond guaranteeing all work under the contract to be free from faulty materials in every particular and free from improper workmanship, and against injury from proper and usual wear, and guaranteeing to replace or to re-execution without cost to Hays County such work as may be found to be improper or imperfect, and to make good all damage caused to the other work of materials, due to such required replacement or re-execution. Neither the final certificate, nor payment, nor any provision in the contract documents shall relieve the contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the maintenance bond.

The successful bidder must commence work upon issuance by the County of a written **Notice to Proceed.**

**Optional Pre-Bid Conference:**

There will be an optional pre-bid conference held at 10:00AM on Thursday, November 5, 2009 at the Hays County Road Department (2271 Yarrington Road, San Marcos, TX 78666). If you have any questions please call the Purchasing Office at 512-393-2273.

**00200 Bid Form**

**BID FORM**

Date: \_\_\_\_\_, 2009

BID of \_\_\_\_\_ an individual proprietorship, a corporation organized and existing under the laws of the State of Texas, or a partnership consisting of \_\_\_\_\_, for the construction of FISCHER STORE ROAD WIDENING AND INTERSECTION IMPROVEMENTS.

THIS BID IS SUBMITTED TO:

Hays County  
Attn: Cindy Maiorka  
111 E. San Antonio St., Suite 101  
San Marcos, Texas 78666

1. The undersigned BIDDER proposes and agrees, if this BID is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this BID and in accordance with the other terms and conditions of the Contract Documents. BIDDER accepts the terms of the form of Agreement and the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Invitation to BID and Instructions to Bidders including without limitation those dealing with the disposition of Bid Security. This BID will remain subject to acceptance for thirty (30) days after the day of BID opening. If BIDDER is the Successful Bidder, BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within ten (10) calendar days after the date of OWNER's Notice of Award.
3. In submitting this BID, BIDDER represents and warrants that:
  - (a) BIDDER has examined and carefully studied the Bidding Documents and Addenda. BIDDER hereby acknowledges receipt of the following Addenda: (List Addenda by b Addendum Number and Date).

Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____

- (b) BIDDER has visited the site, has conducted all testing at the site BIDDER deems necessary, has become familiar with, has taken into consideration in formulating its BID, and accepts the general, local and site conditions that may affect cost, progress, performance, and furnishing of the Work;
- (c) BIDDER is familiar with, has taken into consideration in formulating its BID and accepts all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- (d) BIDDER has obtained and carefully studied and is responsible for obtaining and studying any and all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work, or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto as may be necessary. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this BID for performance and furnishing of the Work in accordance with the times, price, and other terms and conditions of the Contract Documents.
- (e) BIDDER is aware of the general nature of work to be performed by OWNER and others at the site that relates to Work for which this BID is submitted as indicated in the Contract Documents.
- (f) BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- (g) BIDDER has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to BIDDER; BIDDER has no questions regarding the Work; BIDDER has all information necessary to make a fully informed BID; and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this BID is submitted.
- (h) This BID is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association,

organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham BID; BIDDER has not solicited or induced any person, firm, or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.

4. BIDDER is duly qualified to carry on business in the State of Texas; possesses or has the ability to possess all licenses, permits, and certificates of authority necessary to commence and to complete the Work in accordance with the Bidding Documents; is fully qualified and has experience in performing work of the same type as the Work covered by the Bidding Documents; and will provide all necessary labor, superintendence, machinery, equipment, tools, materials, services, and other means of construction to complete all work upon which BIDDER bids and complete said work within the time stated for the following base bid price.

TOTAL BASE BID AMOUNT

\$ \_\_\_\_\_ DOLLARS

When changes in the work are ordered other than identified in the proposed base bid and add alternative involving an add or deduct to these prices, and when such work has been approved by the OWNER, in writing, the successful bidder agrees that the Contract Sum shall be adjusted according to the following unit prices.

Unit prices cover the cost of all work and materials in place, complete, per drawing, and specifications and including, but not limited to all labor, materials, equipment, freight, taxes, insurance, overhead, profit, maintenance, and guarantee. All items in the unit price list shall meet all requirements of the plans, details, and written specifications.

NOTE: SOME OF THE ITEMS LISTED BELOW MAY NOT BE INCLUDED IN THE BASE BID, CONTRACTOR IS REQUESTED TO PROVIDE ALL UNIT PRICES ALLOWING THE OWNER THE OPTION TO ADD OR DELETE ITEMS.



# BID TABLE

ITEM NO	DESCRIPTION	UNIT	ESTIMATED QUANTITY	PRICE PER UNIT	AMOUNT
0100 2002	PREP ROW	STA	6		
0104 2009	REMOVING CONC (RIPRAP)	SY	55		
0105 2014	REMOVING STAB BASE & ASPH PAV (7"-12")	SY	378		
0110 2001	EXCAVATION (ROADWAY)	CY	1,233		
0132 2003	EMBANKMENT (FINAL) (ORD COMP) (TY B)	CY	116		
0160 2003	FURNISHING & PLACING TOPSOIL (4")	SY	2,186		
0164 2005	BROADCAST SEED (PERM) (URBAN) (SANDY)	SY	2,186		
0168 2001	VEGETATIVE WATERING	MG	110		
0169 2004	SOIL RETENTION BLANKETS (CL 1) (TY D)	SY	1,093		
0305 2002	SALV, HAUL & STKPL RCL APH PV (0 TO 2")	SY	1,250		
0310 2005	PRIME COAT (MC-30 OR AE-P)	GAL	471		
0341 2011	D-GR HMA (QCQA) TY-B PG64-22	TON	776		
0341 2034	D-GR HMA (QCQA) TY-C PG64-22	TON	376		
0432 2001	RIPRAP (CONC) (4IN)	CY	2		
0464 2024	RC PIPE (CL IV) (30 IN)	LF	40		
0467 2290	SET (TYII) (30IN) (RCP) (6:1) (P)	EA	1		
0496 2007	REMOV STR (PIPE)	LF	19		
0500 2001	MOBILIZATION	LS	1		
0502 2001	BARRICADES, SIGNS & TRAFFIC HANDLING	MO	4		
0506 2002	ROCK FILTER DAMS (INSTALL) (TY 2)	LF	25		
0506 2003	ROCK FILTER DAMS (INSTALL) (TY 3)	LF	65		
0506 2009	ROCK FILTER DAMS (REMOVE)	LF	90		
0506 2034	TEMPORARY SEDIMENT CONTROL FENCE	LF	1,115		
0644 2001	INS SM RD SN SUP&AM TY 10BWG (1) SA (P)	EA	2		
0666 2012	REFL PAV MRK TYI (W) 4" (SLD) (100MIL)	LF	1,035		
0666 2036	REFL PAV MRK TYI (W) 8" (SLD) (100MIL)	LF	192		
0666 2048	REFL PAV MRK TYI (W) 24" (SLD) (100MIL)	LF	25		
0666 2111	REF PAV MRK TYI (Y) 4" (SLD) (100MIL)	LF	1,064		
0666 2145	REF PAV MRK TYII (W) 4" (SLD)	LF	1,035		
0666 2153	REF PAV MRK TYII (W) 8" (SLD)	LF	192		
0666 2157	REF PAV MRK TYII (W) 24" (SLD)	LF	25		
0666 2178	REF PAV MRK TYII (Y) 4" (SLD)	LF	1,064		
TOTAL PROJECT					

5. BIDDER agrees to begin work promptly after written Notice to Proceed is given by OWNER and will finally complete the Work associated with the FISCHER STORE ROAD WIDENING AND INTERSECTION IMPROVEMENTS within **sixty-four (64) working days**.
6. BIDDER has enclosed with this BID the required Bid Security. BIDDER agrees that this amount is a measure of liquidated damages which OWNER will sustain by failure of the BIDDER to execute and deliver above named Agreement and Bonds, and not a penalty, and further agrees that this Bid Security shall be collected and retained by OWNER as liquidated damages in the event this BID is accepted by OWNER within sixty (60) days after opening of Bids, and BIDDER fails to execute the Agreement and the required Bonds with OWNER within ten (10) days after Contract Documents are received by BIDDER; otherwise said Bid Security shall be returned to the BIDDER in accordance with Paragraph 7 of Section 00100- Instruction to Bidders.

ATTEST:      Very truly yours

\_\_\_\_\_  
(SEAL, if Bidder is Corporation)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name)

Title: \_\_\_\_\_

Bidder: \_\_\_\_\_  
(Name of Company)

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

Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

Surety Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

**00300 Contract**

13

**\*CONTRACT\***

**STATE OF TEXAS  
COUNTY OF HAYS**

WHEREAS, The attached "Bid Package" which includes the **Cover Sheet, Instructions, Specifications, and Bid Sheet(s)** for the item(s) being published for competitive bid, were solicited pursuant to Texas Local Government Code 262.021; and

**WHEREAS, the Hays County Commissioners' Court as the governing body of Hays County did on \_\_\_\_\_, 20\_\_\_\_ award a contract to \_\_\_\_\_ (Vendor/Bidder) for furnishing the materials, equipment, supplies and/or services in quantities and at prices as set forth in the above-attached "Bid Package"; and**

THEREFORE, Knowing all men by these present, that this contract is entered into by Hays County, Texas (hereinafter called "County") and the undersigned Vendor (hereinafter called "Vendor" or "bidder").

**WITNESSETH**

THAT IN ACCORDANCE with the above attached Bid Package in every particular, the Vendor will perform in accordance with the terms thereof and the County agrees to make payment for such items or services purchased on appropriate Purchase Orders in accordance with the items of said Bid Package which is made a part of this contract and incorporated herein for all purposes.

THAT IN ACCORDANCE with the attached the County's acceptance of equipment, supplies and services shall be contingent on (1) they conform, (2) they were delivered (if applicable), and (3) services have been satisfactorily performed in the sole determination of the County.

**Prior Agreements Superseded**

This Contract, with the entire Bid Package incorporated herein for all purposes, including any required supporting literature, brochures, and/or data sheets or sample, constitutes the sole agreements of the parties to the agreement and supersedes all oral or written previous and contemporary agreements between the parties and relating to matters herein.

**Amendment**

No amendment, modification or alteration of the terms of this contract shall be binding unless same is in writing, dated subsequent to the date of this contract, and duly executed by authorization representatives of each party.

IN TESTIMONY WHEREOF: Witness our hands at Hays County, Texas, effective as of the date awarded above, if any.

VENDOR

HAYS COUNTY

BY: \_\_\_\_\_ BY \_\_\_\_\_  
AUTHORIZED AGENT COUNTY JUDGE

ATTEST: \_\_\_\_\_  
Linda Fritsche, Hays County Clerk

**\*\*Failure to sign the Contract page(s) may disqualify the bid from being considered by the Commissioners' Court. However, this contract is not valid until awarded in Commissioners' Court and signed by both parties.**

## **00400 Technical Specifications**

## TECHNICAL SPECIFICATIONS

Governing specifications for the FISCHER STORE ROAD WIDENING AND INTERSECTION IMPROVEMENTS. Technical specifications applicable to this project are identified as follows:

TxDOT Standard Specifications: Adopted by the Texas Department of Transportation June 1, 2004. All standard specifications are incorporated into the contract by reference. Any and all reference to the Texas Department of Transportation within the specifications shall be read and interpreted as HAYS COUNTY, TEXAS.

If any conflicts exist between the TxDOT Standard Specifications referenced here and these bidding documents, the statements, articles, and clauses within these bidding documents shall control.

**00500 Bidder's Affirmation & Conflict of Interest Disclosure**



**Vendor/Bidder's Affirmation**

1. Vendor/Bidder affirms that they are duly authorized to execute this Contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to price, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engages in this type of business prior to the official opening of this bid.
2. Vendor/Bidder hereby assigns to Purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
3. Pursuant to 262.076 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that Vendor/Bidder:

\_\_\_\_\_ Does not own taxable property in Hays County.

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

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

\_\_\_\_\_  
Contact Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

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

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

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

\_\_\_\_\_  
E-mail address

### **Conflict of Interest Disclosure**

Beginning January 1, 2006 a new State Law (Chapter 176 of the Texas Local Government Code) requires the filing of Conflict of Interest Questionnaires by individuals and businesses..

The questionnaire requires disclosures describing certain business and gift giving relationships (if any) the filers may have with the Hays County Commissioners Court members and other elected/appointed officials.

The new law applies to:

- Businesses and individuals who contract with Hays County
- Businesses and individuals who seek to contract with Hays County, (regardless of whether a bidder is awarded the contract), and
- Agents who represent such businesses in their business dealings with Hays County

The forms for reporting are available at

[www.ethics.state.tx.us/whatsnew/conflict\\_forms.htm](http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm)

If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each individual, business, and agent who is subject to the law's filing requirement.

If you are required to file a Conflict of Interest Questionnaire, you should file with the Hays County Clerk by mailing the completed form to:

Hays County Clerk  
137 Guadalupe Street  
San Marcos, Texas 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 2:00 p.m. on WEDNESDAY.

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

**AGENDA ITEM:** Approve budget amendment 10-01. FY09 EMC grant awards not expended need to be rolled over into FY2010. Personal Health & Cedar Oaks Mesa grant awards need to be budgeted for FY2010.

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

**PREFERRED MEETING DATE REQUESTED:** Tuesday, October 27, 2009

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:** HERZOG

**SPONSORED BY:** SUMTER

**SUMMARY:**

**Family Health Services Fund - Personal Health - Grants - DSHS H1N1 Phase I & II**

<u>G/L Account Number</u>	<u>Account Description</u>	<u>Description</u>	<u>Debit Amount</u>	<u>Credit Amount</u>
120-675-99-021.4301	Intergovernmental Revenues	Budget DSHS H1N1 Grant Award		145,449.00
120-675-99-021.5021	Staff Salaries	Budget DSHS H1N1 Grant Award	78,800.00	
120-675-99-021.5101	FICA and Retirement	Budget DSHS H1N1 Grant Award	2,591.00	
120-675-99-021.5160	Insurance Benefits	Budget DSHS H1N1 Grant Award	2,229.00	
120-675-99-021.5211	Office and Computer Supplies	Budget DSHS H1N1 Grant Award	6,925.00	
120-675-99-021.5426	Software Licenses	Budget DSHS H1N1 Grant Award	710.00	
120-675-99-021.5448	Contract Services	Budget DSHS H1N1 Grant Award	7,003.00	
120-675-99-021.5472	Office Rent	Budget DSHS H1N1 Grant Award	12,000.00	
120-675-99-021.5489	Telephone and Data Lines	Budget DSHS H1N1 Grant Award	11,680.00	
120-675-99-021.5501	Travel	Budget DSHS H1N1 Grant Award	4,400.00	
120-675-99-021.5711	Office Equipment	Budget DSHS H1N1 Grant Award	5,616.00	
120-675-99-021.5712	Computer Equipment	Budget DSHS H1N1 Grant Award	5,743.00	
120-675-99-021.5715	Communication Equipment	Budget DSHS H1N1 Grant Award	1400.00	
120-675-99-021.5719	Miscellaneous Equipment	Budget DSHS H1N1 Grant Award	6,352.00	
			<b>\$145,449.00</b>	<b>\$145,449.00</b>

**General Fund - Emergency Management - Grants - GDEM Homeland Security LETPP**

<u>G/L Account Number</u>	<u>Account Description</u>	<u>Description</u>	<u>Debit Amount</u>	<u>Credit Amount</u>
001-656-99-014.4301	Intergovernmental Revenues	Budget Roll-Over Grant Award		13,728.00
001-656-99-014.5719	Miscellaneous Equipment	Budget Roll-Over Grant Award	13,728.00	
			<b>\$13,728.00</b>	<b>\$13,728.00</b>

**General Fund - Emergency Management - Grants - GDEM CERT 2007**

<u>G/L Account Number</u>	<u>Account Description</u>	<u>Description</u>	<u>Debit Amount</u>	<u>Credit Amount</u>
001-656-99-011.4301	Intergovernmental Revenues	Budget FY 07 CERT roll-over		257.00
001-656-99-011.5391	Miscellaneous	Budget FY 07 CERT roll-over	257.00	
			<b>\$257.00</b>	<b>\$257.00</b>

**General Fund - Emergency Management - Grants - GDEM CERT 2008**

<u>G/L Account Number</u>	<u>Account Description</u>	<u>Description</u>	<u>Debit Amount</u>	<u>Credit Amount</u>
001-656-99-010.4301	Intergovernmental Revenues	Budget FY 08 CERT roll-over		8,760.00
001-656-99-010.5201	General Supplies	Budget FY 08 CERT roll-over	805.00	
001-656-99-010.5211	Office and Computer Supplies	Budget FY 08 CERT roll-over	475.00	
001-656-99-010.5303	Professional and Admin Fees	Budget FY 08 CERT roll-over	263.00	
001-656-99-010.5461	Printing Services	Budget FY 08 CERT roll-over	4,828.00	
001-656-99-010.5472	Office Rent	Budget FY 08 CERT roll-over	600.00	
001-656-99-010.5551	Continuing Education	Budget FY 08 CERT roll-over	900.00	
001-656-99-010.5719	Miscellaneous Equipment	Budget FY 08 CERT roll-over	889.00	
			<b>\$8,760.00</b>	<b>\$8,760.00</b>

ORDER AMENDING THE COUNTY OF HAYS BUDGET  
FOR FY ENDING SEPTEMBER 30, 2010

THE STATE OF TEXAS  
COUNTY OF HAYS

WHEREAS, on the 27<sup>th</sup> day of October, A.D., 2009, the Commissioners' Court of Hays County, Texas

has determined that a need exists for the reallocation of certain appropriations included in the FY 2010 Budget in accordance with the attached list which is hereby made a part hereof. It was also determined and agreed that the need was of such a nature as to justify and require amendment of the Budget, as provided in Section 111.010(D), Local Government Code.

NOW, THEREFORE, the COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, pursuant to the authority granted to it under Section 111.010(D), Local Government Code, ORDERS that the pertinent parts of the County of Hays Budget for the Fiscal Year ending September 30, 2010 be and they are hereby amended as indicated on the attached list.

It is the further order of the COMMISSIONERS' COURT that a copy of the amendment provided herein be filed with the Clerk of the County Court of Hays County, with instructions that it be attached to the Budget originally adopted and now on file in the office of the County Clerk.

Passed by the COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, this 27<sup>th</sup> day of October, 2009.

FOR ( ) \_\_\_\_\_  
AGAINST ( ) ELIZABETH 'LIZ' SUMTER  
ABSTAIN ( ) COUNTY JUDGE, HAYS COUNTY, TEXAS

FOR ( ) \_\_\_\_\_  
AGAINST ( ) DEBBIE GONZALES - INGALSBE  
ABSTAIN ( ) COMMISSIONER, PRECINCT 1

FOR ( ) \_\_\_\_\_  
AGAINST ( ) JEFF BARTON  
ABSTAIN ( ) COMMISSIONER, PRECINCT 2

FOR ( ) \_\_\_\_\_  
AGAINST ( ) WILL CONLEY  
ABSTAIN ( ) COMMISSIONER, PRECINCT 3

FOR ( ) \_\_\_\_\_  
AGAINST ( ) KAREN FORD  
ABSTAIN ( ) COMMISSIONER, PRECINCT 4

ATTEST: \_\_\_\_\_  
LINDA C. FRITSCHKE  
COUNTY CLERK, 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 Fax (512) 393-2282

**AGENDA ITEM:**

**09-4-28 Replat of Lot 9, Mountain Oaks Subdivision. Hold public hearing; discussion and possible action to consider approval of final plat.**

**TYPE OF ITEM: ACTION**

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED: N/A**

**LINE ITEM NUMBER OF FUNDS REQUIRED: N/A**

**REQUESTED BY: Garza**

**SPONSORED BY: Ford**

**SUMMARY:**

**The Mountain Oaks Subdivision is a 14 lot recorded subdivision located off of Farrell Lane in Precinct 4. The subdivision was created in the year 2000, and no replats or resubdivisions have taken place. Currently Lot 9 is 38.21 acres in size and the replat will result in 4 new lots 9A(5.02 Ac.), 9B(7.86 Ac.), 9C(7.9 Ac.), and Lot 9D(17.43 Ac.). The average lot size for this replat is 9.55 acres. All new lots will be served by individual private wells and individual OSSF's. The division does lie within the City of Dripping Springs ETJ and will have to go through the City's process as well. As usual, an increase in density in a recorded subdivision requires a public hearing prior to final plat approval. Preliminary Plan was approved on September 29, 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: Discussion and Possible Action to: Allow Out of State Travel for Jeff Turner, Emergency Management Coordinator, to attend Emergency Management Institute/Center for Domestic Preparedness course, 10-05 PIPP Pandemic Influenza Planning and Preparedness, Anniston Alabama, 12/6-10/2009.**

<b>CHECK ONE:</b>	<b>CONSENT</b>	<b>X ACTION</b>	<b>EXECUTIVE SESSION</b>
	<b>WORKSHOP</b>	<b>PROCLAMATION</b>	<b>PRESENTATION</b>

**PREFERRED MEETING DATE REQUESTED: 10-27-2009**

**AMOUNT REQUIRED: \$**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: Jeff Turner, Hays County Office of Emergency Management**

**SPONSORED BY: Judge Elizabeth Sumter**

**SUMMARY: EMC Jeff Turner has been accepted into a training course at the Center for Domestic Preparedness, Anniston, Alabama. The course will be Pandemic Influenza Planning and Preparedness. This program allows participants travel, room and board, and class at no costs to local jurisdictions. All training and course materials are no costs to eligible jurisdictions.**



(FOR CDP USE ONLY)

Center For Domestic Preparedness  
Training Course Application  
(Please Print Legibly and Accurately)

Name: Jeffrey (First) (MI) Turner (Last) ☐ Male ☐ Female

Social Security Number: (For Student Record Use Only) Date of Birth: 1/18/1961 (month) (day) (year)

Mailing Address: (Street address) Organization/Work Address: Hays County Office Of Emergency Management (Organization Name)

(City, State, Zip) 102 N. LBJ Ste. 303 (Street Address)

(Home telephone or cell number) San Marcos, TX 78666 (City, State, Zip)

512-393-7304 (Fax number) 512-393-7301 (Work Phone Number and ext)

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

Profession: Emergency Manager Position/Title: Emergency Management Coordinator

Airport of Departure: Austin, Texas Or if driving, Check Here ☐

Area of Jurisdiction City ☐ Township ☐  
County ☒ Metro ☐ District ☐ State ☐  
Federal ☐ National ☐ Port ☐  
Tribal Territory ☐

Other (Please specify)

Discipline: Fire Suppression ☐ EMS ☐ Emergency Mgmt ☒ HAZMAT ☐  
Law Enforcement ☐ Public Works ☐ Governmental Administrative ☐  
Public Health ☐ Health Care (Non EMS) ☐ Public Safety Communications ☐  
Other (Please specify)

You will select your dates by week number and your class (s) by selecting a Program Letter. Please designate your three choices by listing the desired week of training and program letter found on the training calendar:

	Choice #1	Choice #2	Choice #3
Week #	12/6/2009-12/10/2009		
Program	OO		

HOT and ITC Courses will require the submission of a pre-requisite certificate.

Any questions should be referred to your Regional Training Coordinator:  
East Region 866-213-9546  
Central Region 866-213-9547  
West Region 866-213-9548  
Help Line- 866-213-9553

NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals whether the disclosure is mandatory or voluntary. Your Social Security Account Number (SSN) will be used to identify you precisely when it is necessary. Although disclosure of your SSN is not mandatory, your failure to do so may impede selection for training at the Center for Domestic Preparedness.

**Jeff Turner**

---

**From:** preparingtexas@teexmail.tamu.edu  
**Sent:** Thursday, August 27, 2009 3:17 PM  
**To:** Jeff Turner  
**Subject:** Registration for Pandemic Influenza Planning and Preparedness (PIPP) has been approved by the State Training POC

Your application for Pandemic Influenza Planning and Preparedness (PIPP) from 12/6/2009 to 12/10/2009 located in Anniston, AL has been approved by the State Training POC and has been forwarded to the Training Provider for processing. The Training Provider will contact you directly with additional information and confirmation of your registration.

## Jeff Turner

---

**From:** Grant Bissey <CTR> [bisseyg@cdpemail.dhs.gov]  
**Sent:** Thursday, August 27, 2009 3:33 PM  
**To:** Jeff Turner  
**Cc:** brenda.grays@teemail.tamu.edu; Michael Sevier  
**Subject:** CDP Training Confirmation

Jeffrey Turner,

You are confirmed for the 10-05 PIPP course, 6 – 10 December 2009 at the Center for Domestic Preparedness in Anniston, AL. You should receive a packet NLT the Wednesday before the scheduled start date. The packet will contain the plane reservation, (ticket) **if flying**, reporting instructions and other associated paperwork for the class.

If you have any questions please feel free to call 1-866-213-9547.

Grant Bissey  
Central Region Training Coordinator  
The Beacon Team  
Contractor Support to Center for Domestic Preparedness  
phone: 256-847-2084 | fax: 256-231-5140  
Toll Free 866-213-9547  
email: [Bisseyg@cdpemail.dhs.gov](mailto:Bisseyg@cdpemail.dhs.gov)  
Website: <http://cdp.dhs.gov>

### +++++PRIVACY NOTICE+++++

The information in this email is official US Government communication and is private and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

# PREPARING TEXAS TODAY... FOR TOMORROW'S CHALLENGES

## TEXAS HOMELAND SECURITY PREPAREDNESS



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### CDP-01-006 - Pandemic Influenza Planning and Preparedness (PIPP)

#### Course Description:

The Pandemic Influenza Planning and Preparedness course provides the responder with an overview of pandemic influenza, its challenges, and many facets of community planning that will enable a community to prepare and effectively respond to a pandemic influenza event. Following lectures regarding various aspects of influenza and pandemic influenza, the course culminates in an all-day exercise that casts the planning and management level responder in a community role where the responder must participate in the planning process to prepare a fictitious community for pandemic influenza. As part of their 24 contact hours for this course, the planning and management level responder will experience the outcome of the planning process as the beginning of an out break unfolds in a community.

#### Specifics:

**CDP Program Letter:** OO

**Hours:** 24

**CEUs:** N/A

**Type:** Course

**Provider:** Center for Domestic Preparedness

**Sponsor(s):** FEMA

**Disciplines:** Emergency Management  
Emergency Medical Service  
Fire Service  
Government Administration  
Hazmat  
Health Care  
Law Enforcement  
Public Health  
Public Safety Communications  
Public Works

#### How this course is offered:

Delivered at the Center for Domestic Preparedness  
- Noble Training Center in Anniston, AL.

Training Coordinators can request this course.

#### Prerequisites:

Successful completion of the IS-700 course offered by the Federal Emergency Management Agency (FEMA) is required.

#### Registration Information:

Please read [this document](#) about CDP SID information. When you register for this class, please visit <https://cdp.dhs.gov/elms> to receive a CDP Student Identification Number.

#### Certificates:

Center for Domestic Preparedness certificate of completion

#### Cost:

All training and course materials are free to eligible jurisdictions.

[Click to read more about G&T training \(PDF\)](#)

[Click to read more about FEMA-EMI training \(PDF\)](#)

 No feedback has been left for this course.

## Available Classes

Class Name	Dates	Location	Seats Avail.	
Pandemic Influenza Planning and Preparedness (PIPP) [DFW Airport]	10/19/2009 - 10/22/2009	Anniston, AL	DFW Personnel Only	<a href="#">View Details</a>
Pandemic Influenza Planning and Preparedness (PIPP)	12/6/2009 - 12/10/2009	Anniston, AL	1	<a href="#">View Details</a>

 [Back to Training Catalog](#)

 [Previous Course](#)

[Next Course](#) 

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# Office for Domestic Preparedness

The dramatic and far-reaching impact of terrorism on September 11, 2001, has resulted in a reordering of priorities and a new commitment to enhance the security and preparedness at all levels of government and in every community across our Nation. In the aftermath of these unprecedented events, the Department of Homeland Security (DHS) was created, and on March 1, 2003, 22 Federal agencies joined together to enhance the security and preparedness of the United States. DHS has three primary missions: to prevent terrorist attacks within the United States, to reduce America's vulnerability to terrorism, and to minimize the damage from potential attacks and natural disasters.

On December 17, 2003, President George W. Bush signed Homeland Security Presidential Directive-8 (HSPD-8). This directive establishes policies to strengthen the preparedness of the United States to prevent and respond to threatened or actual domestic terrorist attacks, major disasters, and other emergencies. This "all-hazards" national domestic preparedness goal will establish mechanisms for improved delivery of Federal preparedness assistance and training to State and local governments, and outline actions to strengthen preparedness capabilities of Federal, State, and local entities.

Another way the preparedness of the United States is being strengthened is through the establishment of the Office of State and Local Government Coordination and Preparedness (SLGCP). A new entity under the Office of the Secretary, the SLGCP consolidates the Office of State and Local Government Coordination (SLGC) and the Office for Domestic Preparedness (ODP). The Office of SLGCP has been designated by Homeland Security Secretary Tom Ridge to implement the directives in HSPD-8 in coordination with other Federal departments and agencies. It was established to serve as a single contact point for facilitation and coordination of departmental programs that affect State, local, territorial, and tribal governments. The Department of Homeland Security brings together various organizations that provide support to State, local, territorial, and tribal government organizations and associations. The Office of SLGC in turn coordinates the programs and policies of DHS as they relate to State and local governments, including funding issues and information sharing.

ODP was established in 1998 to help provide training to first responders across the United States and its six territories, as part of an integrated program that also provides specialized equipment, exercises, technical assistance, and lessons learned. ODP remains the lead Federal agency for the development and delivery of weapons of mass destruction (WMD) training, including chemical, biological, radiological, nuclear, and explosive (CBRNE) devices to the Federal, State, and local first-responder communities. The ODP training programs are tailored for a broad spectrum of emergency responders, including fire service, hazardous materials, law enforcement, emergency medical services, public health, emergency management, public works agencies, governmental administrative, health care, and public safety communications.

ODP draws upon a large number of resources to develop and deliver these training programs. These resources include the National Domestic Preparedness Consortium (NDPC); active emergency responders; national associations; contract support; and other agencies from the local, State, and Federal levels. ODP's ability to draw upon such a large pool of resources brings together a uniquely qualified training base capable of delivering a full suite of specialized courses at the awareness, performance, and management and planning levels. Many of these courses have been developed and reviewed in coordination with other Federal agencies, including the Centers for Disease Control and Prevention (CDC), the Department of Energy (DOE), the Environmental Protection Agency (EPA), the Federal Bureau of Investigation (FBI), the Emergency Management Institute (EMI), the Federal Emergency Management Agency (FEMA), the National Fire Academy (NFA), and the Public Health Service (PHS).

ODP also distributes grants to 56 States and territories, as well as to ports, transit authorities, and other homeland security stakeholders. In FY04, ODP disbursed more than \$4 billion in grants for emergency preparedness personnel to protect and defend our Nation's security against the threat posed by terrorism, and since September 11, 2001, ODP has trained more than 600,000 first responders.



The national preparedness goal outlined in HSPD-8 will establish measurable readiness priorities and targets that appropriately balance the potential threat and magnitude of terrorist attacks, major disasters, and other emergencies against the resources required to prevent, respond to, and recover from them. It will also include readiness metrics and elements that support the national preparedness goal, including standards for preparedness assessments and strategies and a system for assessing the Nation's overall preparedness to respond to major events, especially those involving terrorist acts.

A critical step in identifying and building required capabilities is understanding what homeland security tasks need to be performed. The development of the Universal Task List (UTL) is one of the major steps in the implementation of HSPD-8 on National Preparedness. The UTL started with 15 scenarios developed by a Federal interagency group for the Homeland Security Council. The objective was to develop a minimum number of credible scenarios that covered the range of response requirements. Though it is unlikely that any of these specific scenarios would unfold as described, a nation prepared for these scenarios would be prepared for almost all likely eventualities.

Analysts and subject-matter experts reviewed each scenario and developed a list of tasks that are required to effectively prevent and respond to the incident. This task list was vetted by Federal, State, and local officials and practitioners. Many other documents contributed to the task development process, including the following:

- ❖ *The National Response Plan*
- ❖ *The National Incident Management System*
- ❖ *Homeland Security Exercise and Evaluation Program Volume II: Exercise Evaluation and Improvement*, Office for Domestic Preparedness, October 2003
- ❖ *State and local Emergency Operations Plans*
- ❖ *Draft Interim Evidence-Based Performance Goals for Public Health Disaster Preparedness*, Centers for Disease Control and Prevention, April 2004
- ❖ *EMAP Standard*, Emergency Management Accreditation Program, September 2003

- ❖ *Emergency Responder Guidelines*, Office for Domestic Preparedness, July 2002
- ❖ *Guidelines for Homeland Security Prevention and Deterrence*, Office for Domestic Preparedness, June 2003

The UTL will be used as one basis for defining the capabilities (policies, procedures, personnel, training, equipment, mutual-aid agreements, etc.) needed to perform tasks required to prevent or respond to incidents of the nature and scope defined by the Common Suite of Scenarios. The tasks can then be mapped to existing training programs to identify gaps in training. A Target Capabilities List (TCL) will be developed with input from subject-matter experts and practitioners at all levels. The scenarios and UTL, with associated capabilities and metrics, will provide officials at all levels with a framework for assessing their level of preparedness and targeting resources to address greatest needs.

The UTL will be used in the planning and design of exercises, as well as in the evaluation of exercises and the response to real events. When the TCL is complete, and relevant homeland security training information becomes available, it will be updated in this catalog. Until then, refer to the Emergency Responder Guidelines and Prevention and Deterrence Guidelines. A portion of these guidelines are listed in this catalog, and they can be found in their entirety on the ODP website.

To access the Universal Task List, you must be a registered member on the ODP Extranet Secure Portal (the Web address is <https://odp.esportals.com>). The e-mail address for any questions and comments on the UTL is [UTL@DHS.GOV](mailto:UTL@DHS.GOV).

For more information on ODP and its programs, please visit the ODP website at <http://www.ojp.usdoj.gov/odp>, or call the ODP State and Local Domestic Preparedness Support Helpline at 1-800-368-6498. The Helpline is staffed weekdays 8:00 a.m.–7:00 p.m. (EST).

This catalog is current as of October 2004.

## *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 accept award from the Bureau of Justice Assistance (BJA) for FY2009 State Criminal Alien Assistance Program (SCAAP) in the amount of \$84,808 and to amend the budget accordingly.**

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

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED: N/A**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: Ratliff/Hauff**

**SPONSORED BY: Sumter**

**SUMMARY: This is a renewal grant that the county has been receiving to off-set the budget within the jail operation expenses, which may include salaries for correctional officers, training, education, medical and mental health services. Once SCAAP data has been validated and analyzed, applicants will receive an e-mail notification that awards are ready for on-line acceptance and drawdown. Hays County was awarded the maximize amount of \$84,808 for FY 2009.**



**From:** JBI Help Desk [mailto:JBHelpDesk@UNIFICARE.com]  
**Sent:** Thursday, October 01, 2009 2:59 PM  
**To:** Vickie Wilhelm  
**Subject:** WONDERFUL NEWS!!! The FY2009 SCAAP Awards have been announced

## Justice Benefits, Inc.

October 1, 2009

VIA EMAIL

Vickie Wilhelm  
Accountant  
Hays County, TX

### **RE: GREAT NEWS!!! FY2009 SCAAP AWARDS ANNOUNCED**

Justice Benefits, Inc. is very excited to inform you that the Bureau of Justice Assistance (BJA) has released the Award Payment List for the FY2009 State Criminal Alien Assistance Program (SCAAP).

**Congratulations! Hays County was awarded \$84,808.00.**

BJA has also stated that they will activate the drawdown link in the Grants Management System within the next three weeks, and you will then be able to accept your award.

**There is a deadline to drawdown the money.** Once you receive the official notification from BJA that your award is available for drawdown, you must accept your award through the GMS within 45 calendar days. Once 45 days elapses, the award may no longer be available.

Once we (JBI) discover that BJA has activated the drawdown link in the GMS, we will email you the detailed drawdown procedures. JBI's Help Desk will also be available to provide assistance with the drawdown procedure, if needed. Please feel free to call us at **800-576-3518**.

Finally and most importantly, we would like to commend the many individuals on your staff for the wonderful spirit of cooperation in working with JBI as we analyzed data and prepared Hays County's claim. It was only through the "partnership" of Hays County and JBI that led to the ultimate success of this most deserved award for the FY2009 State Criminal Alien Assistance Program.

As we have in past years, attached at the end of this email you will also find a document that can be used as a press release suitable for your local newspaper and other media.

Please do not hesitate to contact JBI regarding any questions to this email or other questions pertaining to the SCAAP Program.

Sincerely,

Amy E. Hoffmann  
Vice President, Special Projects  
Justice Benefits, Inc.

## *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 payment of \$6,292.67 to the City Of Kyle for work performed at the Pct 2 offices and amend the budget if necessary.**

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED: \$6,292.67**

**LINE ITEM NUMBER OF FUNDS REQUIRED: To be determined**

**REQUESTED BY: Auditor**

**SPONSORED BY: Barton**

**SUMMARY: See attached documentation.**

# *Agenda Item Routing Form*

**DESCRIPTION OF Item:** Authorize the payment of \$6,292.67 to the City Of Kyle for work performed at the Pct 2 offices and amend the budget if necessary.

**PREFERRED MEETING DATE REQUESTED:** September 22, 2009

## **COUNTY AUDITOR**

**Typically Requires 1 Business Day Review**

**AMOUNT AND FUND LINE ITEM NUMBER:** \$6,292.67    TBD

**COUNTY PURCHASING GUIDELINES FOLLOWED:** \_\_\_\_ N/A \_\_\_\_

**PAYMENT TERMS ACCEPTABLE:** \_\_\_\_ N/A \_\_\_\_

**COMMENTS:** I recommend we pay for it out of contingencies which will not require a budget amendment.  
**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:** \_\_\_\_



**OFFICE OF THE COUNTY AUDITOR**

111 E. San Antonio Street, Suite 100

San Marcos, Texas 78666

512-393-2283

Fax: 512-393-2279

[www.co.hays.tx.us](http://www.co.hays.tx.us)

**Bill Herzog, CPA**

*County Auditor*

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

**Marisol Villarreal-Alonzo, CPA**

*Assistant County Auditor*

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

October 6, 2009

Mr. Charles L. Cunningham  
City of Kyle  
PO Box 40  
Kyle, TX 78640

Dear Mr. Cunningham,

On September 17, 2009 we received invoice number 250 from the City of Kyle for reimbursement on the restoration work that ServPro completed on November 24, 2008 at 111 N. Front Street due to the overflow of a commode.

Please accept this letter as a request for a more detailed description and break down of the work that was completed in the amount of \$6,292.67.

You may fax the information to me at (512) 393-2279, email [bherzog@co.hays.tx.us](mailto:bherzog@co.hays.tx.us), or mail to the address listed above.

Should you have any questions please do not hesitate to contact me at (512) 393-2283.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Herzog".

Bill Herzog, CPA  
Hays County Auditor

BH/kdh

CC: Jeff Barton, Commissioner – Pct. 2

PO Box 40  
Kyle, TX 78640  
Phone (512) 262-1010  
Fax (512) 262-3800

**DATE:** September 11, 2009  
**INVOICE #:** 250  
**FOR:** *Reimbursement*

**Bill To:**

**Bill Herzog, Hays County Auditor**  
111 E. San Antonio St., Suite 100  
San Marcos, TX 78666  
(512) 393-2283


DESCRIPTION	QUANTITY	AMOUNT
Reimbursement for water restoration work performed at 111 N. Front Street and paid by the City of Kyle.	1	\$ 6,292.67
(Copy of ServPro invoice attached.)		
<b>TOTAL</b>		<b>\$ 6,292.67</b>

**Make all checks payable to the City of Kyle**

If you have any questions concerning this invoice, please contact:

Wendy Bates, Senior Accountant - Phone: (512) 262-3981 or E-mail: [wbates@cityofkyle.com](mailto:wbates@cityofkyle.com)

**THANK YOU FOR YOUR BUSINESS!**

SITE: PRECINT 2 ICES	CITY OF KYLE 111 N. FRONT ST. KYLE, TX 78640 512-738-7188 MARTIN	Date <b>11/5/2008</b>	Invoice No. <b>1962283</b>
		 <b>SAN MARCOS/NEW BRAUNFELS</b> 1222 OLD MARTINDALE RD. SAN MARCOS, TX 78666 512-396-8225 830-625-0578	

10 KEW

PC

G

KS, AR, LB

Services

COMMERCIAL WATER

COMMERCIAL WATER RESTORATION  
BILLING ACCORDING TO WORK DONE ON  
NON-TAXABLE ITEMS  
Sales Tax

6,292.67

0.00

APPROVAL FOR PAYMENT

P.O.#

Date:

11/24/08

WB

Budget Code			Description	Amount
Fund	Dept.	Line Item		
110	000	11231	Restoration work done @ 111 W. Front St. - W. 11	6,292.67
			bill Hays County	
Total				6,292.67

Approved By:

*Charles L. [Signature]*

Date:

11/24/08

Paid

CK/REF #

Date:

- tolies over (on)

PLEASE PAY SERVPRO DIRECT. AUTHORIZATION IS ATTACHED. FIN # 74-2961983

I acknowledge that permanently discolored, faded and/or bleached areas on carpet, upholstery, other types of material sometimes make it impossible to restore the original color or condition. Spot is not guaranteed. PLEASE SEE THE ADDITIONAL TERMS AND CONDITIONS OF SERVICE ON REVERSE SIDE.

TOTAL

\$6,292.67

Read the Terms and Conditions of Service on the reverse of and agree to same.

TERMS OF PAYMENT: Unless otherwise specified on this invoice, payment is due in full upon completion of service. Interest will be charged at the maximum allowable by law, or at 1.5% per month, whichever is lesser, on accounts over 30 days past due.

Signature

I acknowledge the satisfactory completion of the above-described work.

Signature

☐ No One Home

07 Office - Original Invoice Yellow - Billing Copy Green - Reporting Copy Pink - Customer Copy 2nd White Trainer Back Sheet - Recall File

## Bill Herzog

---

**From:** Wendy Bates [wbates@cityofkyle.com]  
**Sent:** Thursday, October 08, 2009 3:14 PM  
**To:** Bill Herzog  
**Subject:** FW: Additional Documentation for City of Kyle Reimbursement  
**Attachments:** Abbreviated.pdf

Good afternoon Mr. Herzog,

Mr. Cunningham asked me to follow up on your request for additional information on City of Kyle's Invoice # 250 (the reimbursement for the ServPro invoice). I contacted ServPro and asked for additional support. Attached is the detailed estimate they sent. Please let me know if this is sufficient or if you need any additional information.

Thanks,

**Wendy Bates**  
**Senior Accountant**

City of Kyle  
100 W. Center St.  
PO Box 40  
Kyle, TX 78640  
(512) 262-3981

---

**From:** Sales [mailto:delvia@servprosmnb.com]  
**Sent:** Thursday, October 08, 2009 3:04 PM  
**To:** WBATES@CITYOFKYLE.COM  
**Subject:** ESTIMATE FOR WATER RESTORATION

I hope this is what you need.

## SERVPRO OF SAN MARCOS/NEW BRAUNFELS

Client: CITY OF KYLE  
Property: 111 NORTH FRONT STREET  
KYLE, TX 78640  
Business: 111 NORTH FRONT STREET  
KYLE, TX 78640

Business: (512) 665-1641

Operator Info:  
Operator: CATHIE

Type of Estimate:  
Date Entered: 10/26/2008      Date Assigned:

Price List: TXAU5B8C  
Restoration/Service/Remodel  
Estimate: 2008-10-27-1359



# SERVPRO OF SAN MARCOS/NEW BRAUNFELS

2008-10-27-1359

## JOB

DESCRIPTION	QNTY	UNIT COST	TOTAL
1. Emergency service call - after business hours	1.00 EA @	225.00 =	225.00
2. Equipment set-up & take down - 10+ pieces	24.00 EA @	10.00 =	240.00
3. Equipment monitoring - per day	2.00 EA @	70.00 =	140.00
4. Fuel Charge	1.00 EA @	167.93 =	167.93
5. Haul debris - per pickup truck load - including dump fees	0.25 EA @	87.70 =	21.93

## LOBBY

LxWxH 30'0" x 12'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
6. Air mover - no monitoring - per 24 hr period 1 FAN (71) FOR 2 DAYS	2.00 EA @	28.00 =	56.00
7. Dehumidifier - Large - no monitoring - per 24 hr period 1 DEHU (312) FOR 2 DAYS	2.00 EA @	150.00 =	300.00
8. Apply anti-microbial agent to carpet	156.00 SF @	0.20 =	31.20
9. Water extraction from carpet	156.00 SF @	0.41 =	63.96
10. Clean and deodorize carpet	360.00 SF @	0.31 =	111.60
11. Apply anti-microbial agent to baseboard and wall	28.00 LF @	0.20 =	5.60

## FRONT OFFICE

LxWxH 10'0" x 9'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
12. Air mover - no monitoring - per 24 hr period 1 FAN (97) FOR 2 DAYS	2.00 EA @	28.00 =	56.00
13. Dehumidifier - Large - no monitoring - per 24 hr period 1 DEHU (311) FOR 2 DAYS	2.00 EA @	150.00 =	300.00
14. Apply anti-microbial agent to carpet	70.00 SF @	0.20 =	14.00
15. Water extraction from carpet	70.00 SF @	0.41 =	28.70
16. Clean and deodorize carpet	90.00 SF @	0.31 =	27.90
17. Apply anti-microbial agent to baseboard	16.00 LF @	0.20 =	3.20
18. Apply anti-microbial agent to wall	16.00 LF @	0.20 =	3.20

## COPY ROOM

LxWxH 13'0" x 5'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
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# SERVPRO OF SAN MARCOS/NEW BRAUNFELS

## CONTINUED - COPY ROOM

DESCRIPTION	QNTY	UNIT COST	TOTAL
19. Air mover - no monitoring - per 24 hr period 1 FAN (72) FOR 2 DAYS	2.00 EA @	28.00 =	56.00
20. Apply anti-microbial agent to carpet	65.00 SF @	0.20 =	13.00
21. Water extraction from carpet	65.00 SF @	0.41 =	26.65
22. Clean and deodorize carpet	65.00 SF @	0.31 =	20.15
23. Contents - move out then reset	1.00 EA @	36.03 =	36.03
24. Apply anti-microbial agent to baseboard line and wall	38.00 LF @	0.20 =	7.60

## COMM. OFFICE

LxWxH 23'0" x 14'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
25. Air mover - no monitoring - per 24 hr period 3 FANS (2,64,66) FOR 2 DAYS	6.00 EA @	28.00 =	168.00
26. Dehumidifier - Large - no monitoring - per 24 hr period 1 DEHU (402) FOR 2 DAYS	2.00 EA @	150.00 =	300.00
27. Apply anti-microbial agent to carpet	322.00 SF @	0.20 =	64.40
28. Water extraction from floor - Heavy	322.00 SF @	0.60 =	193.20
29. Clean and deodorize carpet	322.00 SF @	0.31 =	99.82
30. Contents - move out then reset - Large room	1.00 EA @	54.05 =	54.05
31. Apply anti-microbial agent to baseboard	30.00 SF @	0.20 =	6.00
32. Apply anti-microbial agent to wall	30.00 SF @	0.20 =	6.00

## BREAK ROOM

LxWxH 10'0" x 7'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
33. Air mover - no monitoring - per 24 hr period 1 FAN (1) FOR 2 DAYS	2.00 EA @	28.00 =	56.00
34. Dehumidifier - Large - no monitoring - per 24 hr period 1 DEHU (306) FOR 2 DAYS	2.00 EA @	150.00 =	300.00
35. Apply anti-microbial agent to carpet	70.00 SF @	0.20 =	14.00
36. Water extraction from carpet - Heavy	70.00 SF @	0.60 =	42.00
37. Clean and deodorize carpet	70.00 SF @	0.31 =	21.70
38. Apply anti-microbial agent to baseboard line	15.00 LF @	0.20 =	3.00
39. Apply anti-microbial agent to wall	15.00 LF @	0.20 =	3.00

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10/8/2009

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# SERVPRO OF SAN MARCOS/NEW BRAUNFELS

## CONTINUED - BREAK ROOM

DESCRIPTION	QNTY	UNIT COST	TOTAL
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### LADIES ROOM

LxWxH 6'0" x 4'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
40. Air mover - no monitoring - per 24 hr period 1 FAN (131) FOR 2 DAYS	2.00 EA @	28.00 =	56.00
41. Apply anti-microbial agent to floor	24.00 LF @	0.20 =	4.80
42. Water extraction from floor - Heavy	24.00 SF @	0.60 =	14.40
43. Clean floor	24.00 SF @	0.29 =	6.96
44. Apply anti-microbial agent to baseboard	12.00 LF @	0.20 =	2.40
45. Apply anti-microbial agent to wall	12.00 LF @	0.20 =	2.40

### MENS ROOM

LxWxH 6'0" x 4'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
46. Air mover - no monitoring - per 24 hr period 1 FAN (127) FOR 2 DAYS	2.00 EA @	28.00 =	56.00
47. Apply anti-microbial agent to floor	24.00 LF @	0.20 =	4.80
48. Water extraction from floor - Heavy	24.00 SF @	0.60 =	14.40
49. Clean floor	24.00 SF @	0.29 =	6.96
50. Tear out trim/base and bag for disposal	12.00 LF @	0.56 =	6.72
51. Drill holes in wall cavity for proper ventilation	12.00 LF @	0.56 =	6.72
52. Apply anti-microbial agent to baseboard line and wall	24.00 LF @	0.20 =	4.80

### COURT ROOM

LxWxH 22'0" x 20'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
53. Air mover - no monitoring - per 24 hr period 3 FANS(46,126,44) FOR 2 DAYS	2.00 EA @	28.00 =	56.00
54. Dehumidifier - Large - no monitoring - per 24 hr period 1 LARGE DEHU (501) FOR 2 DAYS	2.00 EA @	150.00 =	300.00

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# SERVPRO OF SAN MARCOS/NEW BRAUNFELS

## CONTINUED - COURT ROOM

DESCRIPTION	QNTY	UNIT COST	TOTAL
55. Apply anti-microbial agent to carpet	440.00 LF @	0.20 =	88.00
56. Water extraction from carpet - Heavy	440.00 SF @	0.60 =	264.00
57. Clean and deodorize carpet	440.00 SF @	0.31 =	136.40
58. Tear out trim/base and bag for disposal	22.00 LF @	0.56 =	12.32
59. Drill holes in wall cavity for proper ventilation	22.00 LF @	0.56 =	12.32
60. Apply anti-microbial agent to baseboard	36.00 LF @	0.20 =	7.20
61. Apply anti-microbial agent to wall	36.00 LF @	0.20 =	7.20

## TV ROOM

DESCRIPTION	QNTY	UNIT COST	TOTAL
62. Air mover - no monitoring - per 24 hr period 3 FANS (50,94,85) FOR 2 DAYS	6.00 EA @	28.00 =	168.00
63. Dehumidifier - Large - no monitoring - per 24 hr period 1 LARGE DEHU (509) FOR 2 DAYS	2.00 EA @	150.00 =	300.00
64. Apply anti-microbial agent to carpet	416.00 LF @	0.20 =	83.20
65. Water extraction from carpet - Heavy	416.00 SF @	0.60 =	249.60
66. Clean and deodorize carpet	416.00 SF @	0.31 =	128.96
67. Apply anti-microbial agent to baseboard line and wall	64.00 LF @	0.20 =	12.80

## BACK OFFICE1

LxWxH 15'0" x 10'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
68. Dehumidifier - Large - no monitoring - per 24 hr period 1 DEHU (307) FOR 2 DAYS	2.00 EA @	150.00 =	300.00
69. Apply anti-microbial agent to hard floor	150.00 LF @	0.20 =	30.00
70. Water extraction from floor - Heavy	150.00 SF @	0.60 =	90.00
71. Clean floor	150.00 SF @	0.29 =	43.50

## BACK OFFICE2

LxWxH 16'0" x 8'0" x 8'0"

DESCRIPTION	QNTY	UNIT COST	TOTAL
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# SERVPRO OF SAN MARCOS/NEW BRAUNFELS

## CONTINUED - BACK OFFICE2

DESCRIPTION	QNTY	UNIT COST	TOTAL
72. Air mover - no monitoring - per 24 hr period 1 FAN (80) FOR 2 DAYS	2.00 EA @	28.00 =	56.00
73. Dchumidifier - Large - no monitoring - per 24 hr period 1 DEHU (404) FOR 2 DAYS	2.00 EA @	150.00 =	300.00
74. Apply anti-microbial agent to carpet	128.00 LF @	0.20 =	25.60
75. Water extraction from carpet - Heavy	128.00 SF @	0.60 =	76.80
76. Clean and deodorize carpet - Light	128.00 SF @	0.27 =	34.56
77. Contents - move out then reset	1.00 EA @	36.03 =	36.03

### Grand Total Areas:

3,904.00 SF Walls	1,673.00 SF Ceiling	5,577.00 SF Walls and Ceiling
1,673.00 SF Floor	185.89 SY Flooring	488.00 LF Floor Perimeter
1,208.00 SF Long Wall	744.00 SF Short Wall	488.00 LF Ceil. Perimctr
0.00 Floor Area	0.00 Total Area	0.00 Interior Wall Area
0.00 Exterior Wall Area	0.00 Exterior Perimeter of Walls	
0.00 Surface Area	0.00 Number of Squares	0.00 Total Perimeter Length
0.00 Total Ridge Length	0.00 Total Hip Length	

**SERVPRO OF SAN MARCOS/NEW BRAUNFELS**

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	<b>Summary for Dwelling</b>	
Line Item Total		6,292.67
Replacement Cost Value		<u>\$6,292.67</u>
Net Claim		<u><u>\$6,292.67</u></u>

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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: Accept donations to the Hays County Historical Commission for the Jack C. Hays documentary film and amend the budget accordingly.**

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED: N/A**

**LINE ITEM NUMBER OF FUNDS REQUIRED: N/A**

**REQUESTED BY: Auditor**

**SPONSORED BY: Sumter**

**SUMMARY: The Historical Commission has received additional donations in the amount of \$22,330.**

## *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 contract with City-County Benefits Services (CCBS) for an updated actuarial analysis for compliance with Governmental Accounting Standards Board GASB 43 & 45.**

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED: \$16,500 Countywide Consultants**

**LINE ITEM NUMBER OF FUNDS REQUIRED:001-645-00.5448**

**REQUESTED BY: Auditor**

**SPONSORED BY: Sumter**

**SUMMARY: The County contracted with CCBS over 2 years ago to perform an actuarial study of our total liability and annual funding requirements for our "other post-retirement employee benefits"(OPEB). In order to be in compliance with GASB we need to update the actuarial study every 2 years. This study will be required by our independent auditors prior to the issuance of our annual financial audit report.**



# *Agenda Item Routing Form*

**DESCRIPTION OF Item:** Approve a contract with City-County Benefits Services (CCBS) for an updated actuarial analysis for compliance with Governmental Accounting Standards Board GASB 43 & 45.

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

## **COUNTY AUDITOR**

**Typically Requires 1 Business Day Review**

**AMOUNT AND FUND LINE ITEM NUMBER:** \$16,500 Countywide Consultants 001-645-00.5448

**COUNTY PURCHASING GUIDELINES FOLLOWED:** State Contract

**PAYMENT TERMS ACCEPTABLE:** Yes

**COMMENTS:**

**Bill Herzog**

## **SPECIAL COUNSEL**

**Typically Requires 9 Business Day Review**

**CONTRACT TERMS ACCEPTABLE:** \_\_\_\_\_

**COMMENTS:**

## **COMMISIONERS' COURT**

**APPROVED/DISAPPROVED AND DATE:** \_\_\_\_\_

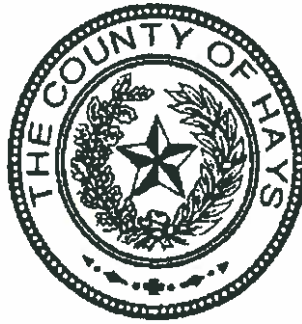
## **COUNTY JUDGE**

*Signature Required if Approved*

**DATE CONTRACT SIGNED:** \_\_\_\_\_

**Scope of Work  
and  
Professional Services Agreement  
for  
Compliance with  
Governmental Accounting Standards Board Rule 45**

# **Hays County**



Presented by



**Burke O. Sunday, LHIC**  
**City-County Benefits Services**  
245 Commerce Green Blvd., Suite 290  
Sugar Land, Texas 77478  
Direct: [281] 295-3013  
Fax: [281] 295-3020

and

**G. F. MONNIN CONSULTING, INC.**  
1715 Capital of Texas Highway South, Suite 205  
Austin, Texas 78746  
Phone: [512] 328-5854  
Fax: [512] 328-5867

**Professional Services Agreement between Hays County and  
City-County Benefits Services to Provide Consulting Services to Hays County related to Compliance with Governmental  
Accounting Standards Board GASB 43 and GASB 45**

COUNTY (also described as "Client"): Hays County, a Texas County, 111 E. San Antonio, San Marcos, Texas 78666

PROFESSIONAL (also described as "CCBS"): City-County Benefits Services, a General Partnership

PROJECT: PROFESSIONAL will provide employee benefits consulting services in accordance with the following:

**City-County Benefits Services Scope of Services**

**[Self-Funded Cases]**

**A. Funding Analysis**

GASB requires the calculation of funding rates separately for the pre-Medicare and post-Medicare retiree groups and the active group. This analysis is used to determine if there is any "implicit subsidy" and/or "direct subsidy". It is likely that the plan has some blending of rates. GASB also requires the use of realistic funding. In some plans, the funding is either below or above this target.

The experience of the plan is analyzed and the required rates for the plan are developed for the different categories (tiers). A funding analysis is provided for and utilized in the development of the GASB calculations.

**B. Data Needs for Funding Analysis (Medical, Dental, Life, and Other)**

1. Month by month census by category (tier) (Employee, Spouse, Children, Family) (prior 24 months)
2. Current detailed census showing categories (tiers) for each plan category:
  - a. Employee only
  - b. Employee + Spouse
  - c. Employee + Children
  - d. Employee + Family
3. Month by month revenue by plan category (tier) (prior 24 months)
4. Month by month expenses (medical and dental claims) by plan category (tier) (prior 24 months)
5. Month by month expenses (Rx claims) by plan category (prior 24 months)
6. Lag reports (prior 24 months)
7. TPA and/or insurance carriers aggregate reports (prior 24 months)
8. Large claim information (prior 24 months) (claims in excess of \$25,000)
9. Plan fixed costs:
  - a. Administrative fees
  - b. Individual stop-loss rate(s)
  - c. Aggregate stop-loss rate(s)
  - d. Network access fee(s)
  - e. Pharmacy access fee(s)
  - f. Other fees (Disease management, Utilization review, Large case management)
10. Summary of Benefits (PDF version)
11. Benefit changes in the past two (2) plan years
12. Proposed benefits changes
13. Current and prior plan year funding rates by category (tier)
  - a. Employee Only
  - b. Employee + Spouse
  - c. Employee + Children
  - d. Employee + Family
14. Current and prior plan year contribution rates (employer and employee)

**C. GASB Calculations**

GASB requires the calculation of the total liability and annual funding for all of the other post-retirement benefits (OPEB) (other than pensions). This calculation will provide the cost of any direct subsidy and any indirect subsidy.

The data will be available after the calculations are done to assist the employer in determining the effect of any funding changes on the GASB liability. The calculations are necessary to determine how the employer will deal with the liability of and for the working life for each current and future employee.

1. Calculation of liability based on current obligations as per Chapter 175 of the Texas Local Government Code. Access only for pre-65 and post-65 eligible retirees.
2. Calculation of liability based on other scenarios as provided by Commissioner's Court.

**D. GASB Liability Solutions (VEBA Trust and Funding Alternatives)**

1. Provide information relative to potential cost of establishing and maintaining a VEBA Trust, should the County decided to "fund" the GASB 45 liability.
2. Provide information and guidance for post-65 retiree alternative plans.

*Actuarial services required to comply with GASB 43 or GASB 45 will be performed by G. P. Monnin Consulting, Inc., a business associate of City-County Benefits Services. City-County Benefits Services and G. P. Monnin Consulting, Inc have entered into business associate agreements for the protection of Personal Health Information (PHI) that will be utilized in the process.*

COUNTY'S REPRESENTATIVE: Judge Liz Sumter – County Judge

DEADLINE: PROFESSIONAL shall provide all professional services listed above to complete the PROJECT within 90 days after the County supplies PROFESSIONAL with the information listed above under "A. Funding Analysis" and "B. Data Needs for Funding Analysis".

PAYMENTS TO PROFESSIONAL: COUNTY shall pay PROFESSIONAL a total of **\$16,500** for satisfactory completion of all of the services for the Project. 1/2 of the \$16,500 will be paid within 30 days after invoice to the COUNTY. The final 1/2 of the \$16,500 will be paid to PROFESSIONAL within 30 days after invoice to the COUNTY following PROFESSIONAL's satisfactory completion of all services required pursuant to this agreement and COUNTY'S acceptance thereof.

**GENERAL CONDITIONS:**

1. Controlling Law--This agreement is performable and is to be governed by the law applicable in **Hays County, Texas**. Sole venue for any action arising under this agreement shall be in **Hays County, Texas**.
2. Successors and Assigns--PROFESSIONAL shall not assign, sublet or transfer any rights under or interest in (including, but without limitations, monies that may become due or monies that are due) this Agreement without the written consent of the COUNTY. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this agreement. Nothing contained in this paragraph shall prevent PROFESSIONAL from employing independent consultants, associates and other employees to assist it in the performance of services hereunder.
3. No Third-Party Beneficiaries--Nothing herein shall be construed to give any rights or benefits to anyone other than COUNTY and PROFESSIONAL.
4. Independent Contractor--In performing services under this agreement, the relationship between COUNTY and PROFESSIONAL is that of independent contractor, and COUNTY and PROFESSIONAL by the execution of this agreement do not change the independent contractor status of PROFESSIONAL. No term or provision of this agreement or act of PROFESSIONAL in the performance of this agreement shall be construed as making PROFESSIONAL the agent, servant, or employee of COUNTY.
5. Confidentiality--PROFESSIONAL will be analyzing confidential Protected Health Information concerning the COUNTY's employees and retirees. For purposes of this section of this agreement, PROFESSIONAL will be considered a "Business Associate" and **Hays County** will be considered a "Covered Entity".

**I. Definitions**



Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule, but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes without limitation "Electronic Protected Health Information" as defined below.

The term "Electronic Protected Health Information" means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

## **II. Confidentiality and Security Requirements**

### **(a) Business Associate agrees:**

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Security and Privacy Rule), or the HIPAA Security and Privacy Rule, and (3) as would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information, and agrees to implement reasonable and appropriate safeguards to protect any of such information which is Electronic Protected Health Information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

### **(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:**

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security and Privacy Rule.

(d) The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Security and Privacy Rule.

(e) Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. For purposes of this agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition,

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

### III. Availability of PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule.

### IV. Termination

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

### V. Miscellaneous

Except as expressly stated herein or the HIPAA Security and Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of Texas. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Security and Privacy Rule, such party shall notify the other party in writing. For a period of up to 10 days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such 10-day period, the Agreement fails to comply with the HIPAA Security and Privacy Rule, then either party has the right to terminate upon written notice to the other party. This provision shall not abrogate or affect the right of either party to terminate this agreement on at least 10 days notice to the other party.

This agreement and said attachments may only be amended, supplemented, modified or canceled by a duly executed written instrument.

APPROVED by the Commissioner's Court of Hays County, this XX day of XXXX 2009  
EXECUTED, this the XX day of XXXX, 2009.

COUNTY: **Hays County**

PROFESSIONAL: **City-County Benefits Services**

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Liz Sumter, County Judge

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Burke Sunday, LHIC - Partner

## *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 consider overtime funding for the Constable Precinct 1, 3, and 4 offices due to the Attorney General Child Support Warrant Roundup.**

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED: \$1,267.52**

**LINE ITEM NUMBER OF FUNDS REQUIRED: possibly contingencies**

**REQUESTED BY: Constable David Peterson**

**SPONSORED BY: Debbie Ingalsbe**

**SUMMARY:**

Constable Precinct 1, 3 and 4 will be holding an AG Child Support Warrant Roundup and no funds were allocated in this years budget for overtime pay. Warrant Roundup will be conducted on November 4, 2009 with the Attorney General Office Staff, San Marcos Police Department and the Sheriff's office.

Precinct 1 will have four officers, Precinct 3 will have two officers and Precinct 4 will have two officers.

# *Agenda Item Routing Form*

**DESCRIPTION OF Item:** Consider overtime funding for the Constable Precinct 1, 3, and 4 offices due to the Attorney General Child Support Warrant Roundup.

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

## **COUNTY AUDITOR**

**Typically Requires 1 Business Day Review**

**AMOUNT AND FUND LINE ITEM NUMBER:** \$1,267.52 TBD

**COUNTY PURCHASING GUIDELINES FOLLOWED:** \_\_\_\_ N/A \_\_\_\_

**PAYMENT TERMS ACCEPTABLE:** \_\_\_\_ N/A \_\_\_\_

**COMMENTS:** Will need an additional \$216 for fringe benefits for a total of \$1,484.

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



ATTORNEY GENERAL  
CHILD SUPPORT WARRANT Round 4  
NOV-4-09

CONSTABLE PCT-1 David Peterson

MARRUS GONZALES	\$19.61 PER HR	156.
Todd WATKINS	\$19.61 PER HR	
Hector RANGEL	\$19.61 PER HR	
SARLY RIOTAS	\$19.61 PER HR	
		TOTAL 629.

CONSTABLE PCT-3 DARRRELL AYRES

RAY HELM	\$20.39 PER HR	163.
TOM WAHACE	\$20.39 PER HR	1
		TOTAL 326.

CONSTABLE PCT-4 Ron Hood

RON HALL	\$19.61 PER HR	156.
BHAINE HAMILTON	\$19.61 PER HR	
		\$313.7

TIME NOV-4-09 WEDNESDAY  
3:00 AM TO 10:00 AM

\$1,267.52

## *Agenda Item Request Form*

### **Hays County Commissioners' Court**

9:00 a.m. Every Tuesday

**Request forms are due in the County Judge's Office**

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

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

**AGENDA ITEM:** Discussion and possible action to authorize the County Judge to execute a grant contract with the Texas Water Development Board, in the amount of \$214,225.00, to initiate a flood protection planning study in northern Hays County.

**CHECK ONE:** ☒ **ACTION**

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

**AMOUNT REQUIRED:** \$214,225.00

**LINE ITEM NUMBER OF FUNDS REQUIRED:** #001-645-00.5448 Countywide, split over two years

**REQUESTED BY:** Hauff

**SPONSORED BY:** Ford

#### **SUMMARY:**

On December 16, 2008 the Commissioners Court authorized submission of a grant application to the Texas Water Development Board (TWDB), Flood Protection Planning Program in the amount of \$300,000 to initiate a flood protection planning/drainage basin study of Hays County. The grant from the TWDB could potentially be utilized to leverage funding from the U.S. Army Corps of Engineers (USACOE) through interlocal agreements with the USACOE and the Lower Colorado River Authority (LCRA - northern drainage basins in Hays County) and the Guadalupe-Blanco River Authority (GBRA - southern portions of Hays County). Halff Associates, Inc. prepared the grant application ~~per approval~~ from the Commissioners Court on November 25, 2008 and has coordinated efforts with the above entities to develop the necessary interlocal agreements, efforts for which are ongoing. Halff Associates has briefed the Commissioners Court on these agreements as well as ~~the scope of the studies~~ through several presentations as well as discussions with individual Court members.

Although the study was originally intended to begin in the southern, or GBRA service area of the county, agreements were not in place between the GBRA and the USACOE to initiate such a study (this is currently being addressed), so a decision was made to shift the study area to begin in northern Hays County (LCRA service area) where existing agreements between the LCRA and USACOE would accommodate the intended work. The TWDB has agreed to this strategy. The initial study, Phase 1a, will encompass the Onion Creek, Little Bear and Bear Creek drainages and include engineering studies to assess flooding potentials along these drainages. It is anticipated that interlocal agreements with the USACOE and LCRA will soon be available for Commissioners Court review and action. Work will not be started until these agreements are approved. The contract with the TWDB must be fully executed by October 30, 2009 to retain the funding.

# Agenda Item Routing Form

**DESCRIPTION OF Item:** Authorize the County Judge to execute a grant contract with the Texas Water Development Board, in the amount of \$214,225.00, to initiate a flood protection planning study in northern Hays County.

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

## COUNTY AUDITOR

**Typically Requires 1 Business Day Review**

**AMOUNT AND FUND LINE ITEM NUMBER:** \$214,225.00 001-645-00.5448 split over 2 years

**COUNTY PURCHASING GUIDELINES FOLLOWED:** N/A

**PAYMENT TERMS ACCEPTABLE:** N/A

**COMMENTS:** \$130,000 is budgeted for FY 2010

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:**



STATE OF TEXAS

TWDB Contract No. 0904830950

COUNTY OF TRAVIS

Research and Planning Fund  
Flood Protection Planning

THIS Contract, (hereinafter "CONTRACT"), between the Texas Water Development Board (hereinafter "BOARD") and Hays County (hereinafter "CONTRACTOR(S)"), is composed of two parts: SECTION I. SPECIFIC CONDITIONS AND EXCEPTIONS TO STANDARD AGREEMENT and SECTION II. STANDARD AGREEMENT. The terms and conditions set forth in Section I will take precedence over terms and conditions in Section II.

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

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

- A. BOARD - The Texas Water Development Board, or its designated representative
- B. CONTRACTOR(S) – Hays County
- C. EXECUTIVE ADMINISTRATOR - The Executive Administrator of the Board or his designated representative
- D. PARTICIPANT(S) - Hays County  
USACE  
City of Dripping Springs  
Lower Colorado River Authority
- E. REQUIRED INTERLOCAL AGREEMENT(S) – N/A
- F. BOARD APPROVAL DATE – August 20, 2009
- G. PLANNING AREA – Hays County, the LCRA and participating cities have determined that this Regional Study is critical to plan for the most feasible flood protection in the portions of the county which are drained by the Colorado River and its tributaries in northern Hays County. The project area is more specifically defined in Exhibit A.
- H. DEADLINE FOR CONTRACT EXECUTION – October 30, 2009

- I. CONTRACT INITIATION DATE – August 20, 2009
- J. STUDY COMPLETION DATE – December 31, 2010
- K. FINAL REPORT DEADLINE – April 30, 2011
- L. TOTAL STUDY COSTS - \$856,900.00
- M. BOARD SHARE OF THE TOTAL STUDY COSTS - Not to exceed \$214,225.00 or 25 percent of the TOTAL STUDY COSTS. Funding will be fifty percent (50%) of each individual voucher submission and according to SECTION II, ARTICLE IV - COMPENSATION AND REIMBURSEMENT
- N. LOCAL SHARE OF THE TOTAL STUDY COSTS - \$214,225.00 in cash and in-kind services, and the U. S. Army Corps of Engineers share of \$428,500, or 75 percent of the TOTAL STUDY COSTS.
- O. VOUCHER SUBMISSION SCHEDULE – QUARTERLY
- P. OTHER SPECIAL CONDITIONS AND EXCEPTIONS TO STANDARD AGREEMENT OF THIS CONTRACT –N/A

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

TEXAS WATER DEVELOPMENT BOARD      HAYS COUNTY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
J. Kevin Ward  
Executive Administrator

\_\_\_\_\_  
The Honorable Elizabeth “Liz” Sumter  
County Judge

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

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



## **SECTION II. STANDARD AGREEMENT**

### **ARTICLE I. RECITALS**

Whereas, the CONTRACTOR(S) applied to the BOARD, Austin, Texas for a planning grant to develop a flood protection plan;

Whereas, the CONTRACTOR(S) and PARTICIPANT(S) will commit cash and/or in-kind services to pay for the LOCAL SHARE OF THE STUDY COSTS of this planning project;

Whereas, the CONTRACTOR(S) is the entity who will act as administrator of the BOARD's planning grant and will be responsible for the execution of this contract;

Whereas, on the BOARD APPROVAL DATE, the BOARD approved the CONTRACTOR(S)'s application for financial assistance;

Now, therefore, the BOARD and the CONTRACTOR(S), agree as follows:

### **ARTICLE II. PROJECT DESCRIPTION AND SERVICES TO BE PERFORMED**

1. The BOARD enters into this CONTRACT pursuant to Water Code §15.405, Subchapter A; Exhibit A, the original grant application, which is incorporated herein and made a permanent part of this CONTRACT; and this CONTRACT.
2. The CONTRACTOR(S) will prepare a flood protection plan for the PLANNING AREA, as delineated and described in Exhibit A, according to the Scope of Work contained in Exhibit B.
3. The CONTRACTOR(S) shall establish formal, direct, and continuous liaisons with all cities, counties, councils of governments, river authorities, and all applicable state agencies, districts, federal agencies, including the appropriate project directors of the U.S. Army Corps of Engineers, and other governmental entities having flood protection responsibility within the PLANNING AREA, and community leaders in the PLANNING AREA for the purpose of coordinating the scope of work and flood protection plan with all existing studies, plans, or activities for the purpose of providing information and obtaining available data for the development of the flood protection plan. The planning will be coordinated with the Federal Emergency Management Agency (FEMA) Flood Insurance Program and all relevant flooding and drainage protection studies and activities, which will also be reviewed as information for the development of this flood protection plan. It will also be the responsibility of the CONTRACTOR to solicit comments from the general public as to the content of this flood protection planning project.

4. The CONTRACTOR(S) will coordinate the flood protection plan with the existing plans and policies of the entities listed above, the Texas Commission on Environmental Quality (TCEQ), and any other affected entities.
5. The CONTRACTOR(S) will hold public meetings with the PARTICIPANTS, consultants, local entities, the TCEQ, the BOARD, and any interested parties at the commencement of the project, at 50% completion, following the STUDY COMPLETION DATE but before the FINAL REPORT DEADLINE, and when deemed necessary by either the BOARD or the CONTRACTOR(S) to discuss the status of the Flood Protection Plan. The public meeting shall be held in accordance with the Texas Open Meetings Act. The CONTRACTOR(S) will solicit input and comments from the affected public on the draft final report and consider such input and comments for incorporation in the final report.

### **ARTICLE III. SCHEDULE, REPORTS, AND OTHER PRODUCTS**

1. The CONTRACTOR(S) has until the DEADLINE FOR CONTRACT EXECUTION to execute this CONTRACT and to provide acceptable evidence of REQUIRED INTERLOCAL AGREEMENTS and the CONTRACTOR(S) ability to provide the LOCAL SHARE OF THE TOTAL STUDY COSTS to the EXECUTIVE ADMINISTRATOR for approval or the BOARD'S SHARE OF THE TOTAL STUDY COSTS will be rescinded.
2. The term of this CONTRACT shall begin and the CONTRACTOR(S) shall begin performing its obligations hereunder on the CONTRACT INITIATION DATE and shall expire on the FINAL REPORT DEADLINE. Delivery of an acceptable final report prior to the FINAL REPORT DEADLINE shall constitute completion of the terms of this CONTRACT.
3. The CONTRACTOR(S) will complete the Scope of Work and will deliver seven (7) double-sided copies of a draft final report to the EXECUTIVE ADMINISTRATOR no later than the STUDY COMPLETION DATE. The draft final report will include the Scope of Work; a description of the research performed; the methodology and materials used; any diagrams or graphics used to explain the procedures related to the study; any data collected; an electronic copy of any computer programs, maps, or models along with an operations manual and any sample data set(s) developed under the terms of this contract; analysis of the research results; conclusions and recommendations; a List of References, a Table of Contents, List of Figures, List of Tables, an Executive Summary, and any other pertinent information. All final reports should be prepared according to Exhibit D, Guidelines for Authors Submitting Contract Reports to the Texas Water Development Board. After a 30-day review period, the EXECUTIVE ADMINISTRATOR will return review comments to the CONTRACTOR(S).
4. The CONTRACTOR(S) will consider incorporating comments from the EXECUTIVE

ADMINISTRATOR and other commentors on the draft final report into a final report. The CONTRACTOR(S) will include a copy of the EXECUTIVE ADMINISTRATOR's comments in the Final Report. The CONTRACTOR(S) will submit one (1) electronic copy of the Final Report in Portable Document Format (PDF) and seven (7) bound double-sided copies of the final report to the EXECUTIVE ADMINISTRATOR no later than the FINAL REPORT DEADLINE. The CONTRACTOR(S) will submit one (1) electronic copy of any computer programs or models and an operations manual developed under the terms of this CONTRACT. After a 30-day review period, the EXECUTIVE ADMINISTRATOR will either accept or reject the final report. If the final report is rejected, the rejection letter sent to the CONTRACTOR(S) shall state the reasons for rejection and the steps the CONTRACTOR(S) need to take to have the final report accepted and the retainage released.

5. The CONTRACTOR(S) will submit progress reports with submittal of vouchers according to the VOUCHER SUBMISSION SCHEDULE. Progress reports shall be in written form and shall include a brief statement of the overall progress made since the last status report; a brief description of any problems that have been encountered during the previous reporting period that will affect the study, delay the timely completion of any portion of this CONTRACT, or inhibit the completion of or cause a change in any of the study's products or objectives; and a description of any action the CONTRACTOR(S) plans to take to correct any problems that have been encountered.
6. The COMPLETION DATE and the FINAL REPORT DEADLINE can be extended upon written approval by the EXECUTIVE ADMINISTRATOR. The CONTRACTOR(S) should submit a written request to the EXECUTIVE ADMINISTRATOR at least thirty (30) working days prior to the COMPLETION DATE or thirty (30) days prior to the FINAL REPORT DEADLINE for an extension to the respective dates and explanation of why the deadlines have not been met.

#### **ARTICLE IV. COMPENSATION AND REIMBURSEMENT**

1. The BOARD agrees to compensate and reimburse the CONTRACTOR(S) in a total amount not to exceed the BOARD'S SHARE OF THE TOTAL STUDY COSTS for costs incurred and paid by the CONTRACTOR(S) pursuant to performance of this CONTRACT. The CONTRACTOR(S) will contribute local matching funds in sources and amounts defined as the LOCAL SHARE OF THE TOTAL STUDY COSTS. The BOARD shall reimburse the CONTRACTOR(S) for ninety percent (90%) of the BOARD's share of each invoice pending the CONTRACTOR(S)'s performance, completion of a Final Report, and written acceptance of said Final Report by the EXECUTIVE ADMINISTRATOR, at which time the BOARD shall pay the retained ten percent (10%) to the CONTRACTOR(S).



2. The CONTRACTOR(S) shall submit vouchers and documentation for reimbursement billing according to the VOUCHER SUBMISSION SCHEDULE and in accordance with the approved task and expense budgets contained in Exhibit C to this CONTRACT. At the discretion of the EXECUTIVE ADMINISTRATOR and upon written memorandum to the contract file, the CONTRACTOR(S) has budget flexibility within task and expense budget categories to the extent that the resulting change in amount in any one task or expense category does not exceed 35% of the total amount authorized by this CONTRACT for the task or category to be changed, or \$2,000 whichever is larger. Larger deviations shall require the formal approval of the EXECUTIVE ADMINISTRATOR which will be documented through a memorandum to the BOARD contract file. For all reimbursement billings including any subcontractor's expenses, the EXECUTIVE ADMINISTRATOR must have provided written approval of REQUIRED INTERLOCAL AGREEMENT(S) and contracts or agreements between the CONTRACTOR(S) and the subcontractor. The CONTRACTOR(S) is fully responsible for paying all charges by subcontractors prior to reimbursement by the BOARD.
3. The CONTRACTOR(S) and its subcontractors shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR. Accounting by the CONTRACTOR(S) and its subcontractors shall be in a manner consistent with generally accepted accounting principles.
4. By executing this Contract, the CONTRACTOR accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The CONTRACTOR shall comply with and cooperate in any such investigation or audit. The CONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The CONTRACTOR also agrees to include a provision in any subcontract related to this contract that requires the subcontractor to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.

5. A progress report and the following documentation which documents the TOTAL STUDY COSTS for reimbursement by the BOARD to the CONTRACTOR(S) for the BOARD'S SHARE OF THE TOTAL STUDY COSTS shall be submitted by the CONTRACTOR(S) to the EXECUTIVE ADMINISTRATOR for reimbursement billing:
- A. Summary of total expenses incurred including the following information:
    - (1) CONTRACTOR's Vendor Identification Number;
    - (2) BOARD CONTRACT Number;
    - (3) Total expenses for the billing period; beginning (date) to ending (date);
    - (4) Total In-kind services;
    - (5) Total Services for this period;
    - (6) Less LOCAL SHARE OF THE TOTAL STUDY COSTS for the billing period;
    - (7) Total BOARD's share of the total study costs for the billing period;
    - (8) Amount of retainage to be withheld for the billing period;
    - (9) Total costs to be reimbursed by the BOARD for the billing period; and
    - (10) Certification, signed by the CONTRACTOR(S) authorized representative, that the expenses submitted for the billing period are a true and correct representation of amounts paid for work performed directly related to this contract.
  - B. For direct expenses incurred by the CONTRACTOR(S) -- documentation showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense category including labor, fringe, overhead, travel, communication and postage, technical and computer services, expendable supplies, printing and reproduction.
  - C. For direct expenses incurred by the CONTRACTOR(S) for outside consulting services -- copies of invoices to the CONTRACTOR(S) showing the tasks that were performed; the percent and cost of each task completed; a total cost figure for each direct expense category including labor, fringe, overhead, travel, communication and postage, technical and computer services, expendable supplies, printing and reproduction; and the total dollar amount due to the consultant.
  - D. For travel and subsistence expenses, including such expenses for subcontractors --
    - (1) names, dates, work locations, time periods at work locations, itemization of subsistence expenses of each employee, limited, however, to travel expenses authorized for state employees by the General Appropriations Act, Tex. Leg. Regular Session, 2007, Article IX, Part 5, as amended or superseded;
    - (2) other transportation costs -- copies of invoices covering tickets for transportation or, if not available, names, dates, and points of travel of individuals; and
    - (3) all other reimbursable expenses -- invoices or purchase vouchers showing

reason for expense with receipts to evidence the amount incurred.

**ARTICLE V. INTELLECTUAL PROPERTY:  
OWNERSHIP, PUBLICATION, AND ACKNOWLEDGEMENT**

1. "Use" of a work product, whether a CONTRACTOR(S) Work, a Subcontractor Work or otherwise, shall mean and include, without limitation hereby, any lawful use, copying or dissemination of the work product, or any lawful development, use, copying or dissemination of derivative works of the work product, in any media or forms, whether now known or later existing.
2. "No Compensation Obligation" shall mean there is no obligation on the part of one co-owner or licensee of a work, whether a CONTRACTOR(S) Work, a Subcontractor Work or otherwise, to compensate other co-owners, licensees or licensors of the work for any use of the work by the using co-owner or licensee, including but not limited to compensation for or in the form of: royalties; co-owner or licensee accounting; sharing of revenues or profits among co-owners, licensees or licensors; or any other form of compensation to the other co-owners, licensees or licensors on account of any use of the work.
3. "Dissemination" shall include, without limitation hereby, any and all manner of: physical distribution; publication; broadcast; electronic transmission; internet streaming; posting on the Internet or world wide web; or any other form of communication, transmission, distribution, sending or providing, in any forms or formats, and in or using any media, whether now known or later existing.
4. The BOARD shall have an unlimited, unrestricted, perpetual, irrevocable, non-exclusive royalty-free right to access and receive in usable form and format, and to use all technical or other data or information developed by CONTRACTOR(S) and SUBCONTRACTOR in, or otherwise resulting from, the performance of services under this CONTRACT.
5. For purposes of this Article, "CONTRACTOR Works" are work products developed by CONTRACTOR(S) and Subcontractor using funds provided under this CONTRACT or otherwise rendered in or related to the performance in whole or part of this CONTRACT, including but not limited to reports, drafts of reports, or other material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate.
  - a. It is agreed that all CONTRACTOR Works shall be the joint property of the BOARD and CONTRACTOR.

- b. The parties hereby agree that, if recognized as such by applicable law, the CONTRACTOR Works are intended to and shall be works-made-for-hire with joint ownership between the BOARD and CONTRACTOR as such works are created in whole or part.
  - c. If the CONTRACTOR Works do not qualify as works-made-for-hire under applicable law, CONTRACTOR(S) hereby conveys co-ownership of such works to the BOARD as they are created in whole or part. If present conveyance is ineffective under applicable law, CONTRACTOR(S) agree to convey a co-ownership interest of the CONTRACTOR Works to the BOARD after creation in whole or part of such works, and to provide written documentation of such conveyance upon request by the BOARD.
  - d. The BOARD and CONTRACTOR(S) acknowledge that the copyright in and to a copyrightable CONTRACTOR Work subsists upon creation of the CONTRACTOR Work and its fixing in any tangible medium. CONTRACTOR(S) or the BOARD may register the copyrights to such Works jointly in the names of the CONTRACTOR(S) and the BOARD.
  - e. The BOARD and CONTRACTOR(S) each shall have full and unrestricted rights to use a CONTRACTOR Work with No Compensation Obligation.
6. For purposes of this Article, "Subcontractor Works" include all work product developed in whole or part by or on behalf of Subcontractors engaged by CONTRACTOR(S) to perform work for or on behalf of any CONTRACTOR(S) under this CONTRACT (or by the Subcontractors' Subcontractors hereunder, and so on). CONTRACTOR(S) shall secure in writing from any Subcontractors so engaged:
- a. unlimited, unrestricted, perpetual, irrevocable, royalty-free rights of the BOARD (and, if desired, of CONTRACTOR(S)) to access and receive, and to use, any and all technical or other data or information developed in or resulting from the performance of services under such engagement, with No Compensation Obligation; and either:
    - 1. assignment by the Subcontractor to the BOARD (and, if desired by them, jointly to the CONTRACTOR(S)) of ownership (or joint ownership with the Subcontractor) of all Subcontractor Works, with No Compensation Obligation; or
    - 2. grant by Subcontractor of a non-exclusive, unrestricted, unlimited, perpetual, irrevocable, world-wide, royalty-free license to the BOARD (and, if desired by them, the CONTRACTOR(S)) to use any and all Subcontractor Works, including the right to sublicense use to third parties, with No Compensation Obligation.

7. No unauthorized patents. CONTRACTOR Works and Subcontractor Works or other work product developed or created in the performance of this CONTRACT or otherwise using funds provided hereunder shall not be patented by CONTRACTOR(S) or their Subcontractor unless the Executive Administrator consents in writing to submission of an application for patent on such works; and provided that, unless otherwise agreed in writing,
  - a. any application made for patent shall include and name the BOARD (and, as applicable and desired by them, CONTRACTOR(S)) as co-owners of the patented work;
  - b. no patent granted shall in any way limit, or be used by CONTRACTOR(S) or Subcontractor to limit or bar the BOARD's rights hereunder to access and receive in useable form and format, and right to use, any and all technical or other data or information developed in or resulting from performance pursuant to this CONTRACT or the use of funds provided hereunder; and
  - c. the BOARD (and, if applicable, the CONTRACTOR(S)) shall have No Compensation Obligation to any other co-owners or licensees of any such patented work, unless otherwise expressly agreed in writing.
8. CONTRACTOR(S) shall include terms and conditions in all contracts or other engagement agreements with any Subcontractors as are necessary to secure these rights and protections for the BOARD; and shall require that their Subcontractors include similar such terms and conditions in any contracts or other engagements with their Subcontractors. For the purposes of this section, "Subcontractors" includes independent contractors (including consultants) and also employees working outside the course and scope of employment.
9. Any work products subject to a BOARD copyright or joint copyright and produced or developed by the CONTRACTOR(S) or their Subcontractor pursuant to this CONTRACT or using any funding provided by the BOARD may be reproduced in any media, forms or formats by the BOARD or CONTRACTOR(S) at their own cost, and be disseminated in any medium, format or form by any party at its sole cost and in its sole discretion. CONTRACTOR(S) may utilize such work products as they may deem appropriate, including Dissemination of such work products or parts thereof under their own name, provided that any BOARD copyright is noted on the materials.
10. No public disclosures or news releases pertaining to this CONTRACT shall be made without prior written approval of the BOARD.



## ARTICLE VI. STOP WORK ORDERS

1. Stop Work Order. The Executive Administrator may issue a Stop Work Order, in writing, to the CONTRACTOR at any time. The Stop Work Order (SWO) shall provide the CONTRACTOR with notice of the facts underlying the determination to issue the SWO. The SWO may require an immediate cessation of work or the cessation of work at a definite future date. The SWO shall provide the CONTRACTOR with a definite limited time to cure the conditions underlying the SWO.
2. CONTRACTOR'S Response. CONTRACTOR shall respond to the SWO, in writing, and shall provide the Executive Administrator with a detailed plan to address and cure the conditions underlying the SWO. The CONTRACTOR shall provide the response within three (3) business days from his receipt of the SWO.
3. Executive Administrator's Reply. The Executive Administrator may accept, reject or amend the CONTRACTOR'S request for opportunity to cure and shall provide notice of such action to the CONTRACTOR within three (3) business days of receipt of the response. The Executive Administrator may issue an amended SWO that allows resumption of work contingent upon the CONTRACTOR'S execution of the plan to cure. The amended SWO may modify the CONTRACTOR's plan to cure only in a manner consistent with the terms and conditions of this CONTRACT.
4. CONTRACTOR'S Option. CONTRACTOR shall notify the Executive Administrator within three (3) business days whether he accepts the amended SWO. If CONTRACTOR does not accept the amended SWO, the Executive Administrator shall terminate this CONTRACT. Upon successful completion of the plan to cure the conditions underlying the SWO, CONTRACTOR shall continue work to complete all obligations under this CONTRACT.

## ARTICLE VII. SUBCONTRACTS

Each Subcontract entered into to perform required work under this CONTRACT shall contain the following provisions:

- a. a detailed budget estimate with specific cost details for each task or specific item of work to be performed by the Subcontractor and for each category of reimbursable expenses;
- b. a clause stating that the Subcontract is subject to audit by the Texas State Auditor's Office and requiring the Subcontractor to cooperate with any request for information from the Texas State Auditor, as further described in Article X, Section A, Paragraph 4 hereof;
- c. a clause stating that payments under the Subcontract are contingent upon the appropriation of funds by the Texas Legislature, as further described in Article X, Section A, Paragraph 1 hereof;

- d. a clause stating that ownership of data, materials and work papers, in any media, that is gathered, compiled, adapted for use, or generated by the Subcontractor or the CONTRACTOR(S) shall become data, materials and work owned by the BOARD and that Subcontractor shall have no proprietary rights in such data, materials and work papers, except as further described in Article V hereof; and
- e. a clause stating that Subcontractor shall keep timely and accurate books and records of accounts according to generally acceptable accounting principles as further described in Article X, Section B, Paragraph 8; and
- f. a clause stating that Subcontractor is solely responsible for securing all required licenses and permits from local, state and federal governmental entities and that Subcontractor is solely responsible for obtaining sufficient insurance in accordance with the general standards and practices of the industry or governmental entity; and
- g. a clause stating that Subcontractor is an independent contractor and that the BOARD shall have no liability resulting from any failure of Subcontractor that results in breach of CONTRACT, property damage, personal injury or death.

#### **ARTICLE VIII. LICENSES, PERMIT, AND INSURANCE**

1. Insurance. The CONTRACTOR shall obtain all necessary insurance that, in the judgment of the CONTRACTOR and consistent with the standard practices in the industry or entity is necessary to protect themselves, the BOARD, and employees and officials of the BOARD from liability arising out of this CONTRACT, including but not limited to worker's compensation, property damage, personal injury or death and breach of CONTRACT.
2. The CONTRACTOR (S) shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the CONTRACTOR (S) to perform the subject, work.
3. Indemnification. The CONTRACTOR shall indemnify and hold the BOARD and the State of Texas harmless from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the CONTRACTOR, arising out of the activities and work conducted pursuant to this CONTRACT. The CONTRACTOR is solely responsible for liability arising out of its negligent acts or omissions during the performance of this CONTRACT.

## **ARTICLE IX. SEVERABILITY**

1. Should any one or more provisions of this CONTRACT be held to be null, void, voidable, or for any reason whatsoever, of no force and effect, such provision(s) shall be construed as severable from the remainder of this Contract and shall not affect the validity of all other provisions of this Contract which shall remain of full force and effect.

## **ARTICLE X. GENERAL TERMS AND CONDITIONS**

### **A. GENERAL TERMS**

1. No Debt Against the State. This CONTRACT does not create any debt by or on behalf of the State of Texas and the BOARD. The BOARD'S obligations under this CONTRACT are contingent upon the availability of appropriated funds and the continued legal authority of the BOARD to enter into this CONTRACT.
2. Independent Contractor. Both parties hereto, in the performance of this CONTRACT, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
3. Procurement Laws. The CONTRACTOR shall comply with applicable State of Texas procurement laws, rules and policies, including but not limited to competitive bidding and the Professional Services Procurement Act, Government Code, Chapter 2254, relating to contracting with persons whose services are within the scope of practice of: accountants, architects, landscape architects, land surveyors, medical doctors, optometrists, professional engineers, real estate appraisers, professional nurses, and certified public accountants.
4. Right to Audit. The CONTRACTOR and its Subcontractors shall maintain all financial accounting documents and records, including copies of all invoices and receipts for expenditures, relating to the work under this CONTRACT. CONTRACTOR shall make such documents and records available for examination and audit by the Executive Administrator or any other authorized entity of the State of Texas. CONTRACTOR'S financial accounting documents and records shall be kept and maintained in accordance with generally accepted accounting principles. By executing this CONTRACT, the CONTRACTOR accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all state funds received pursuant to this CONTRACT. The CONTRACTOR shall comply with directives from the Texas State Auditor and shall cooperate in any such investigation or audit. The CONTRACTOR agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The CONTRACTOR also agrees to include a provision in any Subcontract related to this CONTRACT that requires the Subcontractor to submit to audits and investigation by the State Auditor's Office in connection with all state funds received pursuant to the Subcontract.



5. Force Majeure. Unless otherwise provided, neither CONTRACTOR nor the BOARD nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this CONTRACT caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within two (2) business days of the existence of such force majeure or otherwise waive this right as a defense.

#### B. STANDARDS OF PERFORMANCE.

1. Personnel. CONTRACTOR shall assign only qualified personnel to perform the services required under this CONTRACT. CONTRACTOR shall be responsible for ensuring that any Subcontractor utilized shall also assign only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skills and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession.
2. Professional Standards. CONTRACTOR shall provide the services and deliverables in accordance with applicable professional standards. CONTRACTOR represents and warrants that he is authorized to acquire Subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this CONTRACT.
3. Antitrust. CONTRACTOR represents and warrants that neither CONTRACTOR nor any firm, corporation, partnership, or institution represented by CONTRACTOR, or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under the Texas Business & Commerce Code, Chapter 15, of the federal antitrust laws; or (2) communicated directly or indirectly the proposal resulting in this CONTRACT to any competitor or other person engaged in such line of business during the procurement process for this CONTRACT.
4. Conflict of Interest. CONTRACTOR represents and warrants that CONTRACTOR has no actual or potential conflicts of interest in providing the deliverables required by this CONTRACT to the State of Texas and the BOARD. CONTRACTOR represents that the provision of services under this CONTRACT will not create an appearance of impropriety. CONTRACTOR also represents and warrants that, during the term of this CONTRACT, CONTRACTOR will immediately notify the BOARD, in writing, of any potential conflict of interest that could adversely affect the BOARD by creating the appearance of a conflict of interest.

5. CONTRACTOR represents and warrants that neither CONTRACTOR nor any person or entity that will participate financially in this CONTRACT has received compensation from the BOARD or any agency of the State of Texas for participation in the preparation of specifications for this CONTRACT. CONTRACTOR represents and warrants that he has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant in connection with this CONTRACT.
6. Proprietary and Confidential Information. CONTRACTOR warrants and represents that any information that is proprietary or confidential, and is received by CONTRACTOR from the BOARD or any governmental entity, shall not be disclosed to third parties without the written consent of the BOARD or applicable governmental entity, whose consent shall not be unreasonably withheld.
7. Public Information Act. CONTRACTOR acknowledges and agrees that all documents, in any media, generated in the performance of work conducted under this CONTRACT are subject to public disclosure under the Public Information Act, Government Code, Chapter 552. CONTRACTOR shall produce all documents upon request of the BOARD within two (2) business days when the documents are required to comply with a request for information under the Public Information Act.
8. Accurate and Timely Record Keeping. CONTRACTOR warrants and represents that he will keep timely, accurate and honest books and records relating to the work performed and the payments received under this CONTRACT according to generally accepted accounting standards. Further, CONTRACTOR agrees that he will create such books and records at or about the time the transaction reflected in the books and records occurs.
9. Dispute Resolution. The CONTRACTOR and the BOARD agree to make a good faith effort to resolve any dispute relating to the work required under this CONTRACT through negotiation and mediation as provided by Government Code, Chapter 2260 relating to resolution of certain contract claims against the state. The CONTRACTOR and the BOARD further agree that they shall attempt to use any method of alternative dispute resolution mutually agreed upon to resolve any dispute arising under this CONTRACT if this CONTRACT is not subject to Chapter 2260.
10. Contract Administration. The BOARD shall designate a project manager for this CONTRACT. The project manager will serve as the point of contact between the BOARD and CONTRACTOR. The BOARD's project manager shall supervise the BOARD's review of CONTRACTOR'S technical work, deliverables, draft reports, the final report, payment requests, schedules, financial and budget administration, and similar matters. The project manager does not have any express or implied authority to vary the terms of the CONTRACT, amend the CONTRACT in any way or waive strict performance of the terms or conditions of the CONTRACT.

## **ARTICLE XI. CORRESPONDENCE**

All correspondence between the parties shall be made to the following addresses:

For the **BOARD**:

Contract Issues:  
Texas Water Development Board  
Attention: Contract Administration  
P. O. Box 13231  
Austin, Texas 78711-3231

Payment Request Submission:  
Texas Water Development Board  
Attention: Contract Administration  
P. O. Box 13231  
Austin, Texas 78711-3231  
Physical Address:  
Texas Water Development Board  
1701 N. Congress Avenue  
Austin, Texas 78701

For the **CONTRACTOR(S)**:

Hays County  
Attention: The Honorable Elizabeth Sumter  
111 San Antonio St. Suite 300.  
San Marcos, Texas 78666

**EXHIBIT A**  
**ORIGINAL GRANT APPLICATION**

## **EXHIBIT B**

### **SCOPE OF WORK**

**EXHIBIT C**  
**TASK AND EXPENSE BUDGETS**

**Expense by Work Task**

<b>TASK</b>	<b>DESCRIPTION</b>	<b>Onion Phase 1</b>
1	Collection of Baseline Data	\$12,000
2	Environmental Constraints	\$60,000
3	Review and ID of Flood and Drainage Problems	\$5,000
4	Field Surveys	\$156,375
5	Hydrology	\$15,000
6	Hydraulics	\$296,400
7	Evaluate Flood Protection Criteria	\$15,000
8	Review of Flood Protection Measures	\$25,000
9	H&H Analysis of Alternatives	\$125,000
10	Benefit/Cost Analysis	\$85,000
11	Implement and Phase	\$0
12	Final Deliverables	\$20,000
13	Project Management	\$42,125
Total Cost of Work		\$856,900

**EXPENSE BUDGET**

<b>CATEGORY</b>	<b>AMOUNT</b>
Salaries	\$1,000
Travel	\$250
Communication	\$50
Supplies	\$500
Tech/Computer	\$0
Reproduction	\$500
Subcontractor	\$852,600
Fringe	\$2,000
Profit	\$0
Overhead	\$0
<b>TOTAL</b>	<b>\$856,900</b>

<sup>1</sup> Salaries and Wages is defined as the cost of labor of scientists, engineers, technicians, stenographers, secretaries, clerks, laborers, etc., for work time directly chargeable to this contract.

<sup>2</sup> Fringe is defined as the cost of social security contributions, unemployment, excise, and payroll taxes, workers' compensation

insurance, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

<sup>3</sup> Other Expenses is defined to include expendable supplies, communications, reproduction, postage, and costs of public meetings.

<sup>4</sup> Overhead is defined as the costs incurred in maintaining a place of business and performing professional services similar to those specified in this contract. These costs shall include the following:

- Indirect salaries, including that portion of the salary of principals and executives that is allocable to general supervision;
  - Indirect salary fringe benefits;
  - Accounting and legal services related to normal management and business operations;
  - Travel costs incurred in the normal course of overall administration of the business;
  - Equipment rental not directly involved in collecting or analyzing contract data;
  - Depreciation of furniture, fixtures, equipment, and vehicles;
  - Dues, subscriptions, and fees associated with trade, business, technical, and prof. orgs.;
  - Other insurance;
  - Building rent and utilities; and
  - Repairs and maintenance of furniture, fixtures, and equipment.
- Other insurance; Rent and utilities; and Repairs and maintenance of furniture, fixtures, and equipment

## **EXHIBIT D**

### **Guidelines for Authors Submitting Contract Reports to the Texas Water Development Board**

#### **1.0 Introduction**

The purpose of this document is to describe the required format of contract reports submitted to the Texas Water Development Board (TWDB). Our reason for standardizing the format of contract reports is to provide our customers a consistent, and therefore familiar, format for contract reports (which we post online for public access). Another reason for standardizing the format is so that we can more easily turn a contract report into a TWDB numbered report if we so choose. Remember that your report will not only be seen by TWDB staff, but also by any person interested in the results of your study. A professional and high quality report will reflect well on you, your employer, and the TWDB.

Available upon request, we will provide a Microsoft Word template (used to write these instructions) that gives the fonts, spacing, and other specifications for the headings and text of the report. Please follow this template as closely as possible.

#### **2.0 Formatting your report**

The TWDB format is designed for simplicity. For example, we use Times New Roman for all text. We use 12 point, single-spaced text, left justification for paragraph text, 18 point bold for first-level headings, and 14 point bold for second-level headings. Page numbers are centered at the bottom of the page. Other than page numbers, please refrain from adding content to the document header or footer. Page setup should use one-inch margins on all four sides.

##### **2.1 Text**

The best way to format your document is to use the styles described and embedded in the template document (Authors\_Template.dot) that is available on request from the TWDB. To use the Authors\_Template.dot file, open it in Word (make sure \*.dot is listed under Files of type) and save it as a .doc file. Advanced users can add the .dot file to their computers as a template.

Make sure the formatting bar is on the desktop (to open, go to View→Toolbars→Formatting) or, to view all of the formatting at once, go to Format→Styles and Formatting and select Available Styles from the dropdown box at the bottom of the window. The formatting in the template document provides styles (such as font type, spacing, and indents) for each piece of your report. Each style is named to describe what it should be used for (for example, style names include Chapter Title, Body Text, Heading 1, References, and Figure or Table Caption). As you add to your report, use the dropdown list on the Formatting Toolbar or the list in the Styles and Formatting window to adjust the text to the correct style. The Authors\_Template.dot file shows and lists the specifications for each style.

##### **2.1.1 Title**

Give your report a title that gives the reader an idea of the topic of your report but is not terribly long. In addition to the general subject (for example, "Droughts"), you may include a few additional words to describe a place, methodology, or other detail focused on throughout the paper (for example, "Droughts in the High Plains of Texas" or "Evaluating the effects of drought using groundwater flow modeling"). Please capitalize only the first letter of each word except 'minor' words such as 'and' and 'of'. Never use



all caps.

Use headings to help the reader follow you through the main sections of your report and to make it easier for readers to skim through your report to find sections that might be the most interesting or useful to them. The text of the report should include an executive summary and sections outlined in 4.4 of Attachment 1. Headings for up to five levels of subdivision are provided in the template; however, we suggest not using more than three or four levels of subdivision except where absolutely necessary. Please avoid stacked headings (for example, a Heading 1 followed immediately by a Heading 2), and capitalize only the first letter of headings or words where appropriate—never use all caps.

## **2.2 *Figures and photographs***

To publish professional-looking graphics, **we need all originals to be saved at 300 dots-per-inch (dpi)** and in grayscale, if possible, or in the CMYK color format if color is necessary. Excessive use of color, especially color graphics that do not also work in grayscale, will prevent us from publishing your report as a TWDB numbered report (color reproduction costs can be prohibitive). Preferred file formats for your original graphics are Adobe Illustrator (.ai), Photoshop (.psd), EPS with .tiff preview, .jpg, .png, or .tiff files. Refrain from using low resolution .jpg or .gif files. Internet images at 72 dpi are unacceptable for use in reports.

All graphics shall be submitted in two forms:

1. Inserted into the Microsoft Word document before you submit your report. Ideally, inserted graphics should be centered on the page. Format the picture to downsize to 6 inches wide if necessary. Please do not upsize a graphic in Word.
2. Saved in one of the formats listed above.

### **2.2.1 Other graphics specifications**

It is easiest to design your figures separately and add them in after the text of your report is more or less complete. Graphics should remain within the 1-inch page margins of the template (6.5 inches maximum graphic width). Be sure that the graphics (as well as tables) are numbered in the same order that they are mentioned in the text. Figures should appear embedded in the report after being called out in the text. Also, remember to include a caption for each graphic in Word, not as part of the graphic. We are not able to edit or format figure captions that are part of the figure. For figures and photographs, the caption should appear below the graphic. For tables, the caption should appear above.

### **2.2.2 Creating publication-quality graphics**

When designing a graphic, make sure that the graphic (1) emphasizes the important information and does not show unnecessary data, lines, or labels; (2) includes the needed support material for the reader to understand what you are showing; and (3) is readable (see Figures 1 and 2 for examples). Edward R. Tufte's books on presenting information (Tufte, 1983; 1990; 1997) are great references on good graphic design. Figures 1 through 3 are examples of properly formatted, easy to understand graphics. Do not include fonts that are less than 6 points.

For good-looking graphics, the resolution needs to be high enough to provide a clear image at the size you make them within the report. In general, 300 dpi will make a clear image—200 dpi is a minimum. Try to create your figures at the same size they will be in the report, as resizing them in Word greatly reduces image quality. Photographs taken with at least a two-megapixel camera (if using digital) and with good contrast will make the best images. Save the original, and then adjust color levels and size in a renamed

contrast will make the best images. Save the original, and then adjust color levels and size in a renamed image copy. Print a draft copy of your report to double-check that your figures and photographs have clear lines and show all the features that you want them to have.

Figures and photographs should be in grayscale. Color greatly adds to the cost of printing, so we are trying to keep it to a minimum. Also remember that your report may be photocopied, scanned, or downloaded and printed in black and white. For this reason, you should use symbols or patterns, or make sure that colors print as different shades in black and white. All interval or ratio data (data measuring continuous phenomena, with each color representing an equal interval) need to be displayed in a graded scale of a single color (Figure 3). This way your figures will be useful even as a photocopy.

If you need help with your graphics or have questions, please contact the TWDB graphics department at (512)936-0129.

### **2.2.3 Using other people's graphics**

Figures and photographs (and tables) need to be your own unless you have written permission from the publisher that allows us to reprint them (we will need a copy of this permission for our records). Avoid using any figures or photographs taken off the Internet or from newspapers or magazines—these sources are difficult to cite, and it is often time-consuming and expensive to gain permission to reproduce them.

### **2.3 Tables**

Tables should be created in Microsoft Word (see Table 1). Tables should include a minimal amount of outlining or bold font to emphasize headings, totals, or other important points. Tables should be numbered separately from figures, and captions should appear above the text of the table.

**Table 1: A sample table. Note caption above table.**

Table text heading*								
Table text	1940	1950	1960	1970	1980	1990	2000	%GW
Table text	15	441	340	926	196	522	83	97.4
Table text	64	944	626	173	356	171	516	99.9
Total	79	1385	966	1099	552	693	599	

\* A footnote should look like this using 10 point Times New Roman.

%GW = percent groundwater

Be sure to describe any abbreviations or symbols, and, unlike in this table, be sure to note the units!

### **3.0 Units**

Measurements should be in English units. Metric units may be included in parentheses after the English units.

All units of geologic time should conform to the most recent geologic timescale (Gradstein and others, 2004). A summary of this timescale is available from the International Commission on Stratigraphy's website at <http://stratigraphy.org/chus.pdf>.

### **4.0 Citations and references**

It is important to give credit where credit is due. Therefore, be sure to use the appropriate citations and include references in your paper.

#### **4.1 In-text citations**

Each piece of information you use in your report that comes from an outside source must be cited within the text using the author's last name and the year of publication. If there are two authors, list the last name of each followed by the year, and if there are more than two authors, list the last name of the first author followed by "and others" and the year. For example: the end of the Jurassic Period occurred approximately 145.5 million years ago (Gradstein and others, 2004).

#### **4.2 References**

All sources that are cited within the report should be listed at the end of the paper under the heading References. The references should follow the guidelines in "Suggestions to Authors of the Reports of the United States Geological Survey" (Hansen, 1991). These are available online at [http://www.nwrc.usgs.gov/lib/lib\\_sta.html](http://www.nwrc.usgs.gov/lib/lib_sta.html) (a link to the chapter "Preparing references for Survey reports," p. 234-241, is found here). Several examples of complete reference citations are listed at the end of these guidelines. Be sure that any citations that appear in tables or figures are included in the reference list. Also, before submitting the report, please check that all the citations in the report are included in the reference list and all references in the reference list are cited in the report. If at all possible, avoid web-based citations. These materials are often transient and therefore useless to future readers.

#### **5.0 Submitting your report**

Before you submit your report, proofread it. Look for spelling and grammatical errors. Also, check to see that you have structured the headings, paragraphs, and sentences in your paper so that it is easy to follow and understand (imagine you are a reader who does not already know the information you are presenting!).

#### **6.0 Conclusions**

Following the instructions above and providing accurate and readable text, tables, figures, and citations will help to make your report useful to readers. Scientists may read your report, as well as water planners, utility providers, and interested citizens. If your report successfully conveys accurate scientific information and explanations to these readers, we can help to create more informed decisions about the use, development, and management of water in the state.

#### **7.0 Acknowledgments**

Be sure to acknowledge the people and entities that assisted you in your study and report. For example: We would like to thank the Keck Geology Consortium, the American Society of Civil Engineers, and the Texas Bar CLE for providing examples to use in developing these guidelines. In addition, we appreciate Mike Parcher for providing information on how to create publication-quality graphics, Shirley Wade for creating the data used in sample Figure 1, and Ian Jones for providing sample Figure 3.

#### **8.0 References**

- Gradstein, F.M., J.G. Ogg, and A.G. Smith, eds., 2005, A geologic time scale 2004: Cambridge, Cambridge University Press, 610 p.
- Hansen, W.R., ed., 1991, Suggestions to authors of the reports of the United States Geological Survey (7th ed.): Washington, D.C., U.S. Government Printing Office, 289 p.
- Tufte, E. R., 1983, The visual display of quantitative information: Cheshire, C.T., Graphics Press, 197 p.
- Tufte, E. R., 1990, Envisioning information: Cheshire, C.T., Graphics Press, 126 p.

Tufte, E. R., 1997, *Visual explanations*: Cheshire, C.T., Graphics Press, 156 p.

## **9.0 Examples of references**

Arroyo, J. A., and Mullican, III, W. F., 2004, Desalination: *in* Mace, R. E., Angle, E. S., and Mullican, W. F., III, editors, *Aquifers of the Edwards Plateau*: Texas Water Development Board Report 360, p. 293-302.

Bates, R. L., and Jackson, J. A., 1984, *Dictionary of geological terms*: Anchor Press/Doubleday, Garden City, New York, 571 p.

Blandford, T. N., Blazer, D. J., Calhoun, K. C., Dutton, A. R., Naing, T., Reedy, R. C., and Scanlon, B. R., 2003, *Groundwater availability of the southern Ogallala aquifer in Texas and New Mexico—Numerical simulations through 2050*: contract report by Daniel B. Stephens and Associates, Inc., and the Bureau of Economic Geology, The University of Texas at Austin to the Texas Water Development Board, variably paginated.

Fenneman, N. M., 1931, *Physiography of Western United States* (1st edition): New York, McGraw-Hill, 534 p.

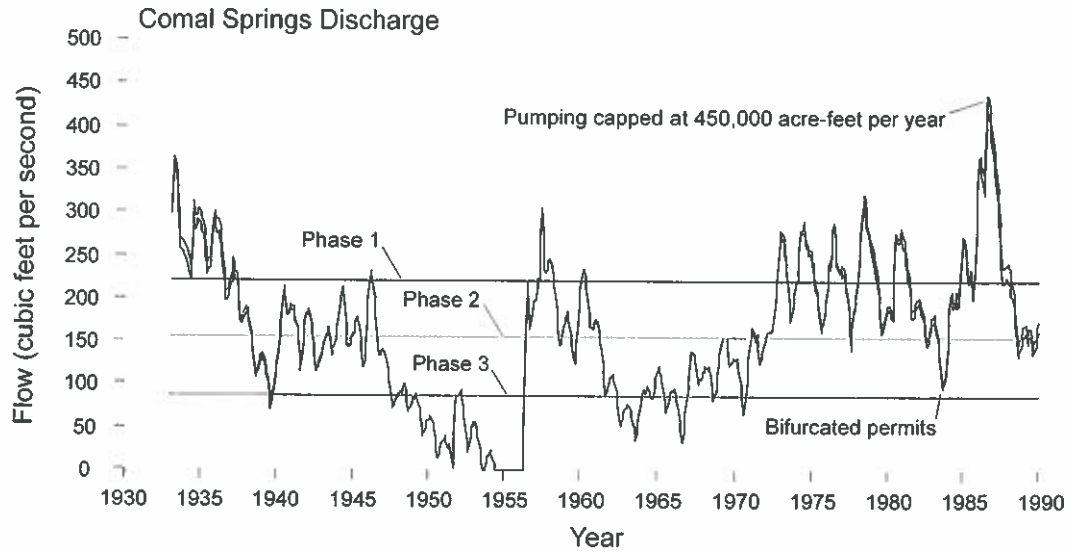
Hubert, M., 1999, Senate Bill 1—The first big bold step toward meeting Texas's future water needs: *Texas Tech Law Review*, v. 30, no. 1, p. 53-70.

Kunianski, E. L., 1989, *Precipitation, streamflow, and baseflow in West-Central Texas, December 1974 through March 1977*: U. S. Geological Survey Water-Resources Investigations Report 89-4208, 2 sheets.

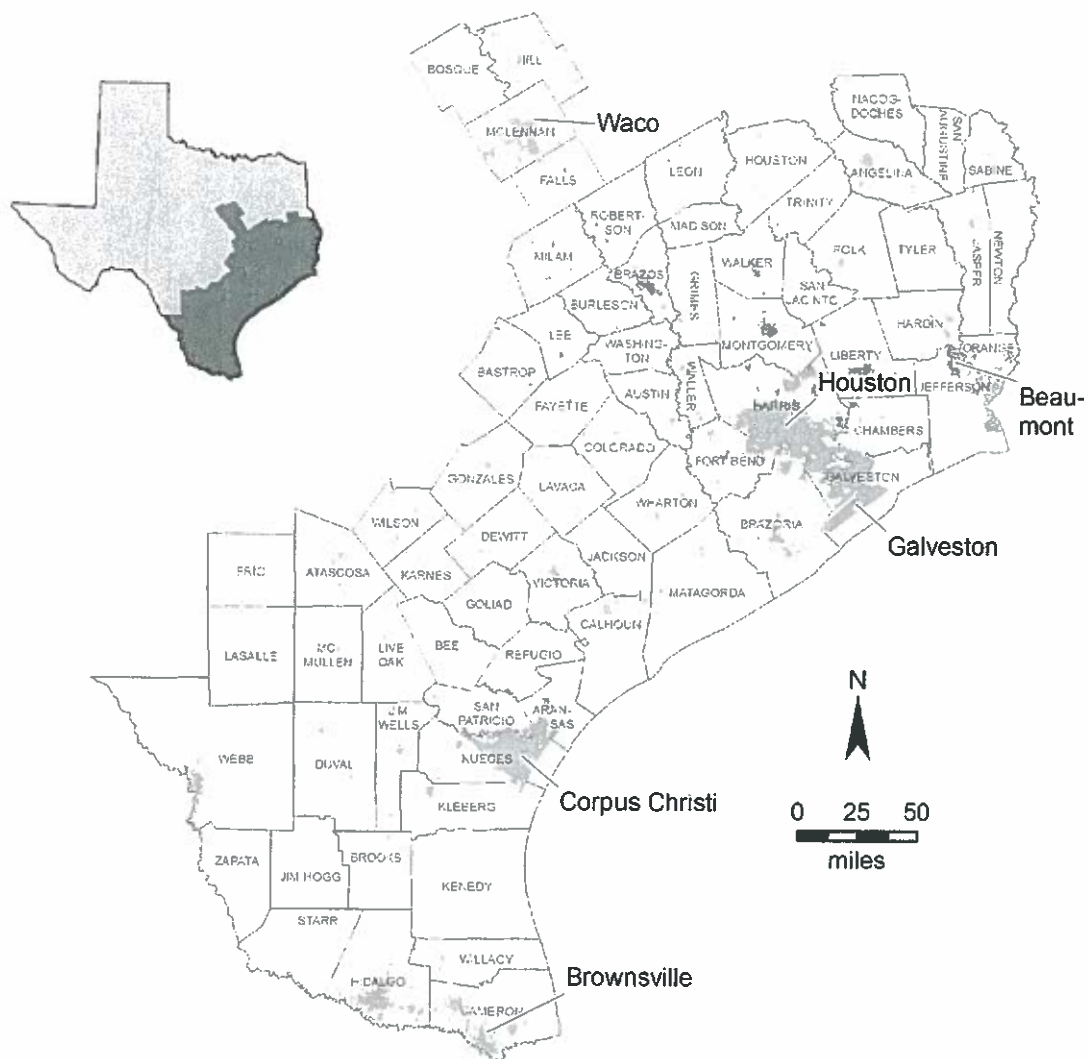
Mace, R. E., Chowdhury, A. H., Anaya, R., and Way, S.-C., 2000, *A numerical groundwater flow model of the Upper and Middle Trinity aquifer, Hill Country area*: Texas Water Development Board Open File Report 00-02, 62 p.

Maclay, R. W., and Land, L. F., 1988, *Simulation of flow in the Edwards aquifer, San Antonio Region, Texas, and refinements of storage and flow concepts*: U. S. Geological Survey Water-Supply Paper 2336, 48 p.

For more examples of references, see p. 239-241 of “Suggestions to Authors of the Reports of the United States Geological Survey” at [http://www.nwrc.usgs.gov/lib/lib\\_sta.html](http://www.nwrc.usgs.gov/lib/lib_sta.html).

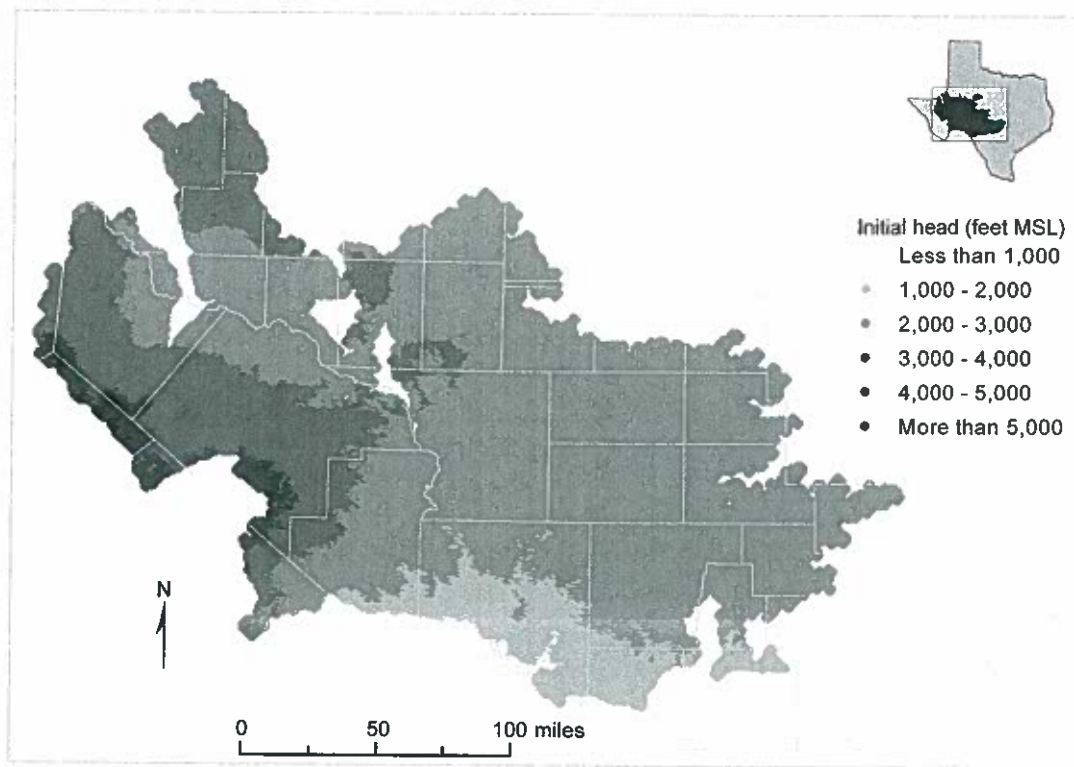


**Figure 1.** A sample figure showing only the information needed to help the reader understand the data. Font size for figure callouts or labels should never be less than 6 point.



**Figure 2.** A sample subject area map, giving the reader enough information to understand the location being discussed in this conference. For map figures, be sure to include a north arrow to orient the reader, a scale, and, if needed, a submap that places the figure in greater geographic context. Be sure that text is readable and that any citations listed on the figure or in the figure caption are included in the reference list. Font size should never be less than 6 pt.





**Figure 3.** Initial hydraulic heads used in model simulations for layer 1. Note the use of grayscale shading to show differences



## MEMORANDUM

TO: J. Kevin Ward

THRU: Carolyn Brittin \_\_\_\_\_  
Ingrid Hansen \_\_\_\_\_  
Rebecca Trevino \_\_\_\_\_  
Mike Howard \_\_\_\_\_  
Gilbert Ward \_\_\_\_\_  
David Carter \_\_\_\_\_

FROM: Al Dillard

RE: Flood Protection Planning Grant between the Texas Water Development Board (TWDB) and Hays County, TWDB Contract No. 0904830950

DATE: October 16, 2009

Two copies of the Board's Flood Protection Planning Grant contract with the Contractor, a Contract Initiation Form, and a transmittal letter are attached for your signature.

The Total Study Cost of this project is \$1,389,190.00. Board funding will not exceed the lesser of \$214,225.000.00 or 15.4 % of the project cost to be provided from the Research and Planning Fund.

Contingent upon approval at all required levels, the completed package should be returned to Contracts Administration for copying and mailing.

Attachments

Brittin \_\_\_\_\_  
Segner \_\_\_\_\_  
Gilbert \_\_\_\_\_  
Carter \_\_\_\_\_

October 28, 2009

The Honorable Elizabeth "Liz" Sumter  
County Judge  
Hays County  
111 San Antonio St. Suite 300  
San Marcos, Texas 78666

RE: Flood Protection Planning Grant between the Texas Water Development Board (TWDB) and  
Hays County, TWDB Contract No. 0904830950

Dear Judge Sumter:

Enclosed are two originals of the Flood Protection Planning Grant Contract between the TWDB and  
Hays County. The deadline for execution of this contract is April 16, 2009.

The Total Study Cost of this project is \$1,389,190.00. Board funding will not exceed the lesser of  
\$214,225.00 or 15.4 % of the project cost to be provided from the Water Research and Planning  
Fund.

Please obtain the proper signature for each copy of the contract (or amendment) and return to the  
attention of Contract Administration at the address shown below within 30 days from receipt of this  
letter. The TWDB will execute and sign the contracts (or amendments) upon their return and deliver  
one copy to you for your records.

Please note: Copies of all subcontract agreements between the County and the subcontractor must  
be submitted for TWDB approval. Subcontractor expenses cannot be reimbursed until the  
subcontractor agreement is approved by the TWDB.

If you have any questions concerning this contract please contact Gilbert Ward, the TWDB's  
designated Contract Manager for this project at (512) 463-6418.

Sincerely,

J. Kevin Ward  
Executive Administrator

Enclosures

c: Gilbert Ward, TWDB



## *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 Mark Kennedy to execute a Quick Claim Deed from Hays County to the West Cave Estates HOA, Inc. regarding ROW at the entrance to West Cave Estates in order to accurately reflect the perimeters of the community-owned park.

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

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

**AMOUNT REQUIRED:** na

**LINE ITEM NUMBER OF FUNDS REQUIRED:** na

**REQUESTED BY:** Ford

**SPONSORED BY:** Ford

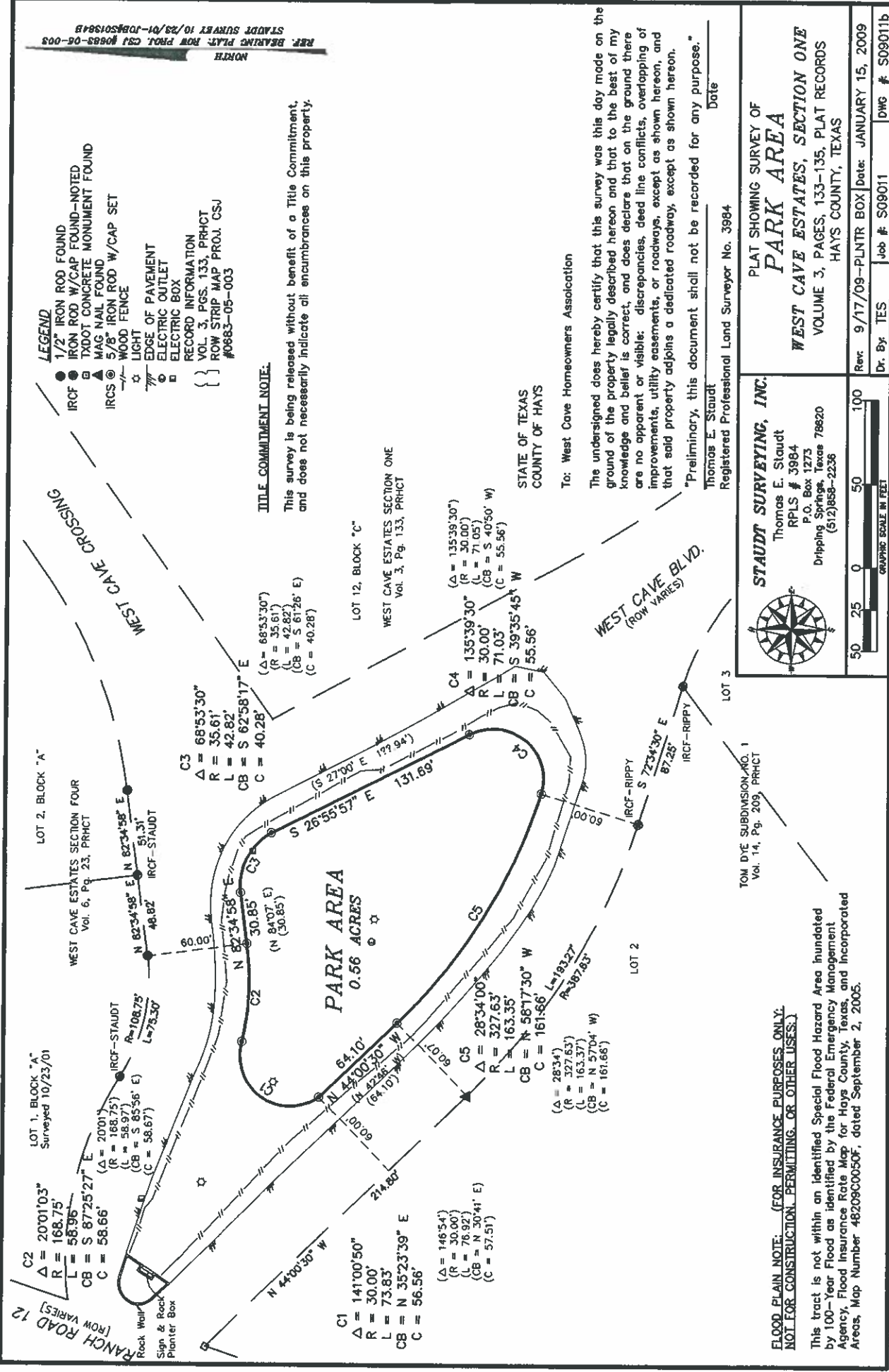
**SUMMARY:** The original survey/plat shows a smaller park area and a greater volume of Hays County ROW around the park, but actual park construction is reflected in the revised survey attached. The West Cave Estates HOA wants to build some structures within the park and want to make sure they have full claim to the land before they begin construction. An amended plat will likely follow execution of the Quit Claim from Hays County, and one from the developer as well.

REF. BEARING PLAT. FOR PROJ. CSJ #0683-05-003  
STADT SURVEY 10/23/01-JOB#015848  
NORTH

- LEGEND**
- 1/2" IRON ROD FOUND
  - IRON ROD W/CAP FOUND-NOTED
  - TXDOT CONCRETE MONUMENT FOUND
  - MAG NAIL FOUND
  - 5/8" IRON ROD W/CAP SET
  - WOOD FENCE
  - EDGE OF PAVEMENT
  - ELECTRIC OUTLET
  - ELECTRIC BOX
  - RECORD INFORMATION
  - VOL. 3, PGS. 133, PRHCT
  - ROW STRIP MAP PROJ. CSJ
  - #0683-05-003

**TITLE COMMITMENT NOTE:**

This survey is being released without benefit of a Title Commitment, and does not necessarily indicate all encumbrances on this property.



**STADT SURVEYING, INC.**  
Thomas E. Staudt  
RPLS # 3984  
P.O. Box 1273  
Dripping Springs, Texas 78620  
(512)858-2238

**PLAT SHOWING SURVEY OF**  
**PARK AREA**  
**WEST CAVE ESTATES, SECTION ONE**  
VOLUME 3, PAGES, 133-135, PLAT RECORDS  
HAYS COUNTY, TEXAS

Rev. 9/17/09-PLNTR BOX Date: JANUARY 15, 2009  
Dr. By: TES Job # S09011 DWG # S09011b  
S0911B2

**FLOOD PLAIN NOTE: (FOR INSURANCE PURPOSES ONLY. NOT FOR CONSTRUCTION, PERMITTING, OR OTHER USES.)**

This tract is not within an identified Special Flood Hazard Area inundated by 100-Year Flood as identified by the Federal Emergency Management Agency, Flood Insurance Rate Map for Hays County, Texas, and Incorporated Areas, Map Number 48209C0050F, dated September 2, 2005.

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and that to the best of my knowledge and belief is correct, and does declare that on the ground there are no apparent or visible discrepancies, deed line conflicts, overlapping of improvements, utility easements, or roadways, except as shown hereon, and that said property adjoins a dedicated roadway, except as shown hereon.

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

Thomas E. Staudt  
Registered Professional Land Surveyor No. 3984  
Date

To: West Cave Homeowners Association

STATE OF TEXAS  
COUNTY OF HAYS

## *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 amend the Office of Emergency Management budget for the purchase of a vehicle.

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

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

**AMOUNT REQUIRED:** \$2900.00

**LINE ITEM NUMBER OF FUNDS REQUIRED:** 001-656-00.5719

**REQUESTED BY:** Turner

**SPONSORED BY:** Sumter

**SUMMARY:** The approved vehicle for the OEM department has increased in price from the original quote, and the transfer of funds from equipment to vehicle line will cover the increased costs. The original quote was for \$24,100.00 and the actual price is \$26,042.00; a difference of \$1942.00. The equipment may be purchased at a later time if cost savings occur in other budget lines.

Move \$2900.00 from Miscellaneous Equipment, (Vehicle Accessory Equipment – Extend-a-bed) 001-656-00.5719 to Vehicle 001-656-00.5713 to cover the increased cost of vehicle due to price increase.

Equipment may be purchased at a later time through cost savings in other line items.

# Agenda Item Routing Form

**DESCRIPTION OF Item:** Amend the Office of Emergency Management budget for the purchase of a vehicle.

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

## COUNTY AUDITOR

**Typically Requires 1 Business Day Review**

**AMOUNT AND FUND LINE ITEM NUMBER:** \$2,352.00 001-656-00-5719

**COUNTY PURCHASING GUIDELINES FOLLOWED:** ☐ Yes ☐ No

**PAYMENT TERMS ACCEPTABLE:** ☐ Yes ☐ No

**COMMENTS:** Transfer funds from 5719 to 5713 in the amount of \$ 2,352 for increased cost of vehicle

as follows:	\$24,302	Base cost
	1,740	Captains seats
	<u>410</u>	Heavy duty battery, alternator, high idle switch
	\$26,452	Total

## SPECIAL COUNSEL

**Typically Requires 9 Business Day Review**

**CONTRACT TERMS ACCEPTABLE:** ☐ Yes ☐ No

**COMMENTS:**

## COMMISSIONERS' COURT

**APPROVED/DISAPPROVED AND DATE:** ☐ Yes ☐ No

## 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 contract amendment for MRB Group for geotechnical engineering and site survey on the RPTP building addition and amend the budget accordingly.**

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

**PREFERRED MEETING DATE REQUESTED: 10-27-09**

**AMOUNT REQUIRED: \$5,640.00**

**LINE ITEM NUMBER OF FUNDS REQUIRED: 03-438-5741**

**REQUESTED BY: Jerry Borcharding**

**SPONSORED BY: Judge Sumter**

**SUMMARY: The additional funding is for \$4,170 for geotechnical engineering and \$1,470 for a site survey. Codi Newsom with Broaddus & Associates recommends payment to MRB Group. See attached email dated 10-20-09 from Ms. Newsom.**

# *Agenda Item Routing Form*

**DESCRIPTION OF Item:** Authorize contract amendment for MRB Group for geotechnical engineering and site survey on the RPTP building addition and amend the budget accordingly.

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

## **COUNTY AUDITOR**

**Typically Requires 1 Business Day Review**

**AMOUNT AND FUND LINE ITEM NUMBER:** \$ 5,640.00 03-438-5741

**COUNTY PURCHASING GUIDELINES FOLLOWED:** \_\_\_\_\_ N/A \_\_\_\_\_

**PAYMENT TERMS ACCEPTABLE:** \_\_\_\_\_ Yes \_\_\_\_\_

**COMMENTS:** I recommend that we amend the budget and move \$5,460 from 03-438-5160 to 03-438-5741.

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

**Invoice**

**MRB Group  
2480 Browncroft Blvd  
Rochester, NY 14625**

**October 13, 2009**

**Invoice No: 000000010508**

**Codi Newsom, Project Manager  
Broaddus & Associates  
1301 S. Capital of Texas Hwy  
Suite A-302  
Austin, TX 78746**

**Project Manager Carl Schoenthal**

**Project: 0845.09001.000 Hays County - Building Addition at RPTP Facility**

**Professional Services from September 13, 2009 to October 10, 2009**

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**FEE**

		%			Current Fee
Billing Phase	Phase Fee	Comple	Fee Earned	Prior Billing	Billing
Architectural Programming	18,600.00	100.00	18,600.00	18,600.00	0.00
Program Management	8,414.00	100.00	8,414.00	8,414.00	0.00
Geotechnical Engineering Report	7,366.00	100.00	7,366.00	6,776.72	589.28
Site Survey	8,396.00	100.00	8,396.00	8,396.00	0.00
Preliminary Engineering Report	23,326.00	100.00	23,326.00	19,827.10	3,498.90
Total Fee	66,102.00		66,102.00	62,013.82	4,088.18
	Total Fee				4,088.18

**Total This Section: \$4,088.18**

**Total Project Invoice Amount: \$4,088.18**

**Invoice**

**MRB Group**  
**2480 Browncroft Blvd**  
**Rochester, NY 14625**

September 15, 2009

Invoice No: 000000010371

Codi Newsom, Project Manager  
Broaddus & Associates  
1301 S. Capital of Texas Hwy  
Suite A-302  
Austin, TX 78746

Project Manager Carl Schoenthal

Project: 0845.09001.000 Hays County - Building Addition at RPTP Facility

Professional Services from August 16, 2009 to September 12, 2009

**FEE**

Billing Phase	Phase Fee	% Compleat	Fee Earned	Prior Billing	Current Fee Billing
Architectural Programming	18,600.00	100.00	18,600.00	16,740.00	1,860.00
Program Management	8,414.00	100.00	8,414.00	7,572.60	841.40
Geotechnical Engineering Report	7,366.00	92.00	6,776.72	736.60	6,040.12
Site Survey	8,396.00	100.00	8,396.00	6,926.00	1,470.00
Preliminary Engineering Report	23,326.00	85.00	19,827.10	11,663.00	8,164.10
Total Fee	66,102.00		62,013.82	43,638.20	18,375.62
	Total Fee				18,375.62

**Total This Section: \$18,375.62**

**Total Project Invoice Amount: \$18,375.62**

**Janice Weber**

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**From:** Codi Newsom [cnewsom@broaddusassociates.com]  
**Sent:** Tuesday, October 20, 2009 10:04 AM  
**To:** Janice Weber  
**Cc:** Jerry Borcharding; Brenda Jenkins  
**Subject:** MRB Invoices  
**Attachments:** 090816-090912 MRB Invoice.pdf; 090913-091010 MRB Invoice.pdf

Janice,

Broaddus & Associates recommends payment to MRB Group of the two attached invoices (dated September 15<sup>th</sup> and October 13<sup>th</sup>). Payment of the last two invoices will complete Phase I of the RPTP Facility Addition.

Thank you,

Codi M. Newsom, P.E., LEED® AP  
BROADDUS & ASSOCIATES  
Office (512) 329.8822  
Direct (512) 347.3653  
Mobile (512) 418.6559  
Fax (512) 853.5559  
[www.BroaddusAssociates.com](http://www.BroaddusAssociates.com)

*Ranked among the Top 40 Program Managers by Engineering News Record*

10/21/2009

## *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: Discussion and possible action to establish a Local Data Advisory Board pursuant to HB2730 by November 1, 2009.**

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

**PREFERRED MEETING DATE REQUESTED: October 29, 2009**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:**

**SPONSORED BY: SUMTER**

**SUMMARY:** Attached is the legislation that identifies the board members and when a board must be put in place and a sample Improvement Plan from Victoria County. The DPS Compliance Report is over 200 pages and will be sent in a separate email. I spoke with Mike Davenport and he concurs that a local data board needs to be set up. We have not met the average disposition completeness percentage of 90% or better to avoid creating the board. This board will address ways to make sure our data is reported to DPS in a timely manner. The sample Victoria County Data Plan further explains reporting responsibilities by the Arresting Agency, Prosecutor, District and County Clerks.

## **ARTICLE 21. CRIMINAL HISTORY REPORTING**

SECTION 21.001. Chapter 60, Code of Criminal Procedure, is amended by adding Article 60.10 to read as follows:

### **Art. 60.10. DATA REPORTING IMPROVEMENT PLAN.**

- (a) In this article, "disposition completeness percentage" has the meaning assigned by Article 60.21(c).
- (b) This article applies only to a county that has an average disposition completeness percentage, including both juvenile and adult dispositions, of less than 90 percent, as reflected in the first report the Department of Public Safety submits under Article 60.21(b)(2) on or after January 1, 2009.
- (c) The commissioners court of a county described by Subsection (b) shall establish a local data advisory board as described by Article 60.09 not later than November 1, 2009. A local data advisory board established under this article may include any person described by Article 60.09(b) and must include:
- (1) the sheriff of the county, or the sheriff's designee;
  - (2) an attorney who represents the state in the district courts of the county;
  - (3) an attorney who represents the state in the county courts of the county;
  - (4) the clerk for the district courts of the county, or the clerk's designee;
  - (5) the clerk for the county courts of the county, or the clerk's designee;
  - (6) the police chief of the municipality with the greatest population located in the county, or the chief's designee;
  - (7) a representative of the county's automated data processing services, if the county performs those services; and
  - (8) a representative of an entity with whom the county contracts for automated data processing services if the county contracts for those services.
- (d) In addition to the duties described by Article 60.09(a), a local data advisory board established under this article must prepare a data reporting improvement plan. The data reporting improvement plan must:
- (1) describe the manner in which the county intends to improve the county's disposition completeness percentage;
  - (2) ensure that the county takes the steps necessary for the county's average disposition completeness percentage to be equal to or greater than 90 percent in the first report the Department of Public Safety submits under Article 60.21(b)(2) on or after January 1, 2013; and
  - (3) include a comprehensive strategy by which the county will permanently maintain the county's disposition completeness percentage at or above 90 percent.
- (e) Not later than June 1, 2010, a local data advisory board established under this article shall submit to the Department of Public Safety the data reporting improvement plan prepared for the county. On receipt of a data reporting improvement plan under this article, the department shall post the plan on the Internet website maintained by the department.
- (f) The public safety director of the Department of Public Safety may adopt rules concerning the contents and form of a data reporting improvement plan prepared under this article.
- (g) This article expires September 1, 2013.



## VICTORIA COUNTY DATA REPORTING IMPROVEMENT PLAN

Pursuant to Article 60.10, Texas Code of Criminal Procedure, the Victoria County Local Data Advisory Board adopts this as the Data Reporting Improvement Plan. By resolution dated \_\_\_\_\_, the Victoria County Commissioner's Court established this board to meet and establish a data reporting and improvement plan which would:

- (1) (1) describe the manner in which the county intends to improve the county's disposition completeness percentage;
- (2) (2) ensure that the county takes steps necessary for the county's average disposition completeness percentage to be equal to or greater than mandated by statute;
- (3) (3) include a comprehensive strategy by which the county will permanently maintain the county's disposition completeness percentage at or above the percentage mandated by statute.

History: Chapter 60, Texas Code of Criminal Procedure (CCP) defines the Computerized Criminal History System (CCH) as the statewide repository of criminal history data reported to the Texas Department of Public Safety (DPS) by local criminal justice agencies in Texas. CCH is one component of the Texas Criminal Justice Information System (CJIS). The other component of CJIS is the Corrections Tracking System (CTS) managed by the Texas Department of Criminal Justice (TDCJ).

Data to Include in CCH: Chapter 60, CCP requires that information on arrests, prosecutions and the disposition of the case for persons arrested for Class B misdemeanor or greater violation of Texas criminal statutes be included in CCH. The statute identifies many of the actual data elements. In addition, although not required by statute, CCH has traditionally included limited supervision data reported to DPS by TDCJ. Of special note is that Chapter 60, CCP creates an Incident Tracking Number (TRN) and Incident Tracking Number Suffix (TRS) as the keys for linking charges from arrest through adjudication. Use of the TRN and TRS ensures that the outcome of each arrest charge can be tracked through the system, but establishing this capability requires each reporting entity to be extremely careful in its management of cases to include and pass along the TRN and TRS.

Local Reporting Responsibilities: Chapter 60, CCP establishes a flow of information at the local level that is required for successful CCH reporting from each county. The statute places responsibility for reporting to CCH on specific local criminal justice agencies, as follows:

Arresting Agencies: The police department and sheriff's department that arrests a person for a Class B misdemeanor or higher violation of a Texas statute is required by Ch 60, CCP to report that event to DPS within seven days. The report, if on paper, must be on the Criminal History Reporting form (CR-43) created by DPS. The report must include the arrested person's fingerprints, the TRN and other data required by statute. If available, electronic transmission of the data is the preferred method. A critical component of successful reporting is cooperation within the county. A large part of that cooperation is each reporting agency passing the TRN and TRS to the next level. The arresting agency needs to send the TRN and TRS to the prosecutor, as indicated below.

Prosecutor: Chapter 60, CCP requires that any County Attorney, District Attorney or other prosecutor receiving a class B misdemeanor or greater offense must report to DPS the decision to accept, reject, change or add to the charge for trial. As with arresting agencies, prosecutors may report on paper or electronically, including the TRN as received from the arresting agency.

District and County Clerks: Chapter 60, CCP requires the District and County Clerks whose courts try class B misdemeanor or greater violations of Texas statutes must report the disposition of the case to DPS. The clerks are dependent upon receiving the TRN and TRS from the prosecutor. The reports may be reported on paper or electronically.

The undersigned members of the advisory board pledge to cooperate in compiling the data required by law and forwarding the appropriate information to agencies in the county and to DPS. We also agree to communicate with one another any problems or discrepancies that occur in compiling the reports.

(here add a date and the names and agencies as set out in 60.09 and 60.10

## Liz Sumter

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**From:** Linda Fritsche [clerk@co.hays.tx.us]  
**Sent:** Tuesday, October 06, 2009 6:03 PM  
**To:** Liz Sumter  
**Subject:** HB2730 - DPS BILL  
**Attachments:** 2009 Compliance Report.pdf; DPS - CRIM HISTORY REPORTING.doc

Judge Sumter,

I think you should have received a letter from DPS regarding criminal history reporting and changes made by HB2730 which requires counties with an average disposition completeness percentage of less than 90% to establish a local data advisory board not later than November 1, 2009. I don't know if any other elected official has spoken to you regarding this new legislation so I am providing you with information I have.

I have attached a copy of the DPS Compliance Report that my staff received at CJIS training in June. This report shows Hays County having 64% completeness percentage in Adult cases and 99% in Juvenile charges in 2007. I believe our percentage has increased since that time and should be in the high 80's now. It does not appear that we have reached 90% or better, therefore, it looks like Hays County will have to create this board no later than November 1, 2009 and a data reporting improvement plan must be submitted to DPS not later than June 1, 2010. I have also attached a copy of Section 21 of the Bill (DPS-Crim History Reporting). I have a copy of the "Victoria County Data Reporting Improvement Plan" that was created by a Victoria County Administrative Judge which we could use as a model once the advisory board is established and meets to work out a plan.

Linda

## *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 Road Bond Construction sign.**

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: Chernow**

**SPONSORED BY: SUMTER**

**SUMMARY: Two draft signs will be available in court for review. This signage will be used at each road bond construction site.**

## *Agenda Item Request Form*

### **Hays County Commissioners' Court**

9:00 a.m. Every Tuesday

**Request forms are due in the County Judge's Office**

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

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

**AGENDA ITEM: Discussion and Possible action to authorize the County Judge to execute a Design/Build Contract with Balfour-Beatty Construction, LLC for Design and Construction of the new Hays County Government Center Facility.**

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: Debbie Ingalsbe**

**SPONSORED BY: Debbie Ingalsbe**

**SUMMARY: The Court authorized Commissioner Ingalsbe, Broaddus and Associates, and the Building Committee to go forward with negotiation of the Design/Build Contract. The attached agreement is the product of that negotiation.**

# *Agenda Item Routing Form*

**DESCRIPTION OF Item:** Authorize the County Judge to execute a Design/Build Contract with Balfour-Beatty Construction, LLC for Design and Construction of the new Hays County Government Center Facility.

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

## **COUNTY AUDITOR**

**Typically Requires 1 Business Day Review**

**AMOUNT AND FUND LINE ITEM NUMBER:** \$ ? 001-645-00.5741

**COUNTY PURCHASING GUIDELINES FOLLOWED:** \_\_\_\_\_ Yes \_\_\_\_\_

**PAYMENT TERMS ACCEPTABLE:** \_\_\_\_\_ Yes \_\_\_\_\_

**COMMENTS:** I assume we are just authorizing the design/development phase.

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





**AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY**

This Agreement is made as of October 27, 2009 (the "Effective Date"), by and between The Owner: Hays County, a political subdivision of the State of Texas (herein "The County" or "Owner") c/o Hays County Commissioner's Court, 111 E. San Antonio Street, San Marcos, Texas 78666, and Design-Build Contractor, Balfour-Beatty Construction, LLC, for Design and Construction of the new Hays County Municipal Government Complex Facility.

The Owner and the Design-Build Contractor agree as follows:

**SCOPE OF WORK**

1.1 The Design-Build Contractor acknowledges and agrees it has a responsibility to act in the best interests of the County in the performance of the contract, and has overall responsibility for and shall provide complete Design Services and Construction Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement.

**CONTRACT DOCUMENTS**

- 2.1 The Contract Documents consist of:
- o This Agreement and all Exhibits attached hereto;
  - o All Change Orders issued after the Effective Date of this Agreement;
  - o The Model, Schedules as spreadsheets, Drawings and Specifications developed by Design-Build Contractor and accepted by Owner;
  - o The Drawings and Specifications developed or prepared by Owner's independent consultants, if any.
  - o Optional COBIE spreadsheet for Building Handover

2.2 The Contract Documents form the entire and integrated Contract between Owner and Design-Build Contractor and supersede all prior negotiations, representations or agreements, written or oral, prior to the date of this Agreement.

**DEFINITIONS**

The terms, words and phrases used in the Contract Documents shall have the meanings given in the General and Supplementary Conditions and as follows

3.1 "Design-Build Contractor" or "Design-Builder" means the legal entity that executes the Agreement to provide design and construction services for the Project.

3.1.1

3.2 "General Conditions"

3.2.1 "Contract General Conditions" means the additional contract provisions described in Exhibit B1.

3.2.2 "Design-Build Contractor's General Conditions" are Contractor's allowable costs for managing the construction in the field.

3.3 "Project Architect" means the professional architect or engineer employed by the Design-Build Contractor to perform all or part of the Design Services in accordance with the Contract. The Project Architect and its professional consultants must be qualified to perform BIM-based Design Services and licensed in the State of Texas in their respective professions.

3.4 "Design-Build Budget Limitation", or DBBL, means the Owner's established upper cost limit, or construction budget, for the Project. DBBL includes all costs for pre-construction services, schematic design, design development, construction documents, construction administration, general conditions, cost of work, contingency, and fee for the Design-Build Contractor and all of his vendors, suppliers, subcontractors, Project Architect and sub consultants. The DBBL also includes all design and construction contingencies. The DBBL serves as

the Design-Build Contractor's initial Guaranteed Maximum Price (GMP) for the Project. The Design-Build Contractor is obligated to meet all contract conditions while designing and constructing the project within the DBBL.

3.5 "Subcontractor" means a person or entity that has an agreement with the Design-Build Contractor to perform any portion of the Work.

3.6 "Work" means the provision of all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents. Work includes, but is not limited to, the Design Services, the GMP proposal, the Construction Services, and any Additional Services and other services required. The term "reasonably inferable" takes into consideration the understanding of the parties hereto that not every detail will be shown on the Drawings and included in the Specifications.

3.7 "Owner", "the "County" means the County Commissioners Court, or "Court".

3.8 "Owner's Representative" means the Project Manager, which is Broadus & Associates.

**Article 4  
DESIGN-BUILD CONTRACTOR  
DESIGN SERVICES**

**4.1 GENERAL RESPONSIBILITIES**

4.1.1 Design Services are all services provided by the Project Architect or any design professional through or under this Agreement, including but not limited to the services in Article 4 of this Agreement. Design-Build Contractor shall designate in writing a representative who is responsible for the day-to-day management of the Design Services. The designated representative shall be the Owner's primary contact during the design phase of the Project and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and to bind the Design-Build Contractor in all matters related to Design Services. The designated representative shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably withheld.

4.1.2 Unless the Design Build contractor also has the ability to legally perform design build services, Design-Build Contractor shall enter into separate agreements with a Project Architect and other qualified professionals as required for performance of the Design Services. Design-Build Contractor certifies that any Project Architect and any other professional consultants with whom Design Build Contractor chooses to contract, have been or will be selected on the basis of competence and qualifications pursuant to Texas Law. Design-Build Contractor shall not perform any architectural or engineering services directly unless Design-Build Contractor is licensed in Texas to perform such services. All model-derived drawings, specifications, and other design documents shall bear the seal of the licensed professional who prepared them in accordance with the applicable laws and regulations of the State of Texas. Design-Build Contractor shall not subcontract any of the design to its construction subcontractors except for shop drawings or technical submittals as required by the specifications. The Design-Build Contractor may use integrated project delivery methods to facilitate and coordinate the development of shop models (BIM) and drawings by the architect and the sub-contractor as appropriate and within the applicable laws and regulations of the State of Texas.





**AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY**

4.1.3 Design-Build Contractor shall be solely responsible for all obligations to the Project Architect and shall pay for the services of the Project Architect and all other professional service providers out of the fees for this Agreement. However, the Owner shall be identified as an intended beneficiary in all such agreements and the Project Architect and all other professional service providers shall acknowledge that they owe a duty of professional care to the Owner for the Design Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from the Owner to the Project Architect or other design professionals not hired directly by the Owner.

4.1.4 The Design-Build Contractor shall be responsible for managing the Design Services so as to insure that the Project, as designed, modeled, analyzed and documented can be constructed for an amount that is within Design-Build Budget Limitation and will recommend and advocate designs which will enable the County to achieve the energy and operational savings as a responsibility of the Contract. The obligation to design, model and simulate the Project so as to achieve the Program objectives of scope and cost shall continue through completion and acceptance of Construction Documents. Any adjustment to the scope or quality considered necessary to comply with the Design-Build Budget Limitation or the Program during the design phase shall be mutually agreed upon and shall be considered normal to that process.

4.1.5 The Design-Build Contractor shall submit the names of all proposed consultants for Design Services, including the Project Architect and any of its consultants, for approval by the Owner, which approval shall not be unreasonably withheld. The Design-Build Contractor shall provide the Owner with a copy of the fully executed contract or agreement authorizing services by any such consultant. All such contracts shall provide that the consultants are bound to Design-Build Contractor in the same manner and to the same extent as Design-Build Contractor is bound to Owner.

4.1.6 The Design Services shall incorporate current technology as appropriate to the stated mission of the institution and the programmed functional activities that is compatible with existing facilities that meet the standards of the industry, and which are acceptable to the Owner. There will be a Building Information Model requirement. The Design Services shall incorporate current BIM, analysis, simulation, and checking technology as appropriate to the stated mission of the institution and the programmed functional activities that is compatible with any existing facility and acceptable to the Owner. Design services shall be performed using BIM tools and integrated processes based upon industry best practices for design, discovery and analysis, simulation, review, coordination, and decision support as appropriate to the stated mission, programmed functional activities, and goals of the project.

4.1.7 The Design-Build Contractor shall establish constructability and value engineering review programs and reporting that conforms to accepted industry BIM analysis and review practices to identify and document project cost and schedule savings. The Design-Build Contractor's constructability coordinator shall formally report project constructability status monthly. The reports shall include the project constructability log and narratives as appropriate. The reports shall be part of the periodic project status review. The reporting requirements shall continue throughout the duration of the Project including the design, procurement, and construction phases.

4.1.8 The Design-Build Contractor agrees to meet prevailing standards of care with respect to the sufficiency and completeness of all Design Services performed and that all model-derived drawings, specifications, and other information furnished or provided by Design-Build Contractor shall be free from material errors and omissions consistent with professional standards of designers in the same area designing projects of similar nature and scope. Approval or acceptance of any Design Services by Owner shall not in any way release Design-Build Contractor from any duty, responsibility or liability for such services, it being understood that Owner is at all times relying upon Design-Build Contractor's skill and knowledge in performing the Design Phase Services.

4.1.9 Owner shall have the right to reject any defective Design Services or other defective Work on the Project of which Owner becomes

aware and Design-Build Contractor shall promptly correct any such defect at Design-Build Contractor's expense. Should any portion of the Project Work be damaged or defective due to an error or omission in the Design Services, including errors or omissions in any plans, drawings, specifications, and other construction document materials prepared or furnished by Design-Build Contractor, Design-Build Contractor shall promptly correct any such damage or defect at no additional cost to the Owner. Should the Design-Build Contractor refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and Design-Build Contractor shall reimburse Owner for all expenses incurred to correct the damage or defect on demand.

4.1.10 Owner may elect, at its option, to construct the Project in different phases. Such phases may or may not overlap. Design-Build Contractor shall perform Design Services in packages as appropriate to each phase of construction which may result in different schedules and reviews for the completion of each design phase and for each phase of planned construction. The Owner may elect, at its option, to establish a different Design-Build Budget Limitation (DBBL) for each such phase. In any event, whether "fast-track" methods are used or not, the Design-Build Contractor shall be responsible to meet the project's Schedule.

4.1.11 At each stage of the design phase, Design-Build Contractor shall provide the following services as appropriate:

- Architectural Services
- Life Safety Code Analysis Services
- Interior Design Services
- Landscape Architectural Services
- Civil Engineering Services
- Structural Engineering Services
- Mechanical Engineering Services
- Fire Protection Engineering Services
- Electrical Engineering Services
- Security Engineering Services
- Commissioning Services
- Telecommunications & data/voice network design services
- Construction Cost Estimating
- Constructability Analysis
- Value Engineering Coordination
- Life Cycle Analysis
- Storm Water Pollution Prevention Plan Design Services
- Construction Administration
- Other services as required

4.2 Design-Build Contractor shall not proceed to any subsequent stage of Design Services until Owner has authorized Design-Build Contractor to proceed in writing, except at the Design-Build Contractor's sole financial risk

#### 4.3 PRE-DESIGN SERVICES PHASE

4.3.1 The Design-Build Contractor shall provide a preliminary evaluation of the Owner's Design Criteria, Program and the Design-Build Budget Limitation, each in terms of the other.

4.3.2 The Design-Build Contractor shall visit the site to become sufficiently familiar with the existing facilities, systems and conditions to insure that the Project as designed will functionally interface with the existing conditions as required.

4.3.3 The Design-Build Contractor shall review laws and local jurisdiction regulations applicable to the design and construction of the Project and advise the Owner if any program requirement may cause a violation of such laws.

4.3.4 The Design-Build Contractor in consultation with the Owner and Design-Build Contractor's entire consultant team (including, but not limited to, the Project Architect, the Mechanical/Electrical/Plumbing Engineer, the Civil Engineer, the Commissioning Consultant and other team members as appropriate) shall verify the Facility Program for the Project provided by the Owner and recommend any necessary revisions prior to the start of design. The Design-Build Contractor shall meet with representatives of the Owner as required to confirm the Facility Program as supplied in the RFP



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No.: P2009-P16 and shall revise the Facility Program as necessary to incorporate the Owner's comments and requirements.

4.3.5 Before proceeding to the Schematic Development Stage, the Design-Build Contractor shall obtain Owner's written approval by the Commissioners Court of the Facility Program and written authorization to proceed.

#### 4.4 SCHEMATIC DESIGN PHASE

4.4.1 Based on the approved pre-design documents and any adjustments to the Program or Design-Build Budget Limitation authorized by the Owner, the Design-Build Contractor shall develop sufficient alternative approaches to design and construction of the Project and review them with the Owner. The Design-Build Contractor shall prepare Schematic Design documents and a preliminary construction cost estimate and submit them to the Owner for approval. Schematic Design documents shall consist of, at a minimum, single line drawings, complete material selections, and system descriptions and outline specifications sufficiently detailed to permit review by the Owner and its consultants. The construction cost estimate shall affirm adherence to the Design-Build Budget Limitation. A 3-D CADD model will be included in the documents.

4.4.2 The Design-Build Contractor shall furnish and deliver to the Owner a minimum of eight (8) half size and two (2) full size complete printed sets of Schematic Design documents.

4.4.3 Before proceeding to the Design Development Phase, the Design-Build Contractor shall obtain Court's written authorization to proceed and the Court's approval of the preliminary construction cost estimate.

#### 4.5 DESIGN DEVELOPMENT PHASE

4.5.1 Based on the approved Schematic Design documents and any adjustments to the Program or Design-Build Budget Limitation authorized by the Owner, the Design-Build Contractor shall prepare Design Development documents and a detailed construction cost estimate and submit them to the Owner for approval. The Design Development Documents shall fix and describe the size and character of the entire Project, including site work, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The detailed construction cost estimate shall confirm adherence to the Design-Build Budget Limitation.

4.5.2 The Design-Build Contractor shall furnish and deliver to the Owner a minimum of eight (8) half size and two (2) full size complete printed sets of Design Development documents.

4.5.3 The Design-Build Contractor shall prepare presentation materials at completion of Design Development and, if requested, present them to Hays County Commissioners Court and staff at a public meeting.

4.5.4 Before proceeding into the Construction Document Phase, the Design-Build Contractor shall obtain Owner's written approval of the Design Development documents and the mutually established Design-Build Budget Limitation.

4.5.5 Upon receiving the Owner's written approval of the Design Development phase, the Design-Build Contractor shall create a model of the proposed County Courthouse for retention by Hays County.

#### 4.6 CONSTRUCTION DOCUMENTS PHASE

4.6.1 Based on the approved Design Development Documents and any further adjustments to the Program, the Design-Build Budget Limitation or the Project Construction Cost as authorized by the Owner, the Design-Build Contractor shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the Owner for approval. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall provide for the construction of the Project within the approved Project Construction Cost.

4.6.2 The Construction Documents shall be consistent in all material

respects with Design-Build Contractor's prior design proposals to Owner and with the approved Guaranteed Maximum Price proposal.

4.6.3 The Design-Build Contractor shall provide for reviews of documents and cost estimates during the preparation of Construction Documents at the 25%, 50%, 75% and 100% stages. The Design-Build Contractor shall advise the Owner's Representative regarding construction phasing and scheduling, the construction contract time period, and such other construction conditions considered appropriate for the Project at these stages.

4.6.4 The Design-Build Contractor shall review with the Owner's Representative his understanding of the procedures for obtaining approval of authorities having jurisdiction over the Project prior to initiating these procedures on behalf of the Owner.

4.6.5 The Design-Build Contractor shall furnish and deliver to the Owner a minimum of eight (8) half size and two (2) full size complete printed sets of Construction Documents.

4.6.6 Following Court approval of the Construction Documents, Design-Build Contractor shall deliver to the Owner the coordinated and merged BIM and the derived Construction Documents in the format and media specified by the Owner plus one (1) set of reproducible sepias and one blue line set, duly sealed. Documentation shall include building system model views, model views of public spaces (interior lobby, courtrooms, holding areas) functional space views (public and judicial access corridors) exterior renderings, site model, security views, and views showing main MEP system equipment with maintenance clearances.

4.6.7 Following Owner's approval of the Construction Documents as described in 4.6.6, Design-Build Contractor shall not be entitled to any adjustment in the approved Project Construction Cost except for changes in Project scope or quality which materially increase or decrease the cost to construct the Project or the time required to construct the project, that are ordered by Owner in writing in accordance with the General and Supplementary Conditions.

#### 4.7 CONSTRUCTION COST ESTIMATES

4.7.1 The Design-Build Contractor shall prepare and provide detailed Construction Cost Estimates of the Construction Project in a form acceptable to the Owner with the models, plans and specifications submitted for review at the completion of the Schematic Design Phase, the Design Development Phase, and all required review stages of the Construction Documents Phase. The Construction Cost Estimates shall affirm the construction cost of the Project to the Owner in writing.

4.7.2 Should any Construction Cost Estimate exceed the Design-Build Budget Limitation, the Owner shall either increase the limitation to accommodate the increase or direct the Design-Build Contractor to revise the Project to bring the estimated cost within the Design-Build Budget Limitation. Should any Construction Cost Estimate fall significantly below the Design-Build Budget Limitation, the Owner shall inform the Design-Build Contractor of desired changes to the Project scope or the Design-Build Budget Limitation.

#### 4.8 REVIEW MODELS and DRAWINGS

4.8.1 The Design-Build Contractor, at its sole expense, shall provide Owner with the required number of design document review sets at each required stage of completion: as previously specified. The Design-Build Contractor shall utilize BIM to support client review of design alternatives and milestone reviews as determined in the BIM Execution Plan developed by the Design-Build team.

4.8.2 The Design-Build Contractor shall incorporate into the documents such corrections and amendments as the Owner requests at each phase review, unless the Design-Build Contractor objects to such changes in writing and Owner agrees to the objections. Any additional cost incurred due to Design-Build Contractor's failure to incorporate Owner's requested corrections and amendments shall be borne by the Design-Build Contractor.

4.8.3 Design-Build Contractor shall identify to Owner in writing anything in Design-Build Contractor's drawings and specifications and any





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models, derived drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Design-Build Contractor (by Owner or any other party) that Design-Build Contractor regards as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Design-Build Contractor shall be solely responsible for the use of such documents or data unless Design-Build Contractor advises Owner in writing that in its opinion such documents or data are unsuitable, improper, or inaccurate and Owner instructs the Design-Build Contractor in writing to proceed in accordance with the documents or data as originally given.

4.8.4 The Design-Build Contractor shall pay all costs for plans, specifications and other design and construction documents used by the Design-Build Contractor and its consultants and subcontractors, and all documents produced for review by the Owner, except for changes generated solely by Owner.

4.8.5 If any of the plans, specifications and other design and construction documents or other work materials produced or used by Design-Build Contractor pursuant to this Agreement are damaged or destroyed by fire or other casualty, Design-Build Contractor shall prepare and provide Owner with new copies of any such documents or materials, at no additional cost to Owner, unless Design-Build Contractor or Owner has a complete and undamaged set thereof.

#### **4.9 CONSTRUCTION ADMINISTRATION SERVICES**

4.9.1 The Design-Build Contractor shall furnish the following Construction Administration Services as part of Construction Services, and without additional cost to Owner.

4.9.2 The Project Architect, and its related consultants, shall inspect the Project site at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents and models. On the basis of such onsite observations, the Project Architect shall observe the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work.

4.9.3 In addition to site visits for general inspection and observation, the Project Architect shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Design-Build Contractor shall provide written reports of all site visits to the Owner within two (2) business days. Progress payments shall be submitted monthly in draft form by the Design-Build Contractor for joint review and certification by the Project Architect, the Project Manager, and the Owner.

4.9.4 The Design-Build Contractor shall establish and maintain a numbering and tracking system for all project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested. The system shall use OmniClass classification tables for appropriate data types. The Owner's Representatives web based Project Management System, "Owner's InSite", shall be used to record and maintain documents.

4.9.5 The Design-Build Contractor shall administer all regular progress, model review, and special meetings scheduled by the Owner and shall promptly provide meeting minutes to all parties within two (2) business days. The Project Architect shall attend the Design-Build Contractor's regularly scheduled planning meetings. Regularly scheduled planning and progress meetings will be held onsite, Stage Coach Drive, as soon as practical, on a weekly basis (usually on a time and place to be set for each Friday). The meeting held on the last Friday of each month (or the first Friday of the following month under certain circumstances) will be the monthly meeting with a complete agenda, complete lists and schedules, and includes consideration of monthly payments.

4.9.6 The Design-Build Contractor shall prepare an agenda for and conduct job conferences for attendance by representatives of the Design-Build Contractor, major Trade Contractors and Subcontractors, the Project Architect and Owner representatives, and prepare and distribute meeting minutes and a construction status reports.

4.9.7 The Project Architect, through the Design-Build Contractor and with the approval of the Owner, shall interpret the technical requirements of the Contract Documents. The Project Architect, through the Design-Build Contractor, shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Design-Build Contractor, and shall render written recommendations to the Owner within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents. Interpretations and recommendations rendered by Design-Build Contractor's Project Architect in accordance with this provision shall be approved, authorized, or concurred with, by the Owner's Representative prior to being utilized or relied upon in the progress of the work. Such approval shall not unreasonably be withheld.

4.9.8 The Project Architect, through the Design-Build Contractor, shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. Project Architect's interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents and model views. Project Architect's interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the Construction Documents. Interpretations, model views and recommendations rendered by Design-Build Contractor's Project Architect in accordance with this provision shall be approved, authorized, or concurred with, by the Owner's representative prior to being utilized or relied upon in the progress of the work.

4.9.9 The Project Architect shall review, recommend approval, or take other appropriate action upon the Design-Build Contractor's submittals such as Shop Drawings, Product Data and Samples. The Design-Build Contractor shall provide to the Owner an adequate number of copies of each submittal to the Owner for review and approval by it and its consultants.

4.9.10 The Project Architect shall, with Owner's approval, have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. Such approval shall not unreasonably be withheld. The Project Architect shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by the Change.

4.9.11 All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be fully described in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

4.9.12 The Project Architect shall participate in concealed space inspections, systems start-up inspections, Substantial Completion and Final Inspections to determine the dates of Substantial Completion, and Final Acceptance. The Project Architect shall also participate in the Owner's final walk thru inspection one year after Final Completion.

4.9.13 The Project Architect, through the Design-Build Contractor, shall assist the Owner in checking the model, reviewing coordination models of major systems, construction models and as-built models and drawings during the course of the Work and shall review final as-built models, documents, and electronic schedule data for completeness and compliance with Contract requirements. COBIE may be used to support final documentation. Final as-built drawings shall be approved, authorized, or concurred with, by the Owner's representative prior to final payment to the Contractor.

4.9.14 The Design-Build Contractor shall provide project record



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models, schedule spreadsheets, and construction documents in the system and manner required by the Owner and determined as part of the BIM execution plan. At a minimum, project record models and documents shall be provided electronically in the native IFC compliant model file (rvt, pln, dgn) and the construction drawings in the current version of dwg, dxf and pdf formats. The Owner may require, at its sole option, that the Design-Build Contractor store and maintain contract documents using an Owner furnished document control system, which shall be "Owner InSite" web based application, as instructed by the Project Manager.

4.9.15 The Project Architect shall be present for final and semifinal inspections and participate in preparation of construction punchlists and provide written copies of construction punchlists to all parties present.

4.8.16 Owner's approval of any models, drawings, specifications, submittals or other documents shall not release or relieve Design Builder, Project Architect or their subcontractors, sub consultants, and vendors from their respective obligations under this Agreement.

#### 4.10 ADDITIONAL SERVICES

4.10.1 Additional Services shall be provided by the Design-Build Contractor and paid for in accordance with this Agreement by the Owner if authorized in writing by the Court. Prior to commencing any Additional Service, Design-Build Contractor shall submit to the Court an Additional Services Proposal in a form acceptable to the Court. The Additional Services Proposal shall describe in detail the nature or scope of the Additional Services, the basis upon which Design-Build Contractor believes that such services are Additional Services, the maximum amount of fees and reimbursable expenses for performance of the Additional Services, and a proposed schedule for the performance of the Additional Service. Design-Build Contractor shall proceed with the Additional Service only after written acceptance by Court of the Additional Services Proposal.

4.10.2 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Design-Build Contractor pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

4.10.3 The following services, if requested by the Court, are Additional Services:

4.10.4 Providing financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, and the cost of the Project.

4.10.5 Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.

4.10.6 Providing coordination of Work performed by Owner's separate Contractors or by the Owner's own forces, except where such work interfaces with the work of the Design-Build Contractor, such as demolition or other contractors working at the site or adjacent sites.

4.10.7 Providing services in connection with the Work of separate consultants retained by the Owner.

4.10.8 Providing services for planning tenant or rental spaces.

4.10.9 Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or due to Changes approved by the Owner and not due to errors or omissions by the Project Architect.

4.10.10 Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

4.10.11 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work provided that the damage was not caused wholly or in part by the Design-

Build Contractor or a Subcontractor.

4.10.12 Providing services after final payment or expiration of the Warranty, whichever is later, except as otherwise required by the Contract.

4.10.13 Preparing to serve or serving as an expert witness at the request of the Owner in connection with any public hearing, arbitration proceeding or legal proceeding.

#### **Article 5 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION SERVICES**

5.1 At the conclusion of the Design Development phase, the Design-Build Contractor shall prepare and submit a Guaranteed Maximum Price (GMP). The GMP must be prepared in the format specified by Owner and include, without limitation, a breakdown of Design-Build Contractor's estimated costs organized by trade; allowance amounts by item; contingency amounts; the Construction Phase Fee, a Contract Time and date of Substantial Completion and other items as required by the Owner. The form shall be prepared after award announcement and attached to the contract as an Exhibit D.

5.2 The GMP Proposal must include a written statement describing how it was derived and prepared. If BIM data is used then this process is to be described in the BIM execution plan. At a minimum, the GMP Proposal must specifically identify the Drawings, Specifications and other construction documents relied on, the addenda incorporated, any exceptions to the Owner's General and Supplementary Conditions or to the terms of this Agreement, the allowances, and all clarifications and assumptions made by the Design-Build Contractor due to the incompleteness of the Drawings and Specifications.

5.3 In formulating the Guaranteed Maximum Price Proposal, Design-Build Contractor shall allow for the continued development and completion of the Drawings and Specifications which are reasonably inferable, except for material changes in scope or quality and the Guaranteed Maximum Price Proposal shall include a contingency "Design-Build Contractor Contingency" to allow for additional costs of the Work arising out of such development and completion, as well as bidding variations and price escalations which do not qualify for a change order. Amounts attributable to clarifications, assumptions, and further development and completion of the Model, model quantities, Drawings and Specifications shall be specified in an itemized breakdown as part of the GMP. Wherever in the GMP the Design-Build Contractor has not developed a full design or specifications to fully describe a building item or system, Design-Build Contractor shall develop performance based specifications that will be included in the GMP.

5.4 Before final acceptance of the GMP by the Owner, Design-Build Contractor shall submit for Owner's approval, the number of copies requested by the Owner, complete, bound sets of the models, model views, drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents required by the GMP Guideline so as to fully and completely describe the Project as developed at the time of Design Development.

5.5 The GMP Proposal and the GMP Contract Documents are intended to address all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the Guaranteed Maximum Price. The Design-Build Contractor shall provide a fully functional and operational facility as intended in the GMP. The GMP Proposal and the GMP Contract Documents are complementary and what is required by one shall be binding as if required by all. If there is an irreconcilable conflict between or among the various documents that make up the GMP Proposal and the GMP Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

5.6 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all other documents that comprise the Contract between the Owner and the Design-Build Contractor. Any exceptions to or modifications of such terms and conditions proposed by the





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Design-Build Contractor in the GMP Proposal shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the Owner.

5.7 Owner may accept or reject the Guaranteed Maximum Price Proposal or negotiate its terms with Design-Build Contractor (with the right to cease negotiations at any time and reject the Proposal). If the Design-Build Contractor judges that it is difficult for the GMP to be less than the DBBL at Design Development, the Owner can require the Design-Build Contractor to redesign or implement Value Engineering at no added cost or project duration. If the Owner accepts the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price and the GMP Contract Documents, shall become part of the Contract. If the parties are unable to agree on the Guaranteed Maximum Price, then the Owner may reject the Design-Build Contractor's GMP proposal and terminate the contract for convenience, and has the right to utilize the design documents, and obtain bids or proposals from other construction contractors to accomplish the project.

5.8 Following Owner acceptance of the GMP Proposal, Design-Build Contractor shall be responsible for developing the Construction Documents so that, when complete, the documents incorporate and address all qualifications, assumptions, clarifications, exclusions and value engineering issues contained in the GMP Proposal. The Design-Build Contractor and the Project Architect shall jointly provide to Owner monthly status reports on the progress of incorporation of all such qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the GMP Proposal.

5.9 The Design-Build Contractor shall not be entitled to an increase in the Guaranteed Maximum Price due to the absence of any detail or specification the Design-Build Contractor may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Design-Build Contractor is responsible for all design, including incidental modeling, designing/detailing as required by the Specifications for shop drawing purposes, except for design provided by Owner's independent Design Consultants, if any.

5.10 All contingencies are to be used as mutually agreed upon between the Owner and Design-Build Contractor. The Design-Build Contractor shall notify the Owner in writing prior to expending any contingency monies with an explanation as to why use of such funds is warranted.

5.11 As the Construction Documents are finalized and the Cost of Work buyout progresses for those Design-Build Contractor's Contingency items specifically identified in the GMP Proposal, the Design-Build Contractor's Contingency amount shall be reduced by mutual agreement of Owner and Design-Build Contractor with the deductions returned to the Owner as savings. Any Contingency remaining at the end of the Project shall be returned to the Owner by deductive Change Order.

5.12 Prior to utilization of any Contingency and subject to the Owner's approval, the Design-Build Contractor shall provide complete documentation, to the Owner's satisfaction, describing in detail the scope of work affected and the associated costs.

**Article 6  
DESIGN-BUILD CONTRACTOR CONSTRUCTION SERVICES**

6.1 The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal specified in such Notice to Proceed, (ii) the issuance of a purchase order by Design-Build Contractor for materials or equipment for the Project after prior written authorization by Owner, or (iii) award of a Subcontract in accordance with the requirements of this Contract after prior written authorization by Owner.

Design Services may overlap the Construction Services phase of the project.

6.2 Design-Build Contractor shall designate in writing a representative who is responsible for the day-to-day management of the Construction Services. The designated representative shall be the Owner's primary contact during the construction phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and bind the Design-Build Contractor in all matters related to Construction Services including, but not limited to, execution of Change Orders, Applications for Payment and Additional Service Requisitions. The designated representative shall not be changed without advance written approval from the Owner.

6.3 Unless otherwise provided for in the Contract, Design-Build Contractor shall provide or cause to be provided, and shall pay for all design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary or reasonably inferable for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

6.4 The Design-Build Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Design-Build Contractor shall keep the Owner informed of the progress and quality of the Work.

6.5 The Design-Build Contractor shall prepare and submit a Schedule of Work for the Owner's written approval. This schedule shall indicate the dates for the start and completion of the various phases of construction, milestones, including dates when information and approvals are required from the Owner. The Design-Build Contractor shall update this schedule on a monthly basis at a minimum or as required by the conditions of the Work and with the written approval of the Owner.

6.6 The Design-Build Contractor warrants to the Owner that the materials and equipment provided under the Contract will be of good quality and new unless otherwise required or permitted by the Contract, that the construction will be free from faults and defects and that the construction will conform to the requirements of the Contract. The Design-Build Contractor shall be responsible for correcting Work that does not comply with the Contract Documents.

6.7 Design-Build Contractor is solely responsible for all safety precautions and programs in connection with the Work. Design-Build Contractor shall review the safety programs developed by each Subcontractor and prepare and submit to Owner a comprehensive safety program for that trade prior to commencing construction by the trade. The comprehensive safety program shall comply with applicable requirements of the Occupational Safety and Health Act of 1970, all other applicable state, local, or federal laws or regulations. Design-Build Contractor shall ensure Subcontractor compliance with the requirements of the comprehensive safety program. The existence of any Owner-controlled insurance programs shall not operate to diminish or eliminate in any way Design-Build Contractor's responsibilities under this paragraph.

6.8 The Design-Build Contractor's Construction Services and obligations are further described in the General and Supplementary Conditions and other Contract documents.

**Article 7  
DESIGN-BUILD CONTRACTOR'S PERSONNEL AND  
SUBCONTRACTORS**

7.1 Before execution of this Agreement and before entering into any subcontract agreements related to the Work or the Project, the Design-Build Contractor shall identify in writing to the Owner its employees, personnel, Project Architect, and all other associated sub-consultants to be assigned to the Project. Design-Build Contractor shall not assign to the Project or contract any person or entity to which Owner has a reasonable objection. After approval by the Owner, Design-Build Contractor shall not remove or replace the personnel and entities assigned to the Project except with the Owner's prior written consent which shall not be unreasonably withheld. Design-Build Contractor shall promptly update the personnel list as



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required.

7.2 The Design-Build Contractor shall solicit competitive sealed proposals for each subcontracting and materials package issued for the Work and shall notify the Owner in advance in writing of the date it will receive such proposals. Based on the proposals, Design-Build Contractor, with assistance from and in cooperation with the Owner, shall identify the proposal that provides the best value for the Project. The Design-Build Contractor shall document the actual Cost of Work at buyout as compared to the Guaranteed Maximum Price and shall report this information to the Owner immediately following receipt of proposals for each subcontracting package. Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting work, provided however, that Design-Build Contractor may use such savings to offset other buyout packages that exceed the amounts identified in the Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

7.3 Design-Build Contractor shall identify every Subcontractor it intends to use on the Project to the Owner for approval in writing before entering into any such subcontract. Design-Build Contractor shall not use any Subcontractor to which Owner has a reasonable objection. Design-Build Contractor shall not be required to subcontract with any Subcontractor to which it has reasonable objection. If Design-Build Contractor intends to perform any Work other than General Conditions Work, it shall notify Owner in writing in advance. Following Owner's approval of Design-Build Contractor's Subcontractors, they shall not be changed without Owner's prior written consent, which shall not be unreasonably withheld. Design-Build Contractor shall not incur any Subcontract costs prior to issuance by Owner of a Notice to Proceed for such Work.

**Article 8  
OWNER'S RESPONSIBILITIES**

8.1 The Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Design-Build Budget Limitation, contingencies for changes in the Work during construction, and other costs which are the responsibility of the Owner. The schedule will set forth the Owner's plan for milestone dates and completion of the Project.

8.2 The Owner will designate an Owner representative with authority to act in the Owner's behalf with respect to the Project. The Owner's Designated Representative (ODR) shall examine the documents submitted by the Design-Build Contractor and shall render decisions pertaining thereto.

8.3 The Owner, at Owner's cost, will secure the services of special consultants to develop such additional information as may be necessary for the design of the project. The Design-Build Contractor shall provide the Owner with parameters for inclusion in the Owner's instructions to such providers. (For example, a Criminal Justice System Management Consultant may offer parameters for inclusion.)

8.4 The Owner shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

8.5 The Owner shall examine the design documents submitted by the Design-Build Contractor and provide comments concerning corrections or amendments to such documents in writing to the Design-Build Contractor. The Owner may obtain independent review of the design documents by its own Design Consultant. The Owner may require the Design-Build Contractor to halt production during design review.

8.6 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Design-Build Contractor's services and of the Work.

8.7 The Owner may designate one or more Construction Inspectors of its own who shall be given access to the Work as requested or needed. The provision of such Inspectors by Owner shall not reduce or lessen in any respect Design-Build Contractor's responsibilities for the Work. Design-Build Contractor shall remain fully and solely responsible for the drawings,

specifications, and other contract documents furnished or provided by Design-Build Contractor, and for constructing the Project in strict accordance with the Contract Documents.

**Article 9  
OWNERSHIP AND USE OF DOCUMENTS**

9.1 The Design-Build Contractor or Project Architect shall provide to the Owner the originals of the following documents including but not limited to: native format models, animations, simulations, drawings, specifications in spreadsheet form and other documents or items prepared for the Project ("Construction Documents"), in written reproducible form and electronic form native BIM format, IFC, Drawings in dwg, dwt, pdf of the original design signed and sealed by the Project Architect to be used by the Owner as the Owner deems necessary without violating any copyrights of the Project Architect. The Project Architect shall provide to the Owner final record models and drawings and documents, including but not limited to: native models, animations, simulations, drawings, specifications and other documents reflecting the final "as-built" condition of the Project as maintained by the Design-Build Contractor during the course of construction, in written reproducible form and electronic form noted above to be used by Owner as Owner deems necessary without violating any copyrights of the Project Architect. The Owner acknowledges that the Construction Documents prepared by Project Architect, including electronic files, as instruments of professional service. Nevertheless, the model, animations, simulations, specifications in spreadsheet form and Construction Documents prepared under this Agreement are owned by the Owner. The Owner shall not reuse or make modifications to the Construction Documents without the Owner's receipt of an acknowledgment from any third party who reuses or modifies the model data or construction documents that the third party is responsible for any liability arising from the reuse or modification.

9.2 The Design-Build Contractor shall provide the Owner with the electronic form of the model, simulations, schedules in spreadsheet form, drawings, specifications and other documents prepared by the Design-Build Contractor throughout the course of the project. If the Contract is terminated by the Owner, at any stage of the Agreement, the Design-Build Contractor shall grant the Owner a limited license that allows the Owner to use the documents to complete the Project.

**Article 10  
TIME**

10.1 Unless otherwise approved, the Owner and the Design-Build Contractor shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

10.2 Time limits stated in the Contract Documents are of the essence of this Agreement. The Design-Build Contractor shall be responsible for schedule development, updating and reporting throughout the entire Project, including Design Services and Construction Services. The Design-Build Contractor shall comply in all regards with requirements set forth in the Project Planning and Scheduling Specifications.

10.3 Prior to commencement of the Design Services, the Design-Build Contractor shall submit for the Owner's approval a detailed schedule for the performance of the Design Services and BIM Execution Plan. The Design Services Schedule shall include reasonable periods of time for the Owner's review and approval of design drawings and for approval of authorities having jurisdiction over the Project. Upon acceptance by the Owner, the Design Services Schedule shall not be modified except for good cause including the Owner not being able to approve Design in a timely manner, as approved by the Owner at the Owner's sole option and discretion. The Design Services shall commence when the Owner issues a Notice-to-Proceed designating the date for commencement. The Design-Build Contractor shall complete the Design Services as set forth in the approved Design Services Schedule and BIM Execution Plan developed by the integrated design, construction, sub-contracting and commissioning teams.

10.4 Prior to commencement of the Construction Services, the Design-Build Contractor shall submit for the Owner's approval a detailed schedule





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for the performance of Construction Services. The Construction Phase Schedule shall include reasonable periods of time for the Owner's review and approval of design drawings and submissions and for approval of authorities having jurisdiction over the Project. Upon acceptance of a Guaranteed Maximum Sum Proposal by the Owner, the Construction Phase Schedule shall not be modified except for good cause as approved by the Owner at the Owner's sole option and discretion. The Design-Build Contractor shall provide the Owner with detailed and accurate monthly invoices which also include the following items:

- 10.4.1 A copy of the original schedule with marked up changes showing original activities and modified ones (as applicable).
- 10.4.2 Schedule changes (if any).
- 10.4.3 Schedule update – progress accomplished thus far.
- 10.4.4 Next month activities and milestones.
- 10.4.5 Any time savings or delays experienced thus far and an explanation as to why.
- 10.4.6 A plan on how the Design-Build Contractor intends to recover from any delays.
- 10.4.7 Progress photos for construction activities.
- 10.4.8 Status of buy-outs against the GMP and technical submittals and shop drawings
- 10.4.9 Any safety incidents recorded for the period covered in the report.

**Article 11  
PAYMENTS**

11.1 Payments for Design Services shall be made at the completion of each design phase (pre-design services, schematic design, design development, and construction documents) or, with the Owner's approval, monthly, based on the percentage completion of services performed within each approved phase of design as demonstrated by work product. Design Services shall be billed separately from Construction Services and Cost of Work. Construction Administration shall be billed separately within the billings for Construction Services and Cost of Work. All payment requests shall be submitted on approved form. Billings shall accurately and completely detail Subcontractor payment requests and payments.

11.2 Payment for approved Additional Services and Reimbursable Expenses shall be made monthly upon presentation of the Design-Build Contractor's statement of services rendered or expenses incurred.

11.3 With each application for payment, Design-Build Contractor shall submit all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, and any and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested. This requirement normally will be waived unless payment is for pre-approved Time and Material work, or if the Owner exercises its right to audit per Section 11.15.

11.4 The Design-Build Contractor's Construction Services Fee shall be shown as a separate line item on the schedule of values. In determining the percentage of completion, Design-Build Contractor shall use the lesser of the total percentage of the Work actually completed for each classification on the schedule of values; or the percentage of the Guaranteed Maximum Price allocable to that item which has been actually incurred and demonstrated as an expense by the Design-Build Contractor. The amount requested for such fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current Guaranteed Maximum Price.

11.5 Retainage as specified in the General and Supplementary Conditions will be applied to the entire amount requested including the Cost of the Work and the Design-Build Contractor's Construction Phase Fee.

11.6 Each schedule of values submitted shall maintain the originally established value for each work classification line item or subcontractor,

and shall contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original schedule of values and of all updates thereto shall be subject to the approval of Owner. The Owner may require that payment applications be submitted electronically. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that classification or subcontractor, then the amount payable to Design-Build Contractor by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Design-Build Contractor's fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).

11.7 Payments to Subcontractors included in an application for payment shall not exceed the percentage of Work allocable to that Subcontractor for each respective schedule of values classification which has been actually completed.

11.8 Owner shall have the right to withhold from payments due Design-Build Contractor such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Design-Build Contractor or failure of Design-Build Contractor to perform Design-Build Contractor's obligations under this Agreement.

11.9 Design-Build Contractor's request for final payment shall not be made until Design-Build Contractor delivers to Owner a complete release of all liens and/or bond claims arising out of this Agreement and an affidavit that, to the best of Design-Build Contractor's information or knowledge, the release includes and covers all materials and services over which Design-Build Contractor has control and for which a lien and/or bond claim could be filed. Alternatively, Design-Build Contractor may furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Design-Build Contractor shall refund to Owner all moneys Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

11.10 Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by Design-Build Contractor and has been verified by Owner or Owner's representatives. The aggregate total of payments to Design-Build Contractor shall not exceed the total of the actual Cost of the Work as verified by Owner or Owner's representative from Design-Build Contractor's final accounting plus the applicable Design-Build Contractor's Construction Fee, as certified for payment in accordance with the Contract. In no event shall the aggregate sum of Construction payments to the Design-Build Contractor exceed the Guaranteed Maximum Price. If payments made to Design-Build Contractor exceed that which is due and owing, then Design-Build Contractor shall promptly refund such excess to Owner.

11.11 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment to the extent necessary to protect the Owner from loss (whether a progress payment or final payment) to Design-Build Contractor under any of the following circumstances if the making of such payment would be materially prejudicial to the Owner:

11.11.1 Design-Build Contractor is in breach or default under this Agreement;

11.11.2 Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;

11.11.3 Design-Build Contractor has failed to make payments promptly to consultants or other third parties used in connection with any services for which Owner has made payment to Design-Build Contractor; or

11.11.4 If Owner, in its good faith judgment, determines that the portion of the compensation unpaid then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement.





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11.11.5 Design-Build Contractor has persistently failed to meet schedule requirements.

11.12 Nothing contained herein shall require the Owner to pay the Design-Build Contractor an aggregate amount for Construction Services that exceeds the Guaranteed Maximum Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Design-Build Contractor.

11.13 No partial payment made hereunder shall constitute, or be construed to constitute, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Design-Build Contractor from any of its obligations hereunder or liabilities with respect to such services.

11.14 Design-Build Contractor shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

11.15 Owner shall have the right to verify and audit the details set forth in Design-Build Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Design-Build Contractor during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Design-Build Contractor's business employees; (4) visiting the Project site; and (5) other reasonable action. Design-Build Contractor's records shall be kept on the basis of generally accepted accounting principles. Any audit shall be done at no additional cost to the Owner.

11.16 The acceptance by Design-Build Contractor of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Design-Build Contractor or Design-Build Contractor's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Design-Build Contractor as unsettled at the time of the final request for payment.

**Article 12  
REIMBURSABLE EXPENSES**

12.1 Reimbursable Expenses are in addition to Compensation for Basic and Additional Services and include actual out-of-pocket reasonable expenditures made by Design-Build Contractor and its employees and consultants incurred solely and directly in connection with the Work for the following items: none-All expenses, as defined by 13.3.1.3, 13.4.3, 19.3 are to be accounted for in the Design-Builder Fee.

12.2 Owner shall not pay a mark-up on any reimbursable expenses. Design-Build Contractor shall submit receipts for all reimbursable expenses along with any reimbursement request.

**Article 13  
COST OF THE WORK**

13.1 The term "Cost of the Work" means costs which the Design-Build Contractor actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Cost of the Work includes the cost of Design-Build Contractor's General Conditions for the Work, the cost of the work itself. The costs associated with Design Services and Construction Administration are not Cost of the Work items within the terms and conditions of this Contract but are included within the RFP CRITERIA NINE: RESPONDENT'S PART I PRECONSTRUCTION AND PART II CONSTRUCTION FEES.

13.2 References in the General and Supplementary Conditions relating to adjustments in "cost" or "costs" refer to adjustments to the Cost of the Work.

13.3 Cost of the Work includes:

13.3.1 Labor and Administrative:

13.3.1.1 Reasonable and customary wages or salaries of Design-Build Contractor's supervisory and administrative personnel who are identified to

the Owner in advance and in writing but only when stationed full-time at the site with the Owner's prior consent. The Project Manager's salary, when directly associated with the project, shall be included in the General Conditions Costs. The Superintendent(s) and Project Site Engineer(s) salary or other full-time personnel stationed at the site, shall be included in the General Conditions with an associated breakdown by personnel category. If other personnel are needed and scheduled to be onsite part time, the prorated cost of their assignment shall be identified as a General Conditions item in the RFP CRITERIA NINE: RESPONDENT'S PRICING AND DELIVERY NOT-TO-EXCEED GENERAL CONDITIONS COSTS.

13.3.1.2 Costs paid or incurred by Design-Build Contractor for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii), or otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.

13.3.1.3 Reasonable and customary travel expenses of Design-Build Contractor's personnel incurred directly and solely in support of the Project and approved in advance in writing by Owner.

13.3.1.4 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of Design-Build Contractor's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

13.3.2 Materials, Equipment, Tools, Rentals:

13.3.2.1 Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Design-Build Contractor shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to the General and Supplementary Conditions.

13.3.2.2 Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Design-Build Contractor, if such items are fully consumed in the construction of the Work, and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.

13.3.2.3 Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Design-Build Contractor, and may include transportation, installation, and minor maintenance costs, and removal, all so long as Owner has approved such items and the rental rates in advance in writing. If tools, machinery or construction equipment are rented from the Design-Build Contractor, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "Contractor's Equipment Cost Guide," latest edition published by the AGC, approved by the Owner before commitments are made and shall in no event be higher than the prevailing competitive rates paid in the locality for similar equipment. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, Design-Build Contractor shall purchase such equipment and turn it over to Owner upon final completion of the Work, or, at Owner's option, credit to the Owner with the amount of the fair market resale value. Equipment purchase or rental costs for a subcontractor's work shall be within the bid for that subcontract and not be charged to General Conditions.

13.3.2.4 Site debris removal and disposal costs in accordance with all applicable laws and regulations.

13.3.3 Subcontracts: Payments made to Subcontractors by Design-



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Build Contractor for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.

**13.3.4 Other costs:**

**13.3.4.1** Owner is a public entity and Design-Build Contractor shall avail itself of all exemptions that may exist for such taxes based on Owner's status. Owner shall present sales tax exemption forms for use in Contractor and subcontractor's purchasing.

**13.3.4.2** Permit and inspection fees

**13.3.4.3** Premiums for insurance and bonds to the extent directly attributable to this Contract.

**13.3.4.4** Testing fees pursuant to the General and Supplementary Conditions.

**13.3.4.5** Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.

**13.3.4.6** Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Design-Build Contractor.

**13.3.4.7** Other costs approved in advance in writing by Owner at Owner's sole option and discretion.

**13.4 Costs Not Included in the Cost of the Work**

The following *shall not* be included in the Cost of Work to be paid by Owner:

**13.4.1** Costs including, but not limited to, costs arising from failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.

**13.4.2** Legal and administrative costs to review and negotiate these Contract Documents.

**13.4.3** Travel and subsistence expense of Design-Build Contractor, its officers or employees incurred while traveling between the Project and Design-Build Contractor's principal or branch offices, and travel in the metropolitan area of the Project.

**13.4.4** Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Design-Build Contractor.

**13.4.5** Costs incurred by Design-Build Contractor resulting from the failure of Design-Build Contractor or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Design-Build Contractor to comply with directives of Owner not in conflict with said schedules.

**13.4.6** Costs resulting from the failure of Design-Build Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

**13.4.7** Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and the Project Manager assigned to this Project and only as specifically provided herein.

**13.4.8** Any and all overhead expense or office expense at any location, except site office expense to the extent specifically included herein.

**13.4.9** Costs related to Design-Build Contractor's indemnification obligations under the Contract.

**13.4.10** The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.

**13.4.11** Any cost arising out of a breach of this Contract or the fault or negligence of Design-Build Contractor, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or

equipment, damage to persons or property, errors and omissions with respect to design services provided or furnished by Design-Build Contractor, and failure to coordinate the design services provided or furnished by Design-Build Contractor. In the case of such fault or negligence of Design-Build Contractor is possible, therefore anticipated, related costs shall be anticipated in the Design-Builder's contingency, which shall not be borne by the Owner.

**13.4.12** Liquidated damages imposed by Owner for failure of Design-Build Contractor to complete the Work within the Contract Time.

**13.4.13** Any cost arising out of the failure of Design-Build Contractor to complete the Drawings and Specifications in a timely manner.

**13.4.14** Costs of Design-Build Contractor's architects, engineers, and other entities and personnel performing Design or Consulting Services.

**13.4.15** Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the Guaranteed Maximum Price to be exceeded.

**13.5 Discounts, Rebates and Refunds**

The Cost of the Work to be paid by Owner shall be credited with the following items:

**13.5.1** Proceeds of the sale of all tools, surplus materials, construction equipment and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the Owner, the Design-Build Contractor, or to some other party; and any such sale, if made to others than the Owner, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and the Design-Build Contractor shall use its best efforts to obtain the highest price in respect of such sales.

**13.5.2** If Owner makes funds available to Design-Build Contractor, discounts earned by the Design-Build Contractor through advance or prompt payments. The Design-Build Contractor shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The Design-Build Contractor shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner.

**13.5.3** Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by the Design-Build Contractor.

**13.5.4** Rebates, discounts, or commissions allowed to and collected by the Design-Build Contractor from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.

**13.5.5** Design-Build Contractor shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the Design-Build Contractor. Should Design-Build Contractor not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Design-Build Contractor, including, but not limited to, by deducting the amount from payments due the Design-Build Contractor.

**Article 14  
DESIGN-BUILD CONTRACTOR'S FEE**

**14.1** The Design-Build Contractor's Fee shall cover the Design-Build Contractor's profit, general overhead and all expenses in connection with maintaining and operating Design-Build Contractor's main office and any branch or field offices, except the field office for this Project.

**14.2** References in the General and Supplementary Conditions to Design-Build Contractor's "overhead" and "profit" refer to Design-Build Contractor's Fee.

**14.3** Design-Build Contractor's Fee includes:

**14.3.1** Salaries of Design-Build Contractor's officers, project



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manager(s), estimators and schedulers when not directly assigned to the Project.

14.3.2 Salaries of persons employed in the main or branch offices of the Design-Build Contractor whose time is devoted to the general conduct of the Design-Build Contractor's business.

14.3.3 Overhead or general expenses of any kind unless specifically addressed otherwise herein.

14.3.4 Services and expenses of the personnel, accounting, budget control, audit and management information systems relating to accounting in Design-Build Contractor's office and even if at the site, except as specifically identified herein.

14.3.5 Interest on the Design-Build Contractor's capital or on money borrowed by the Design-Build Contractor, including the capital employed by the Design-Build Contractor in the performance of the Work.

14.3.6 Amounts required to be paid by Design-Build Contractor for Federal and/or State income and franchise taxes.

14.3.7 Purchase/lease of jobsite vehicles and their maintenance costs.

14.3.8 Purchase/rental of jobsite radios and communications equipment.

14.3.9 Purchase/rental of jobsite computer hardware, software, and other electronic equipment.

14.3.10 Purchase/rental of jobsite phone systems including cellular and digital pagers.

**Article 15  
CONTRACT SAVINGS**

15.1 If the sum of the Design-Build Contractor's actual Cost of the Work including Part I Preconstruction Phase Services and Part II Basic Construction Services as defined by Articles 23.2 and 23.3 of this Agreement is less than the DBBL, then the entire savings shall be returned to the Owner and a final adjustment made to the contract amount.

**Article 16  
PRE-EXISTING CONDITIONS, DESIGN ERRORS, AND  
OMISSIONS**

16.1 The Design-Build Contractor acknowledges that it was afforded unrestricted access to the existing improvements and conditions on the Project site and it has thoroughly investigated those conditions. The results of Design-Build Contractor's investigation have been taken into account in establishing the Guaranteed Maximum Price of the Work. Therefore, Design-Build Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Design Phase Services or for Construction Phase Services arising from Project conditions that Design-Build Contractor discovered or, in the exercise of reasonable care, should have discovered in Design-Build Contractor's investigation. The Design-Build Contractor shall not be liable for existing environmental conditions including but not limited to environmental impact issues not revealed by Geotechnical Investigation. All environmental remediation shall be by the Owner.

16.1.1 Design-Build Contractor is responsible for discovering and correcting any error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents prepared by Design-Build Contractor or its Project Architect. Design-Build Contractor shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays, resulting from any error or omission in the Contract Documents.

**Article 17  
BONDS AND INSURANCE**

17.1 Within ten (10) days of the Effective Date of this Agreement, Design-Build Contractor shall provide a security bond in a form acceptable to the Owner in the amount of 5% of the Design-Build Budget Limitation. The surety for a security bond shall meet the same requirements as set forth

for payment and performance bonds.

17.2 Within ten (10) days of acceptance by the Owner of a Guaranteed Maximum Price Proposal, Design-Build Contractor shall provide performance and payment bonds on forms prescribed by Owner, in accordance with the requirements set forth in the General and Supplementary Conditions. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price including the cost for design services; the penal sum of the bonds shall be equal to the Owner's Design-Build Budget Limitation for the entire Project. When a Guaranteed Maximum Price is established, Design-Build Contractor shall provide revised performance and payment bonds in the amount of the GMP. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

17.3 The Design-Build Contractor shall carry professional liability and errors and omissions insurance, covering the design services provided under this Agreement, as set forth in Exhibit B1, General Conditions. A Certificate of Insurance indicating the expiration date of the Design-Build Contractor's professional liability insurance is required. No policy providing such insurance shall be cancelled without thirty (30) days prior written notice to the Owner. If Design-Build Contractor is performing the Design Services, then the professional liability insurance shall be in Design-Build Contractor's name and shall include a Design-Build Endorsement in form acceptable to Owner. If Design-Build Contractor is furnishing the Design Services through others, then the professional liability policy or policies shall be in the name of the respective professionals performing such services, which shall include all architects and engineers furnishing services for the Project, and Design-Build Contractor shall also provide a Contractor's Errors and Omissions policy naming it as the insured. If Design-Build Contractor is performing some design services and furnishing others, then the insurance policies shall be provided covering all design entities in accordance with the previously stated requirements. Owner may consider, as an alternate to the above coverage, that the Design-Build Contractor obtain Project Professional Insurance (PPI) coverage in excess of each designer's standard liability policy equal to or greater than Zurich PPI coverage.

17.4 Prior to commencing any work under the Agreement, the following insurance coverages shall be provided by the Design-Build Contractor:

17.4.1 Design Phase Services: Design-Build Contractor shall provide coverages for Employer's Liability, Workers' Compensation, Commercial General Liability, and Automobile Liability, as set forth in the General Conditions.

17.4.2 Construction Phase: In addition to those coverages required for the Design Phase Services, Owner's Protective Liability, Design-Build Contractor shall provide Employer's Liability, Workers' Compensation, Commercial General Liability, and Automobile Liability, and Builders Risk Insurance as set forth in the General Conditions of the contract.

17.4.3 Design-Build Contractor shall develop the GMP including the cost of all premiums for insurance coverage. The GMP should include the cost of premiums of all other insurance required by the Agreement or otherwise desired by the Design-Build Contractor for the Project. No mark-up shall apply to insurance premiums.

17.5 During construction, the Owner has the option to audit the Design-Build Contractor's insurance costs.

17.5.1 If the audit indicates that actual insurance costs are less than the costs included by the Design-Build Contractor then Design-Build Contractor shall issue a deductive Change Order to the Owner.

**Article 18  
DISPUTE RESOLUTION**

18.1 All disputes to which the Owner is a party that arise from this Agreement or the Project shall be resolved in accordance with the procedures and limitations of Article 26 of the General Conditions.





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**Article 19  
PROJECT TERMINATION AND SUSPENSION**

19.1 This agreement may be terminated by the Owner during the Design Phase upon at least seven (7) day written notice to the Design-Build Contractor in the event that the Project is to be temporarily or permanently abandoned.

19.2 At its sole discretion and option, the Owner may terminate this Agreement after the conclusion of the Program Phase, Schematic Design Phase, Design Development Phase, or the Construction Documents Phase of the Design Services Phase.

19.3 In the event of termination that is not the fault of the Design-Build Contractor, the Design-Build Contractor shall be entitled to compensation for all services performed to the termination date together with Reimbursable Expenses then due provided, however, Design-Build Contractor has delivered to Owner such statements, accounts, reports and other materials as required by the Owner together with all reports, documents and other materials prepared by Project Architect prior to termination. Upon such payment, Owner shall have no further obligation to the Design-Build Contractor.

19.4 Termination of this Agreement shall not relieve Design-Build Contractor or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Design-Build Contractor. In the event of a termination, Design-Build Contractor hereby consents to employment by Owner of a substitute Design-Build Contractor to complete the services under this Agreement, with the substitute Design-Build Contractor having all rights and privileges of the original Design-Build Contractor of the Project.

19.5 As of the date of any termination of this Agreement, Design-Build Contractor shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Design-Build Contractor in connection with Design-Build Contractor's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

19.6 If the Project is suspended or abandoned in whole or in part for more than three months, the Design-Build Contractor shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three months, the Design-Build Contractor's compensation for Design Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.

**Article 20  
INDEMNITY**

REFER TO GENERAL CONDITIONS ARTICLE 7.7.15 FOR INDEMNIFICATION.

20.1 Design-Build Contractor shall protect and indemnify the Owner from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent, or copyright, arising by or out of any of the work performed hereunder or the use by Design-Build Contractor, or by Owner at the direction of Design-Build Contractor, of any article or material, provided that upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Design-Build Contractor and Design-Build Contractor shall be given full opportunity to negotiate a settlement. Design-Build Contractor does not warrant against infringement by reason of Owner's or Design Consultant's design of articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Design-Build Contractor and parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

20.2 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

20.4 The indemnities contained herein shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by any indemnitor under workers' or workers' compensation acts, disability benefit acts or other employee benefit acts.

**Article 21  
SPECIAL WARRANTIES**

21.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Design-Build Contractor agree and acknowledge that Owner is entering into this Agreement in reliance on Design-Build Contractor's representations regarding its expertise and ability to provide Design-Build services. Design-Build Contractor covenants with Owner to use its best efforts, skill, judgment, and abilities to perform the obligations hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the usual and customary high standards of Design-Build Contractor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Should Design-Build Contractor fail to comply with the standard of care required herein, Design-Build Contractor's responsibilities under this Agreement, or the applicable laws, regulations, codes, ordinances, and orders, Design-Build Contractor hereby agrees to bear the full cost of correcting Design-Build Contractor's Work and Services, those of its consultants, and those of any others who have acted in reliance thereon.

21.2 The Design-Build Contractor warrants, represents, covenants, and agrees that all of the services to be performed by the Design-Build Contractor under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations of comparable experience, size, knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.

21.3 The Design-Build Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Design-Build Contractor be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Design-Build Contractor's skill and knowledge in performing the services required hereunder.

21.4 The Design-Build Contractor warrants, represents, covenants, and agrees that all persons connected with the Design-Build Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

21.5 The Design-Build Contractor warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

21.6 Design-Build Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the obligations required hereunder.

21.7 Design-Build Contractor warrants, represents, and agrees that individual executing this Agreement on behalf of Design-Build Contractor has been duly authorized to act for and bind Design-Build Contractor.

21.8 Except for the obligation of Owner to pay Design-Build Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Design-Build Contractor or to anyone claiming through or under Design-Build Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Design-Build Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, employee of the Hays County or anyone claiming under Owner has or shall have any personal liability to Design-Build Contractor or to anyone claiming through or under Design-Build Contractor by reason of the execution or



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performance of this Agreement.

**Article 22  
MISCELLANEOUS PROVISIONS**

22.1 Assignment. This Agreement is a personal service contract for the services of Design-Build Contractor, and Design-Build Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

22.2 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on the basis of generally accepted accounting principles and shall be available for audit by the Owner or the Owner's authorized representative at mutually convenient times.

22.3 Family Code Child Support Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

22.4 Sales Tax Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 2155.004, *Texas Government Code*, the Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

22.5 Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Build Contractor and Owner.

22.6 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

22.7 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Hays County, Texas shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

22.8 Waivers. No delay or omission by either of the parties hereto in

exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

22.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

22.10 Records. Records of Design-Build Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four years after final Payment or abandonment of the Project, unless Owner otherwise instructs Design-Build Contractor in writing.

22.11 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by registered or certified U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

22.12 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

22.13 Enforcement. It is acknowledged and agreed that Design-Build Contractor's services to Owner are unique, which gives Design-Build Contractor a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Design-Build Contractor acknowledges and agrees that a breach by Design-Build Contractor of the provisions hereof will cause Owner irreparable injury and damage. Design-Build Contractor, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement



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**Article 23  
COMPENSATION**

**23.1 The Design-Build Budget Limitation (DBBL) for the project is \$58,288,337.00.** The total compensation payable to the Design-Build Contractor for all services, materials, labor and other work provided for the Project, including the Preconstruction Services Fee, the Construction Services Fee and the Cost of the Work cannot exceed the Design-Build Budget Limitation.

**23.2 FOR PART I PRECONSTRUCTION PHASE (BASIC) SERVICES,** Owner shall pay the Design-Build Contractor a Preconstruction Services Fee as follows:

<b>Part I Preconstruction Services Fees</b>	
Pre-Design Services Phase:	\$0
Schematic Design Phase:	\$583,960
Design Development Phase:	\$906,600
<b>Subtotal of Fees at conclusion of GMP Commitment</b>	<b>\$1,490,560</b>
Construction Document Phase including subcontract buyout:	\$1,229,240
<b>Part I Preconstruction Services Sub-total:</b>	<b>\$2,719,800</b>

If the scope of the Project or description of the Design Services is changed materially, the compensation for Design Services shall be equitably adjusted.

**23.3 FOR PART II BASIC CONSTRUCTION SERVICES** Owner shall pay Design-Build Contractor a Construction Services Fixed Fee as follows:

<b>Part II Construction Services</b>	
Design-Build Contractor Construction and Contract Administration Phase Fee:	\$3,563,431
Design-Build Contractor General Conditions:	\$4,460,362
Cost of Work	\$45,062,897
<b>Part II Construction Services Subtotal:</b>	<b>\$53,086,690</b>

**23.4 SUMMARY OF COMPENSATION**

Part I Preconstruction Services	\$2,719,800
Part II Construction and Contract Administration Services	\$53,086,690
Design-Build Contractor's Contingency	\$2,481,847
<b>Design-Build Budget Limitation</b>	<b>\$58,288,337</b>

**OTHER TERMS AND CONDITIONS**

**23.5 TIME OF COMPLETION.** The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal specified in such Notice to Proceed, (ii) the issuance of a purchase order by Design-Build Contractor for materials or equipment for the Project after prior written authorization by Owner, or (iii) award of a Subcontract in accordance with the requirements of this Contract after prior written authorization by Owner. The Design-Build Contractor shall substantially complete the New Government Complex within 780 Calendar Days of the Owner's Notice-to-Proceed for the Work. This Substantial Completion Date for this Facility are subject to adjustment by time extensions granted

by Change Order. The time set forth for completion of the work is an essential element of the Contract. In computing change order requests for delays due to inclement weather (precipitation delays) contractor shall include in his schedule the precipitation shown in the 30-year statistical record of the National Oceanic and Atmospheric Administration (NOAA) for the Hays County area. If during construction Contractor claims a weather delay, he must demonstrate to owner that his critical construction activities have been impacted by precipitation over and above the average values recorded by the National Oceanic and Atmospheric Administration in that given month.



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23.6 NOTICES. Notices required by this Agreement shall be sent to the following persons at the indicated locations. A party shall not change the person or the address for notices without prior written approval of the other part

<b>If to Owner:</b> Commissioner Debbie Ingalsbe Precinct #1 Hays County Courthouse 111 E San Antonio Street San Marcos, TX 78666  <b>With copy to:</b> Bob Hinkle, Senior Project Manager Broaddus & Associates 1301 S. Capitol of Texas Hwy, Suite A-302 Austin, Texas 78746	<b>If to Design-Build Contractor:</b> Balfour Beatty Construction, LLC Attn: Mr. Mark A. Bradley Vice President 3100 McKinnon Drive, Seventh Floor Dallas, TX 75201  <b>With copy to:</b> Bob Hinkle, Senior Project Manager Broaddus & Associates 1301 S. Capitol of Texas Hwy, Suite A-302 Austin, Texas 78746
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23.7 EXHIBITS. The following exhibits are incorporated by reference as part of this Agreement and the Contract.

Exhibit A	Personnel Titles and Roles (supplied by Contractor at RFP)
Exhibit B	General Conditions of the Contract
Exhibit C	Supplementary Conditions
Exhibit D	Guaranteed Maximum Price Proposal form (to be supplied by Owner's representative at Design Development)
Exhibit E	Sub-consultants, and Subcontractors List (supplied by Contractor at buyout)
Exhibit F	Project Overall Schedule (Supplied by Contractor at Notice to Proceed)
Exhibit G	Payment and Performance Bond
Exhibit H	Hays County Design Build Conceptual Program Budget

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

Owner, Hays County

Design-Build Contractor

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

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

XXX  
XXXX  
Hays County, Texas

Mr. Douglas H. Jones  
Division President and CEO  
Balfour Beatty Construction, LLC





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**Exhibit A**

**Personnel Titles, Roles and Responsibilities**

**(to be provided by the contractor)**

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**Exhibit B**

**GENERAL CONDITIONS OF THE CONTRACT**

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**General Contract Definitions**

Unless the context clearly requires another meaning, the following terms shall have the meaning assigned herein:

Architect/Engineer means a person registered as an architect pursuant to Article 249a, Tex. Civ. Stat. Ann., as a landscape architect pursuant to Article 249c, Tex. Civ. Stat. Ann., and/or a person licensed as a professional engineer pursuant to Article 327la, Tex. Civ. Stat. Ann., or a firm employed by County or Contractor to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in the Contract.

Authorize, Authorization by Owner means a vote of the majority of Commissioner's Court of Hays County, or a limited power of authorization to the County's Designated Representative if delegated by the majority of the Commissioner's Court of Hays County.

Change Authorization means a Change Order Proposal Evaluation which has been marked "Accepted" by the County and, upon receipt of the Change Authorization by Contractor, constitutes notice to proceed with the changed work described therein.

Change Order means a written modification of the Contract between the County and Contractor, made either unilaterally by the Owner or by agreement of both parties.

Change Order Proposal Evaluation means a Contractor-generated document in response to a Change Order Request or Change Proposal Request or Field Order that states the adjustment necessary to Contract Sum and Time, if any, in response to the changed work described in the Change Order Request.

Change Order Request or Change Proposal Request means a County-generated document that describes a proposed change in the Work, including a description and Drawings and Specifications, as necessary, to inform the Contractor of the nature of the proposed change.

Close-out Documents means the product brochures, product/equipment maintenance and operation instructions, manuals, warranties, as-built record documents, affidavit of payment, release of lien and claim, etc., and as may be further defined or identified and required by the Contract Documents.

Contract or Design-Build Contract Agreement means all of the Contract Documents between the County and the Contractor.

Contract Date is the date the Design-Build Contract Agreement is effective between the County and Contractor.

Contract Documents means the Design-Build Contract Agreement, General Conditions, Supplementary Conditions, Drawings, Shop Drawings, Specifications, Bid and Proposal Documents, Advertisement, Contractor's Proposal, Contract Correspondence, issued to execute the Contract and Changes to the Contract.

Design-Build Contractor, Design-Builder, Construction Manager-at-Risk mean the individual, corporation, company, partnership, firm or other organization that has contracted to perform the Work under the Contract. Herein and throughout this document, the Design-Build Contractor is referred to as "Contractor".

Contract Sum is the total compensation payable to the Contractor for completion of the Work in accordance with the Contract Documents.

Contract Time is the period of time in calendar days between the date of the Notice to Proceed and the date of Substantial Completion of the Work as amended by Change Order.

Date of Commencement is the date designated in the Notice to Proceed that Contractor shall commence the Work.

Day means a calendar day, unless some other definition for "day" is specifically stipulated for a specific purpose.

Drawings mean the work product of the Architect/Engineer that depicts the location, quantity, and details of elements of the Work.

Final Completion means the date established by the County in writing in a certificate when the Contract is fully performed according to the Contract Documents and is acceptable to County. Unless otherwise specified in writing Contractor shall achieve final completion within thirty (30) days of substantial completion.

Interim Change Authorization means an County-generated document which authorizes the Contractor to proceed with changed work before acceptance of a Change Order Proposal Evaluation, when work must proceed in order to prevent damage to Work in place, to prevent significant delay in the Project Schedule, or to maintain safety, or otherwise when determined to be in the interest of the County.

County means the Hays County and the County's Designated Representatives.

County's Designated Representative is the County's on-site representative during the Project who exercises certain power on behalf of the County and undertakes certain contract administration activities outlined in the Contract. The County's Designated Representatives includes the Program Manager, and/or others granted authority by a majority of the Commissioner's Court of Hays County.

Project means the Work as described by the Contract Documents.

Punchlist is an inspection report prepared by design professionals and Owner representatives which details items not satisfactory as finished work. The "pre-final" punchlist is developed at the substantial completion inspection. The "final" punchlist is developed at the final completion inspection.

RFP means Request for Proposal of Design Build services.

Samples means the physical examples of materials, equipment or workmanship, that are representative of some portion of the Work and which establish standards by which the Work will be judged.

Schedule of Values means the detailed breakdown of the cost of the materials and labor necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by County.

Shop Drawings means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

Site means the geographical area at the location where the Work is to be performed.

Special Conditions means the documents containing terms and conditions, which relate to and are peculiar to the specific project. Special Conditions when used, are a part of the Contract Documents and supercede the General Conditions to the extent of conflict.

Specifications mean the Architect/Engineer's work product which establishes the quality of the products and processes to be used to produce the Work and they describe all elements of the work from CSI (Construction Specifications Institute) Division 1 through Division 17.



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Subcontractor means a person or organization who/that, as an independent contractor, contracts directly or indirectly with the Contractor to perform part or all of the Contract between the County and the Contractor.

Substantial Completion means the date jointly certified by the Contractor and County which depicts when the Work or a designated portion thereof is sufficiently complete in accordance with the Contract Documents, and is functionally and fully operational in all its components, and is fit for the use for which it is intended.

Supplementary General Conditions mean the standard procedures and contract administration requirements specific to the County which alter or expand upon matters covered in the General Conditions. Supplementary General Conditions, when used, are a part of the Contract Documents and supercede the General Conditions to the extent of conflict.

Unit Price Work means Work to be paid for on the basis of unit prices.

Unilateral Change Order means a Change Order issued by the County without the agreement of the Contractor.

Work means all labor, plant, material, equipment, facilities, and all other things, including the construction and services necessary or incidental to fulfilling the Contractor's Contract obligations.

Substantial Completion Inspection means an inspection conducted to determine that a project, or a portion thereof, is substantially complete as defined herein, and usable for its intended purposes. The Substantial Completion Inspection results in a Pre-Final Punchlist.

Final Inspection means an inspection conducted to determine that all deficiencies on the pre-final Punchlist, and all other deficiencies subsequently identified, have been corrected. A Final Inspection with a satisfactory outcome as determined by the County, results in release retainage and/or final payment.

The terms "bid", "bidder", or similar terms used in this document also mean "proposal", "proposer", or "respondent" as appropriate for the type of project for which these General Conditions are used.

#### **General Laws Governing Construction**

Compliance with Laws. In the execution of the Contract and the Work, the Contractor shall comply with all applicable State and Federal laws, including but not limited to, laws governing labor, equal employment opportunity, safety, environmental protection and prevailing s. The Contractor shall make himself familiar with and at all times shall observe and comply with all Federal, State and Local laws, ordinances and regulations which in any manner affect the conduct of the Work. The Contractor shall indemnify and save harmless the Hays County and its official representatives against any claim arising from violation of any such law, ordinance or regulation by himself, his subcontractors, and his employees. Except where expressly required otherwise by applicable laws and regulations, the County shall not be responsible for monitoring Contractor's compliance with any laws or regulations. Competent evidence of compliance with applicable laws shall be furnished.

The Contractor shall cooperate with governmental officials at all times where their jurisdiction applies. The Contractor shall make application, pay all fees, and provide supporting documentation necessary to secure permits, which are required for the performance of the Contract and the Work. Contractor has a continuing obligation throughout the term of the Contract to conduct his operations under duly issued permits and, in the event Contractor loses or has revoked a necessary permit, Contractor must take immediate steps to apply for and receive another permit.

Where the Underwriters' Laboratories have established standards and

issued labels for a particular group, class, or type of equipment the Underwriters' label shall be required on all equipment in that category. The National Electric Code and the National Plumbing code shall be minimum requirements. Competent evidence of compliance with applicable codes shall be furnished.

Federal, State, and Local Taxes. The Contract price includes all applicable federal, state, and local taxes and duties. The County is exempt from Texas state and local sales and use taxes, and any such taxes included on any invoice or voucher received by the County shall be deducted from the amount of the invoice or voucher for purposes of payment.

Antitrust Claims. The Contractor hereby assigns to the County any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq.

Venue for Suits. The venue for any suit arising from this Project shall be in a court of competent jurisdiction in Hays County, Texas.

Licensing of Trades. The Contractor shall comply with all applicable provisions of state and local law related to required licensing of skilled tradesmen, subcontractors, material men, suppliers, and or laborers, as necessary to accomplish the Work.

In the event the Contractor or one of his Subcontractors loses his license for any reason during the term of performance of the Contract, the Contractor shall promptly hire, or contract for, a licensed provider of the service at no additional cost to the County.

Royalties and Patents. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the County harmless from loss on account thereof, except when a particular design, process, or product of a particular manufacturer is specified by the County; provided that, if the Contractor has reason to believe that the design, process, or product specified infringes a patent, the Contractor shall be responsible for such loss unless it promptly gives such information to the County. The Contractor shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work.

Whether or not County has specified the use of a particular design, devise, material or process, the Contractor shall pay all valid royalties and license fees, and shall provide, prior to commencement of the Work hereunder, and at all time during the performance of same, for the lawful use of any design, device, material, or process covered by letters, patent, or copyright by suitable legal agreement with patentee, copyright holder, or their duly authorized representative.

Contractor shall defend all suits or claims for infringement of any patent or copyright and shall save the County harmless from loss or liability, direct or indirect, arising with respect to the Contractor's process in the formulation of its bid or performance of the Work or otherwise arising in connection therewith. County reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright, in which event the Contractor shall indemnify and save harmless the County from all costs and expenses, including reasonable attorney's fees and judgments, arising from such defense.

Environmental Regulations. At all times, Contractor shall conduct its activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment, and its protection. County and Contractor are jointly responsible for obtaining and maintaining permits related to stormwater run-off. Contractor covenants to conduct its operations consistent with stormwater run-off permit conditions. Contractor shall be responsible for any hazardous materials brought to the site by Contractor,





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subcontractors, suppliers or anyone else for whom Contractor is responsible. No hazardous materials shall be incorporated into the Work without prior approval of the County.

**Antiquities.** Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological, or historical significance. No objects of this nature shall be disturbed without written permission of County and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the County and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the County's property shall remain property of State of Texas, the Texas Historical Commission. If it is determined by County, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, Contractor may file with the County a Notice of Claim.

**Franchise Tax Status:** The Contractor agrees to execute and provide to the County a Certification of Franchise Tax Payment, on a form approved by the County.

**Tax payer and Vendor Account Information:** The Contractor agrees to execute and provide to the County a Taxpayer and Vendor Account Information form as obtained from the Texas Comptroller of Public Accounts stating that the Contractor is in "Good Standing" and not on "Vendor Hold".

**Compliance with and Enforcement of Prevailing Wage Laws**

**Duty to Pay Prevailing Wage Rates.** All persons employed in the performance of the work under this contract, or any subcontracts hereunder, shall be paid not less than the general prevailing rates of per diem, holiday, and overtime wages prevailing in the locality for work of a similar character (which wages are specified in an attachment to this contract). Failure to comply with this provision shall subject the Contractor to the penalties prescribed in Chapter 2258 of the Texas Government Code.

The Contractor shall pay not less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Schedule" provided by the County. The specified wage rates are minimum rates only. The County will not consider any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The "Prevailing Wage Schedule" is not a representation that quantities of qualified labor adequate to perform the Work may be found locally at the specified wage rates.

Each worker shall be classified in one of the classifications in the prevailing wage rate table. Each worker shall be notified by the Contractor or Subcontractors of the worker's craft classification and the classification's established minimum wage rate and fringe benefits. This notification shall be given to the worker upon commencing work at the site. The notice must be delivered to, and signed by the worker to acknowledge receipt of the notice, and must list both the monetary wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested, competent evidence of compliance with the Texas Prevailing Wage Law shall be furnished.

A copy of each worker wage rate notification shall be submitted to the County with the application for progress payment in the period during which the worker began on-site activities.

**Penalty for Violation.** The Contractor and any Subcontractor shall pay to the County a penalty of sixty dollars (\$60.00) for each worker

employed for each calendar day, or portion thereof, that the worker is paid less than the wage rates stipulated in the Prevailing Wage Schedule or any supplement thereto pursuant to §3.2. The Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all workers employed in connection with the Work, and showing the actual per diem wages paid to each worker, which records shall be open at all reasonable hours for the inspection by the County.

**Complaints of Violations of Prevailing Wage Rates.**

**County's Determination of Good Cause.** Within 31 days of receipt of information concerning a violation of Chapter 2258, Texas Government Code, the County shall make an initial determination as to whether good cause exists to believe a violation occurred. The County's decision on the initial determination shall be reduced to writing and sent to the Contractor or Subcontractor against whom the violation was alleged, and to the affected worker. When a good cause finding is made, the County shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the Prevailing Wage Schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

**Arbitration Required if Violation not Resolved.** After the County makes its initial determination, the affected Contractor or Subcontractor and worker have 14 days in which to resolve the issue of whether a violation occurred, including the amount that should be retained by County or paid to the affected worker. If the Contractor or Subcontractor and affected worker reach an agreement concerning the worker's claim, the Contractor shall promptly notify the County in a written document signed by the worker. If the Contractor or Subcontractor and affected worker do not agree before the 15<sup>th</sup> day after the County's determination, the Contractor or Subcontractor and affected worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171, Tex. Civ. Prac. & Rev. Code. The parties to the arbitration have 10 days after the expiration of the 15 days referred to above, to agree on an arbitrator; if by the 11<sup>th</sup> day there is no agreement to an arbitrator, a County court shall appoint an arbitrator on the petition of any of the parties to the arbitration.

**Arbitration Award.** If an arbitrator determines that a violation has occurred, the arbitrator shall assess and award against the Contractor or Subcontractor the amount of penalty as provided in §3.4.1 thereof and the amount owed the worker. The County may use any amounts retained under the Contract to pay the worker the amount as designated in the arbitration award. If the County has not retained enough from the Contractor or Subcontractor to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor and Subcontractor as appropriate, and the surety of either, to receive the amount owed, attorneys' fees, and court costs. The Contractor shall promptly furnish a copy of the arbitration award to the County.

**Prevailing Wage Retainage.** Money retained pursuant to §3.4 shall be used to pay the claimant or claimants the difference between the amount the worker received in wages for labor on the Project at the rate paid by the Contractor or Subcontractor and the amount the worker would have received at the general prevailing wage rate as provided by the agreement of the claimant and the Contractor or Subcontractor affected, or in the arbitrator's award. The full statutory penalty of \$60.00 per day of violation per worker shall be retained by the County to offset its administrative costs, pursuant to Texas Government Code §2258.023. Any retained funds in excess of these amounts shall be paid to the Contractor on the earlier of the next progress payment or final payment. Provided, however, that the County shall have no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement or the arbitration award as provided under §3.5.3.



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~~No Extension of Time. If the County determines that good cause exists to believe a violation has occurred, the Contractor shall not be entitled to an extension of time for any delay arising directly or indirectly from the procedures set forth in §3.4.~~

**Drawings and Specifications**

Copies Furnished. The Design-Build Contractor will furnish free of charge to the County ten (10) complete sets of the Contract Drawings and Specifications and electronic files as required by the Supplementary General Conditions or Special Conditions.

Interrelation of Documents. The Drawings depict the location and quantity of elements of the work. The specifications indicate quality. All documents are intended to be complementary to produce the Work.

Resolution of Conflicts in Documents. In the event of conflict between or among Drawings and Specifications, the better quality or greatest quantity shall prevail. In the event of conflict among provisions of Specifications, using the CSI format, what is called for in the division of the predominant discipline will govern inconsistent provisions found elsewhere. In the event of conflict among the drawings, the large-scale drawings prevail over the small-scale drawings.

Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, the Contractor shall examine and compare: the Contract Documents; information furnished by the County pursuant to §4.6; relevant field measurements made by the Contractor; and any visible conditions at the Site affecting the Work.

Other Information Provided to Contractor. The County may provide Contractor with information, reports, pictures or other items which are not contained within the Contract Documents, but which Contractor should review and use pursuant to §4.4.

Requirements for Record Documents. The Contractor shall maintain at the site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings and Contract Modifications, and all project correspondence. The Contractor shall maintain Drawings and Specifications in good order and marked to record all changes made during construction. The Contractor shall keep on the site of Work a copy of the current and updated Contract Drawings and Specifications and shall at all times give the County or its representatives and agents access thereto.

Further, the Contractor shall maintain this record set of drawings and specifications which reflect the "As-Constructed" conditions and representations of the Work performed, whether it be directed by Addendum, Change Order or otherwise. All records prescribed herein shall be made available for reference and examination by the County and its representatives and agents.

The Contractor shall update the "As-Constructed" drawings and specifications monthly prior to submission of periodic partial pay estimates. Failure to maintain such records shall constitute cause for denial of a progress payment otherwise due.

Prior to requesting Substantial Completion Inspection by the County, the Contractor shall furnish a complete set of the "mark-up" blue-line "As-Constructed" set maintained at the site and one photocopy of same. Concurrently with furnishing these record blue-line drawings, the Contractor shall also furnish a preliminary copy of each operating and maintenance manual (O&M) required by the contract documents, for review by the County.

Once determined acceptable, the Contractor shall provide photographic mylar prints of professionally drafted "As-Constructed" drawings, two

sets of blue-line copies of the mylar "As-Constructed" drawings, two sets of operating and maintenance manuals, two sets of approved submittals, other record documents as required elsewhere in the contract documents, and one set of electronic files.

**Construction Bonds**

Performance and Payment Bonds. The Contractor is required to tender to County, prior to commencing the Work, performance and payment bonds, as required by Chapter 2253, Texas Government Code.

The performance bond is solely for the protection of the Hays County, in the full amount of the Contract, and conditioned on the faithful performance of the Work in accordance with the Contract Documents.

A payment bond is payable to the Hays County, in the full amount of the Contract and solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a supplier of required materials or labor.

Payment and performance bonds, as required above, shall be furnished in the full amount of the Guaranteed Maximum Price (GMP) when the GMP is executed.

The Contractor is also required to obtain performance bonds for subcontracts greater than \$100,000, and payment bonds for subcontracts greater than \$25,000 or provide a first party insurance policy that indemnifies the County for costs incurred as a result of a subcontractor default. The bonds shall not provide coverage for that part of this Contract, which is Design Services.

Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.

Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the County, and on the County's form. If any bond is for more than 10 percent of the surety's capital and surplus, the County may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trusted to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall within thirty (30) days after such loss furnish a replacement bond at no added cost to the County.

Approved Sureties. Sureties shall be listed on the Department of the Treasury's Listing of Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Chapter 2253, Texas Government Code. If for any reason a statutory payment or performance bond is not honored by the surety, the Contractor shall fully indemnify and hold the County harmless of and from any costs, losses, obligations or liabilities it incurs as a result.

County shall furnish certified copies of a payment bond and the related Contract to any qualified person seeking copies who complies with §2253.026, Texas Government Code.

Claims on Payment Bonds. Claims on payment bonds must be sent directly to the Contractor and his surety in accordance with §





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2253.041, Texas Government Code. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the County may result in loss of their rights against the Contractor and/or his surety. The County is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

Payment Claims when Payment Bond is not Required. When the value of the Contract between the County and the Contractor is less than \$25,000, claimants and their rights are governed by Texas Property Code, §§ 53.231 – 53.239. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claims.

Additional Bond Security. The Contractor shall promptly furnish additional security required to protect the County and persons supplying labor or materials under this contract if any surety upon any bond furnished with this contract becomes unacceptable to the County; or any surety fails to furnish reports on its financial condition as required by the County; or the contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the County.

**Insurance Requirements**

The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required herein.

Before commencing work under this contract, the Contractor shall certify to the County in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the County's interest shall not be effective (1) for such period as the laws of Texas prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the County, whichever period is longer.

The Contractor shall insert the substance of this clause, including this paragraph, in subcontracts under this contract that require work on any facility owned or operated by, or under the control of, the County and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. At least five days before entry of each such subcontractor's personnel on the facility the Contractor shall furnish (or ensure that there has been furnished) to the County a current certificate of insurance, meeting the requirements herein for each such subcontractor.

Contractor shall purchase and maintain the insurance (with a minimum "Best" rating of "A-VII") described below to cover the Work and all obligations under the Contract Documents and the Agreement, whether the Work and such obligations are required to be performed or furnished by Contractor, any Subcontractor, any Supplier, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

(a) Workers' Compensation insurance to cover full liability under the workers' compensation laws of Texas and the state of hire, including coverage for the benefits provided under the United States Longshoremen and Harbor Worker's Act and under the Jones Act, if applicable. Such coverage shall also include an "all-states" endorsement.

(b) Employer's Liability insurance with limits of \$1,000,000 per accident for Bodily Injury by accident; \$1,000,000 per employee for Bodily Injury by disease; and \$1,000,000 policy limit for Bodily Injury by disease.

(c) General Liability insurance with coverage written at least as broad as that of the standard Commercial General Liability insurance policy ("Occurrence Form"), including, but not limited to, hazards of operations (including explosion, collapse, and underground coverage), independent contractors, contractor's protective liability, products and completed operations, and personal injury liability with the contractual exclusion deleted. The insurance required by this subparagraph (c) shall be written for not less than the following limits of liability: \$1,000,000 per occurrence and in the general aggregate per Project for bodily injury and property damage; \$1,000,000 per occurrence and \$2,000,000 in the aggregate for products and completed operations; and \$1,000,000 per occurrence and \$2,000,000 in the aggregate for personal injury and advertisers liability. The policy shall include contractual liability coverage in the amounts of (i) \$1,000,000 each occurrence and \$1,000,000 aggregate for Bodily Injury and (ii) \$1,000,000 each occurrence and \$1,000,000 annual aggregate for Property Damage. The policy shall include Personal Injury with Employment Exclusion deleted: \$1,000,000 annual aggregate.

(d) Automobile Liability insurance covering all owned, non-owned, and hired vehicles. Such insurance shall be written at least as broad as that of the Standard Comprehensive Automobile Liability policy and shall be written for not less than \$1,000,000 per occurrence for bodily injury and property damage. If transporting hazardous materials, the policy shall include endorsement MCS90.

(e) Environmental Impairment and/or Pollution Liability Insurance for bodily injury, property damage and environmental clean-up arising from the handling, removal, storage, testing, transportation and disposal of hazardous materials of pollutants. If Contractor uses vehicles to transport hazardous materials, wastes, or substances, such insurance shall apply to accidents during transportation. Coverage shall be provided with limits of liability no less than \$5,000,000 per claim/ \$10,000,000 in the aggregate. Such insurance shall be maintained for two (2) years following the start of the Work by the Contractor.

(f) Should the Work involve any activities in the vicinity of a railroad, Railroad Protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

(g) Professional Liability Insurance coverage for liabilities arising out of the Work being provided hereunder with limits of liability of not less than \$3,000,000.

(h) Excess or Umbrella Liability insurance with coverage written at least as broad as those of the primary policies required by subparagraphs (b), (c), and (d) above and written for not less than \$5,000,000 per occurrence. If an aggregate limit applies to this coverage, it shall be on a "per project" basis.

(i) The Contractor shall purchase and maintain insurance (Owner's/Contractor's Protective Liability) covering the Owner's contingent liability for claims which may arise from operations under the Contract, with the following limits:

- Bodily injury: \$1,000,000 each occurrence; \$1,000,000 aggregate.
- Property damage: \$1,000,000 each occurrence;



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\$1,000,000 aggregate.

- o Personal injury, with employment exclusion deleted: \$1,000,000 aggregate.

(j) The Contractor shall purchase and maintain Builders Risk Insurance for the full cost and duration of the construction.

Each insurance policy described in subparagraphs (c), (d), (e), (f), (g) (i) and (j) above shall be endorsed (Form CG-2010 Form B which shall be modified to include "Completed" as well as "ongoing" operations) to name as additional insureds County and its respective directors, officers, agents, and employees and all other interests as may be reasonably required by County and its affiliates. No insurance policy described in Paragraph 5.4 shall have a deductible or self insured retention greater than \$50,000 per occurrence. The coverage afforded the additional insureds shall be primary insurance. If the additional insureds have other insurance applicable to the loss, such other insurance shall be on an excess or contingent basis and shall apply only to the additional insureds.

Each insurance policy described in paragraph 6.4 above shall include clauses to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery (under subrogation or otherwise) against any of the insureds or additional insureds. In addition, Contractor waives all rights of recovery against County and its affiliates because of deductible clauses in, or inadequacy of, any such policies.

The existence of the insurance required by Subparagraph 6.4 shall not relieve Contractor from its obligation to exercise due care in the performance of the Work and the performance of all its duties under the Agreement and the Contract Documents.

Each insurance policy shall remain in effect until Final Payment and acceptance and at all times thereafter when Contractor or any Subcontractor is correcting, removing, or replacing "defective Work", and all such policies (and the certificates or other evidence thereof) shall be endorsed to provide that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty (30) Days' prior written notice has been given to County and Contractor and to each additional insured. Completed operations coverage shall continue to be purchased and maintained for two (2) years after Final Payment and acceptance, and Contractor shall furnish (at Final Payment and each year thereafter) County and each additional insured with evidence of such continued coverage.

If Contractor fails to purchase and maintain the insurance required by Subparagraph 6.4, County shall, if County receives advance notice of nonrenewal, cancellation, refusal to renew or intent to materially change terms, give written notice to Contractor of County's intent to exercise its rights under this Subparagraph and exercise County's right, but not the obligation to, purchase such insurance on behalf of Contractor, and have Contractor pay the cost thereof to County upon demand and furnish to County any information needed to obtain such insurance. If County receives thirty (30) Days advance notice, County shall give Contractor seven (7) Days notice and opportunity to cure.

#### **General Responsibilities of County and Contractor**

County's General Responsibilities. The County is the entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed, a conference will be held attended by the County, Contractor, Subcontractors, as appropriate, to establish a working understanding among the parties as to the Work, the operational conditions at the project site, and general administration of the project, including communications, schedules, procedures for

handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications on Site.

County's Designated Representative. Prior to the start of construction, County shall designate the County's Designated Representative, who shall have express authority to act and bind the County to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract. Unless otherwise specifically provided for, the County's Designated Representative is the single point of contact between the County and Contractor. Notice to the County's Designated Representative, unless otherwise noted, constitutes notice to the County under the Contract.

The County shall furnish all surveys describing the legal description and limitations, and other information under the County's control to the Contractor. Necessary actions of the County, including processing of payments to the Contractor, shall be accomplished with reasonable promptness and subject to Article XII hereof. The County shall pay for all routine testing of materials agreed by the County to be required by the Contract Documents, except when for retesting of materials failing the initial test is required, in which instance the cost of re-inspection will be paid for by the Contractor; provided, however, any special testing which is specifically required in the scope of work and listed in a technical section of the specifications shall be paid by the Contractor.

County supplied materials and information. Information, equipment or services under the County's control shall be furnished by the County to the Contractor with reasonable promptness to avoid delay in orderly progress of the work.

Availability of Lands. County shall furnish, as indicated in the Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use by Contractor. County shall identify any encumbrances or restrictions specifically related to use of lands so furnished with which Contractor will have to comply. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by County, unless otherwise provided in the Contract Documents. If County fails to furnish these lands, rights of way or easements in a timely manner, Contractor may make a claim under Article XXI.

The foregoing listing is in addition to the specific duties and authority of County found in other Articles of the Contract.

Limitation on County Duties. County will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. County is not responsible for any failure of Contractor to comply with laws and regulations applicable to furnishing or performing the Work. County is not responsible for the failure of Contractor to perform or furnish the work in accordance with the Contract Documents. County is not responsible for the acts or omissions of Contractor, or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

Contractor's General Responsibilities. The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The Contractor shall supervise and direct the Work using the best skill and attention to assure that each element of the work conforms to the contract requirements. The Contractor, shall be solely responsible (with subcontractors responsible to the Contractor) for all design, construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under the Contract. Contractor shall be responsible to see that the completed



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Work complies accurately with the Contract Documents.

The Contractor shall provide project administration in accordance with provisions of Division I Specifications and as outlined in the Pre-Construction Conference.

Contractor's Architect and Engineer – Unless otherwise provided for in the Contract Documents, the Contractor's Architect/Engineer will perform the duties of the Architect/Engineer as described in this Contract during design and construction and until final payment, including advising the Contractor and County on matters where assistance is needed.

Contractor's Superintendent. The Contractor shall employ a competent resident superintendent who shall be in attendance at the Project Site during the progress of the Work. The superintendent shall be satisfactory to the County, and shall not be changed except with the written approval of the County unless he leaves the employment of the Contractor. The superintendent shall represent the Contractor at the Site and shall have full authority to act on behalf of the Contractor including, but not limited to, signature authority for progress payments and change orders. All communications given to the superintendent shall be binding on Contractor. All oral communications affecting Contract Time, Contract Sum and contract interpretation will be confirmed in writing to County.

Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

Services, Materials, and Equipment. Unless otherwise specified in the Supplementary or Special General Conditions, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work. The Contractor shall provide, without extra charge, all incidental items required as a part of the Work, even though not particularly specified or indicated in the Contract.

Documents and Samples at the Site. The Contractor shall maintain at the site for the County one record copy of the Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Samples and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the County upon completion of the Work or Contractor's request for Substantial Completion Inspection.

Should Work be identified by County as being not in compliance with the Contract Documents, the County shall communicate the finding to Contractor and such Work shall be corrected by the Contractor at its expense. The approval of Work by the County does not relieve the Contractor from compliance with all requirements of the Contract Documents where such requirements are not judged at the time of observation of the Work due to work sequences by the Contractor or the lack of time to judge the performance characteristics of the particular Work item.

Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom County may have reasonable objection. County will communicate such objections in writing. If a rejection causes a change to the Contract Sum, Contractor may file a Contractor-initiated change claim under Article XX. Contractor shall not be required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom

Contractor has reasonable objection. Contractor will not substitute Subcontractors without the approval of County, except in the event of a default by a subcontractor in which event the substitute will be subject to the County's approval.

Contractor shall enter into written agreements with all Subcontractors and suppliers which specifically bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents for the benefit of the County as a third party beneficiary. All such written agreements shall expressly state this provision.

Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Contractor shall require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with County through Contractor.

The Contractor shall furnish to the County a copy of each first-tier subcontract promptly after it has been executed. The Contractor agrees that the County has no obligation to review or approve the content of such contracts and that providing the County such copies shall in no way relieve the Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the subcontractor to be bound to the Contractor in the same manner in which the Contractor is bound to the County.

Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with County. No Work shall be delayed or postponed pending resolution of any disputes, disagreements or processes, except as County and Contractor may agree in writing.

Cleaning. The Contractor shall at all times keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Upon completion of the Project, and prior to the final inspection, the Contractor shall have the Work in a neat and clean condition.

Acts and Omissions of Contractor, his Subcontractors and employees. The Contractor shall be responsible for acts and omissions of his employees and his subcontractors, their agents and employees. The County may, in writing, require the Contractor to remove from the work any of its or its subcontractor's employees that the County's representative finds to be careless, unqualified or otherwise objectionable.

**INDEMNIFICATION OF COUNTY. CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE COUNTY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS, AND REPRESENTATIVES OF THE COUNTY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE COUNTY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS**





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CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF COUNTY, OFFICERS OR EMPLOYEES, SEPARATE CONTRACTORS OR ASSIGNED CONTRACTORS, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT THE CONTRACTOR AND COUNTY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE OTHER PARTIES UNDER TEXAS LAW.

The provisions of this Indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Contractor shall promptly advise the County in writing of any claim or demand against the County or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract. Such notification shall be in writing and shall occur no later than three working days after condition became known.

The duties listed above are in addition to the duties, responsibilities and activities to be undertaken by Contractor as specified throughout the Articles of the Contract.

The Contractor will operate and maintain operations areas and associated storage areas at the site of the Work in accordance with the following:

All Contractor operations, including storage of materials and employee parking upon the site of work, shall be confined to areas designated by the County.

The Contractor may erect, at its expense from funds within the fee temporary buildings which shall remain its property. The Contractor shall remove such buildings and associated utilities service lines upon completion of the Work, unless the Contractor requests and the County provides written consent that it may abandon such buildings and utilities in place.

The Contractor will use only established roadways or construct and use such temporary roadways as may be authorized by the County. Load limits of vehicles shall not exceed the limits prescribed by appropriate regulations or law. The Contractor will provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage, and any damage thereto shall be repaired by and at the expense of the Contractor.

The County may restrict the Contractor's entry to the site to specifically assigned entrances and routes.

The Contractor shall at all times keep construction areas, including storage areas used by it, free from the accumulation of water, waste materials or rubbish during performance of the work. During the period of construction, and not less frequently than once a week, the Contractor shall remove from the site any and all waste materials, rubbish and trash, and shall dispose of such waste materials, rubbish and trash off the property of the County. Prior to the Contractor's requested date for a pre-final inspection, the Contractor shall remove any and all remaining equipment from the site and shall leave the premises in a clean, neat and workmanlike condition satisfactory to the County.

**Additional Contractor Responsibilities when the County Awards Separate Contracts**

Separate Contracts. The County reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions. The County reserves the right to perform operations related to the Project with County's own forces. Each separate Contractor shall undertake to indemnify the County as set forth in Article 7.

When separate contracts are awarded for different portions of the Project, "Contractor" in the Contract Documents in each case shall be the Contractor who signs each separate Contract. This Contractor shall cooperate with the separate Contractors and County's own forces. This Contractor shall properly connect and coordinate its work with the work of the separate Contractors as defined in these Contract Documents. If any part of this Contractor's work depends for proper execution or proper results on the work of any of the separate Contractors, this Contractor shall inspect and promptly report in writing to the County any visually apparent discrepancies or defects found in such other work that render it unsuitable for such proper execution and results. Failure of this Contractor to so inspect and report the visually apparent discrepancies or defects shall constitute an acceptance of the separate Contractor's work as fit and proper to receive the Contractor's Work, except as to defects which may develop in the separate Contractor's work after the execution of this Contractor's work.

Should this Contractor cause delay or damage to the Work or property of any separate Contractor on the Project, this Contractor shall, upon due written notice, endeavor to settle with the separate Contractor by agreement. If such separate Contractor does not settle with this Contractor, the County shall initiate a Dispute Resolution process and each party to the dispute shall be financially accountable for any damages or loss based on their proportionate fault determined by the Dispute Resolution process.

This Contractor shall afford the County, the separate Contractors, and County's own forces, as necessary, with the reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work.

The County reserves the right to make essential installations that are pertinent to the early use of the building or project. Within this right the County may let other contracts or may do such work with its own labor forces and materials. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or supplier, or by County's employees. The Contractor shall cooperate to the end that the County may realize complete functioning of the building or project on the day of substantial completion.

The County shall provide for coordination of the activities of the County's own forces and of each separate Contractor with the Work of this Contractor, who shall cooperate with them. This Contractor shall participate with other separate Contractors and the County in reviewing the respective construction schedules, when directed to do so. This Contractor shall make any revisions to his construction schedule as necessary, after receiving County's instructions.

The County shall be reimbursed by the Contractor for costs incurred by the County which are payable to a separate Contractor because of delay, improperly timed activities, or defective construction by the Contractor. The County shall be responsible to the Contractor for costs incurred by the Contractor because of delay, improperly timed activities, damage to the Work or defective construction by a separate Contractor. Contractor may make claim for such amounts as outlined in Articles 20 and 21..



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**The Contractor's Responsibility for Jobsite Safety**

Unless otherwise specified in the Specifications, Contract Documents, General, Supplementary, or Special Conditions, Contractor, shall be responsible (with subcontractors responsible to the Contractor) for initiating, maintaining, supervising, and enforcing all safety precautions and programs in connection with their respective portions of the Work. It shall be the duty and responsibility of the Contractor and all of its Subcontractors to be familiar and comply with all requirements of Public Law 91-596, 29 U.S.C. §§ 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of the Act. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection.

Contractor shall notify the owners of adjacent property, facilities, and utilities of the prosecution of the Work which may affect them or their facilities, and the Contractor shall cooperate with these owners in the protection, removal, relocation and replacement of their facilities and/or utilities.

In any emergency affecting the safety of persons or property, the Contractor shall act reasonably to prevent threatened damage, injury, or loss. Contractor shall give the County prompt notice if Contractor believes that any significant changes in the Work or variations from Contract Documents have been caused by its emergency response. Any additional compensation or extension of time claimed by the Contractor resulting from emergency work shall be considered in accordance with Articles 20 and 21. Authorized agents of Contractor shall respond immediately to call out at anytime of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage, restriction or limitation, or to take such action pertaining to the Work as may be necessary to provide for the safety of the public. Should Contractor fail to respond, County is authorized to direct other forces to take action as necessary and County may deduct any cost of remedial action from the funds due the Contractor under the Contract.

In the event of an incident or accident involving outside medical care or a lost time injury to an individual on or near the Work, Contractor shall notify the County as soon as possible, and within 24 hours of the event. Contractor shall record the location of the event, the circumstances surrounding the event, by using photography or other means, and shall gather witness statements and other documentation which describes the event. Contractor shall supply the County with incident investigation documents no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three workers hospitalized), the scene of the incident shall be barricaded and left intact until all investigations are completed.

Contractor shall be responsible for coordinating the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations.

**Environmental Safety and Control.** Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, the Contractor shall immediately stop work in and secure the affected area, and notify the County. All subcontracts shall expressly bind subcontractors to the same duty. On receiving such notice, the County shall promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. As soon as possible upon completion of this investigation, the County shall issue a written report to the Contractor identifying the material or materials found and indicating any necessary steps to be taken to

treat, handle, transport or dispose of the material. The County may hire third-party Contractors to perform any or all such steps. Should compliance with the County's instructions result in an increase in the Contractor's cost of performance, or delay the Work, an adjustment in the contract price or time may be claimed by the Contractor pursuant to the provisions of Articles 20 through 23. The Contractor shall fully indemnify, save and hold harmless the County of and from any costs, losses, damages, or liabilities resulting from its failure, or the failure of its subcontractors, to comply strictly with these provisions.

Trenching safety precautions, applicable only if the project requires excavation which exceeds a depth of five feet, shall comply with the following:

The Contractor will develop a trenching plan approved and sealed by a professional engineer registered in the State of Texas and employed by the Contractor

**THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY AND ITS EMPLOYEES AND AGENTS, FROM ANY AND ALL DAMAGES, COSTS (INCLUDING, WITHOUT LIMITATION, LEGAL FEES, COURT COSTS, AND THE COST OF INVESTIGATION), JUDGMENTS, AND CLAIMS BY ANYONE FOR INJURY OR DEATH OF PERSONS RESULTING FROM THE COLLAPSE OR FAILURE OF TRENCHES CONSTRUCTED UNDER THIS CONTRACT. THE CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY PROVISION APPLIES EVEN IF THE COLLAPSE OR FAILURE IS PARTLY CAUSED BY THE COUNTY'S NEGLIGENCE INCLUDING WITHOUT LIMITATION THE COUNTY'S NEGLIGENT ACTS OR OMISSIONS IN FAILING TO PROVIDE ADEQUATELY FOR TRENCH SAFETY.**

**Warranty of Construction; Materials and Workmanship; Licensing and Testing**

**Warranty of Construction** - In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph 10.1.10 of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed, by the Contractor or any subcontractor or supplier at any tier.

Except for longer warranties required by the specifications on certain items, this warranty shall continue for a period of one year from the date of final acceptance of the work. If the County takes possession of any part of the work before final acceptance, this warranty for such part of the work shall continue for a period of one year from the date the County takes possession.

The Contractor shall remedy at the Contractor's expense any failure to conform to the contract requirements or any defect.

In addition, the Contractor shall remedy at the Contractor's expense any damage to real or personal property owned or controlled by the County, when the damage is the result of -

**the Contractor's failure to conform to contract requirements; or  
any defect of equipment, material, workmanship, or design furnished.**

The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

The County shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the have the right to



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replace, remove, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall County shall

obtain all warranties that would be given in normal commercial practice;

require all warranties to be executed in writing for the benefit of the County, if directed by the County; and

enforce all warranties for the benefit of the County, if directed by the County.

In the event the Contractor's warranty under paragraph 10.1.2 of this clause has expired, the County may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the County or for the repair of any damage that results from any defect in material or designs furnished by the County.

This warranty shall not limit the County's rights under the Inspection of Construction Clause of this contract with respect to latent defects, gross mistakes, or fraud.

Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

Observations by County;

Recommendation to pay any progress or final payment;

The issuance of a certificate of Substantial Completion or any payment by County to Contractor under the Contract Documents;

Use or occupancy of the Work or any part thereof by County;

Any acceptance by County or any failure to do so;

Any review of a Shop Drawing or sample submittal; or

Any inspection, test or approval by other entities not in contract with Contractor.

Routine Testing. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected, tested or approved, the Contractor shall give the County timely notice of its readiness and of the date arranged so the County may observe such inspection, testing or approval. Should the material or work fail to comply with the requirements of the Contract Documents, the Contractor shall bear all costs of the testing, inspection or approval as well as the cost of replacement of unsatisfactory material or Work as provided by Article XII; otherwise, the County shall bear such costs and an appropriate change order shall be issued.

The costs of routine testing shall be borne by the County, but the Contractor shall be responsible for the cost of material tested. When directed by the County, demonstration of a material's compliance with the specifications shall be made by one of the following:

Manufacturer's certificate of compliance.

Mill certificate.

Testing laboratory certification.

Report of actual laboratory test from the County's laboratory or from a laboratory satisfactory to the County. Samples tested shall be selected by or in the presence of the County and the method of testing shall comply with the professional societies' standard specifications.

Materials incorporated into the Project shall be new unless otherwise specified and may be subject to routine tests as specified or as deemed necessary by the County to insure their compliance with the specifications. Materials to be tested may include, but are not limited to, the following:

Concrete - Primary mix design, slump tests and cylinder compression tests.

Steel - Tensile tests.

Welds - Field inspection and X-ray equipment.

Soils - Subsoil investigation, physical analysis and compaction tests.

Pavement - Physical analysis and compaction tests.

Roofing - Samples cut from in-place roof.

Windows, curtain walls, skylights.

Any other basic materials for which standard laboratory test procedures have been established may also be included if doubt as to their quality should arise. Any testing, as described, will be done at the discretion of the County who will bear all costs. The Contractor shall be held responsible for providing (and replacing) samples of sufficient size for test purposes and for cooperating with the County or his representative in obtaining and preparing samples for tests. All tests will be in accordance with standard test procedures and will be performed by a laboratory selected by the County. Results of all tests will be provided to the County, and the Contractor.

Not included in tests provided by the County are:

Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to prove its compliance with the Specifications, which testing shall be paid for by Contractor.

Tests on mechanical systems required to insure their proper installation and operation, which shall be paid for by Contractor.

Should any of the routine tests indicate that a material does not comply with the job requirements, the burden of proof of compliance shall be with the Contractor, subject to the following conditions:

Contractor may select the laboratory for further testing, but selection must be approved by the County.

Quality and nature of tests will be determined by the County.

All tests shall be taken in the presence of the County.

If tests prove that the material complies with specifications, the laboratory fees will be paid by the County. If noncompliance is proved, laboratory fees will be paid by the Contractor.

Proof of noncompliance will make the Contractor liable for any corrective action which the County feels is prudent, including complete removal and replacement of defective material.

All subsequent tests on original or replaced materials conducted as a result of prior failure will be paid by the Contractor.

Special Testing. The County may require special inspection, testing or approval of material or Work in addition to that which may be specified for compliance with requirements of the Contract





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Documents. Upon direction by the County for additional special testing, the Contractor shall promptly arrange for such special testing, inspection or approval procedure. The costs of special testing shall be at County's expense, except if the materials fail, Contractor shall pay the expense; provided, however, that the entire cost of any additional testing, whether routing or special, required because of failure of a prior test shall be borne by the Contractor.

If any Work (or the work of others) that is to be inspected, tested or approved is covered by Contractor without providing the County an opportunity to review based on written notification as set forth in 12.2.3, or if any Work is covered contrary to the written request of County or as specifically indicated elsewhere in the contract documents, the covered work must, if requested by County, be uncovered and recovered at Contractor's expense, except as set forth in § 12.2.3.

**Contractor's Testing.** Nothing contained herein is intended to imply that the Contractor does not have the right to have tests performed on any material at any time for his own information and job control so long as the County is not charged for costs or forced to rely upon such tests when appraising quality of materials. Any modification of, or elaboration on, these test procedures which may be included for specific materials under their respective specification sections shall take precedence over these procedures and all testing required in the technical specification sections shall be the responsibility of the Contractor to coordinate and pay for.

**Material and Workmanship**

All work under this contract shall be performed in a skillful and workmanlike manner. The County may require, in writing, that the Contractor remove from the work any employee the County deems unqualified, careless, or otherwise objectionable.

**Shop Drawings and Submittals**

**Contractor's Submittals.** The Contractor shall submit to the County, with reasonable promptness consistent with the Project Schedule and in orderly sequence, all Shop Drawings, Samples or other information required by the Contract Documents, or as governed by Change Orders. The Contractor shall review each submittal for compliance with Contract Documents and shall certify that it has done so by stamp, or otherwise, affixed to each copy thereof. Submittal data presented without such Contractor certification will be returned without review or other comment, and any delay resulting therefrom will be the Contractor's responsibility.

The Contractor shall, within twenty (20) calendar days after receipt of the Notice to Proceed, submit to the County four (4) copies of a submittal schedule, listing all items that shall be furnished, for review and approval by the County. The schedule shall also list all items that are to be reviewed and approved by the Contractor.

Such submittal schedules shall include, among other things, shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, etc.

The submittal schedules shall indicate the type of item, contract requirements reference, the Contractor's scheduled dates for submitting the above and like items and the projected need dates for approval answers from the County and the projected need dates for procurement. This schedule shall show a minimum of fourteen (14) calendar days after receipt for review and approval by the County, and if re-submittal is required an additional seven (7) days will be allowed for approval after receipt. The Contractor will revise and/or update this schedule as appropriate, and submit it with each payment estimate.

The submittal schedule shall be coordinated with the Work Progress Schedule for all the Work. The Contractor shall revise and/or update

both schedules monthly to insure consistency and current project data. Four (4) copies of such updated schedules shall be provided to the County concurrent with each application for progress payment.

Shop Drawings, Samples or other required information shall be properly identified, as specified or as the County may require. At the time of submission, the Contractor shall inform the County in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.

By submitting Shop Drawings, Samples or other required information, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents and he shall so certify as required by § 11.1.

**Nature and Effect of Review.** The County, if required by Supplementary or Special Conditions, will review and approve all submittals with reasonable promptness, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. Such approval will be indicated in writing. The approval of a separate item shall not indicate approval of an assembly in which the item functions. The approval of the Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the County in writing of such deviation at the time of submission and the County has not objected to the specified deviation. The approval shall not relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

**Correction and Resubmission.** The Contractor shall make any corrections required to a submittal and shall resubmit the required number of corrected copies of the submittals promptly so as to avoid delay, until approved. The Contractor shall direct attention in writing to the County when required, to any new revisions other than the corrections requested on previous submissions.

**Limits on Shop Drawing Approvals.** No Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved. All such work shall be in accordance with approved Shop Drawings and Samples. Approvals of Shop Drawings and Samples are not authorization to Contractor to perform extra work or changed work unless the procedures of Articles XX and XXI are followed. The County's approval, if necessary, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the approved Shop Drawing or Sample.

The County may establish routine review procedures and schedules for submittals at the preconstruction conference.

**Unauthorized Substitutions at Contractor's Risk.** All proposed substitution of materials, equipment or fixtures shall be presented through the submittal process. The Contractor shall be financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified, and shall reimburse the County for any increased design or contract administration costs resulting from such unauthorized substitutions.

**Inspection of Construction**

The word "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

The Contractor shall maintain an inspection system acceptable to the County and perform such inspections as will ensure that the Work called for by this contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the County. All Work shall be conducted under the



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general direction of the County and is subject to inspection and testing by the County and/or the County's consultants at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

Inspections and tests by the County are for the sole benefit of the County and do not:

relieve the Contractor of responsibility for providing adequate quality control measures;

relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

constitute or imply acceptance; or

affect the continuing rights of the County after acceptance of the completed work under paragraph 12.9 below.

The presence or absence of an inspector from the County does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition or waive any requirement of the specifications without the County's written authorization.

The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the County. The County may charge to the Contractor any additional cost of inspection or test when Work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The County shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the contract.

The Contractor shall, without charge, replace or correct Work found by the County not to conform to contract requirements, whether found before or after Substantial Completion, and whether or not fabricated, installed or completed, unless in the public interest, the County consents to accept the work with an appropriate reduction in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

If the Contractor does not promptly replace or correct rejected work, the County may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate this Contract or any part thereof for default under Article 25.

If, before acceptance of the entire work, the County decides to examine already completed work by uncovering it, removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall pay for the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the County shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

Unless otherwise specified in the contract, the County shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the County determines can be accepted separately. Subject to the provisions of the Warranty of Construction Clause hereof, acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the County's rights under any warranty or guarantee.

The Contractor shall not cover up any work with finishing materials or other building components prior to providing the County an opportunity to perform an inspection of the work by the County for

review of the installation.

The Contractor shall be responsible for providing notification of at least five (5) working days or as mutually agreed, to the County of the anticipated need for a cover up inspection. Should the County fail to respond to the requested inspection within the five (5) working day period, or as mutually agreed, the Contractor may proceed with the particular cover up work identified in the notification. The five (5) working day notice requirement shall not be reduced or waived by the County's ability to respond in less time.

The County has the authority to reject and condemn Work, which does not meet the requirements of the Contract and to order such work removed and replaced. The County shall interpret the Contract requirements and shall be the final judge of the acceptability of the Work under the Contract Documents. If any materials or Work furnished under this Contract are condemned or rejected by the County, the Contractor shall, after notice from the County, proceed to remove materials, whether worked or un-worked, and to take down all portions of the Work condemned. Contractor shall make good all Work damaged or destroyed by the removal and replacement process.

The Contractor shall, without charge or assessment against any contract contingency or allowance, replace any material or correct any workmanship found by the County not to conform to the contract requirements, unless in the public interest the County consents in writing to accept such material or workmanship with an appropriate adjustment in the contract price. The Contractor shall promptly correct all Work rejected by the County as defective or as failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion or final inspection and acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work.

#### **Contract Payments**

**Schedule of Values.** Within twenty (20) days of Notice to Proceed under the Contract, the Contractor shall submit to the County for approval a Schedule of Values, accurately itemizing material and labor for the various classifications of the Work. The approved Schedule of Values will be used as the basis for the progress payments under the Contract. The Schedule of Values shall be in such detail as may be required by the County. The breakdown shall follow the trade divisions of the specifications along with provision for general conditions costs, fees, contingencies, and allowances so that the sum of the items will equal the contract price. Each item shall be assigned labor or material values, or both, the subtotal thereof equaling the value of the work in place when completed.

**Progress Payments.** Periodic progress payments will be made to the Contractor for Work performed, and materials in place or suitably stored and protected on sites or as otherwise agreed to by the County and the Contractor. Payment shall not become due until receipt by the County or his designee of a correct and complete Pay Application, certified by the Architect Engineer pursuant to this article. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Progress payments for Change Order work will not be accepted for payment until Change Order has been fully signed and executed and the work has been performed. Payment forms shall be AIA G702 and G703 or other form approved by the County.

**Contractor's Periodic Invoice.** As soon as practicable, but in no event later than seven days after receipt of the Preliminary Pay Worksheet, the County shall meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. On the basis of this review, the County may require modifications to the Preliminary Pay Worksheet prior to the submittal of a Periodic Invoice, and shall promptly notify the Contractor of revisions necessary for approval. As soon as



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practicable, but in no event later than seven days following the Preliminary Pay Worksheet review meeting, the Contractor shall submit a Periodic Invoice reflecting the required modifications, and attaching all additional documentation required by the County, as well as his affidavit swearing or affirming that all payrolls, bills for labor, materials, equipment, subcontracted work or other indebtedness connected with the Contractor's Periodic Invoice (Application for Payment) have been paid or will be paid within the time specified in Chapter 2251, Government Code. No Periodic Invoice shall be complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.

**County's Duty to Pay.** The County shall have no duty to pay the Contractor except on receipt by the County of (1) a complete and certified Periodic Invoice.

County must approve bulk materials in accordance with contract requirements before payment for the materials. Payment for stored materials shall be limited to 85% of the invoice price or 85% of the scheduled value for the materials, whichever is less. Bulk materials are eligible for full payment only after they have been incorporated into the Work.

**Retainage.** The County shall withhold from each progress payment, as retainage, ten percent (10%) of the total earned amount except for Design Services. No retainage will be held on Design Services. Retainage so withheld shall be managed in conformance with Subchapter B, Chapter 2252, Texas Government Code.

Any request for reduction or release of retainage shall be accompanied by written consent of the Contractor's Surety except for Design Services. No retainage will be held on Design Services. No such request shall be made until the Contractor has earned at least sixty-five percent (65%) of the total Contract Price.

**Reduction to Cover Loss.** The County may upon written notice to the Contractor, reduce any Periodic Invoice prior to payment to the extent necessary to protect the County from loss on account of actions of the Contractor, including, but not limited to:

Defective work not remedied;

Damage to work of a separate Contractor;

Failure to maintain scheduled progress or reasonable evidence that the work will not be completed within the contract time;

Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law); or

For Contracts with a value of less than \$25,000 for which no payment bond is posted, receipt of written notice by the County of unpaid bills, filed in conformance with § 53.232, Texas Property Code. Any funds so withheld shall be released to the Contractor if he furnishes a bond for release of lien as provided in § 53.236, Texas Property Code.

Persistent failure to carry out the work in accordance with the Contract Documents.

Reasonable evidence that the work cannot be completed for the remainder of the contract sum.

**Assessment of fines for violations of Prevailing Wage Rate laws**

Failure to comply with the terms and conditions of the Contract.

Title to all material and Work covered by progress payments transfers to the County upon payment. Transfer of title to County does not relieve the Contractor of the sole responsibility for the care and protection of materials and work upon which payments have been made, or the restoration of any damaged work, or waive the right of the County to require the fulfillment of all the terms of the

Contract.

Progress payments to the Contractor shall not release the Contractor or his surety from any obligations under this Contract.

Upon the County's request, current, accurate, and complete reports of the status of Subcontractor's accounts shall be furnished in a form acceptable to the County.

A corporate officer or a duly authorized representative of the Contractor must sign pay estimate certificates.

The Contractor, in requesting payment for materials, shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials.

For purposes of Texas Government Code 2251.021 (a)(2), the date the performance of service is completed is the date when the County's representative approves the application for payment.

**Off-Site Storage:** With prior approval by the County and in the event Contractor elects to store materials at an off-site location, he shall abide by the following conditions..

Inspection by County's representative is allowed at any time. The County's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.

Materials for this project are physically separated and marked for the project in a sectioned-off area. Only materials which have been approved through the submittal process are to be stored in the area.

County reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Drawings and Specifications requirements regardless of any previous progress payment made.

With each monthly payment estimate, the Contractor shall submit a report to the County listing the quantities of materials already paid for still stored in the off-site location.

Warehouse records, receipts and invoices shall be made available to County's representatives, upon request, to verify the quantities and their disposition.

In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to County or County's agents at a location near the jobsite as directed by the County.

The full provisions of PERFORMANCE AND PAYMENT BONDS on this project shall cover the materials off-site and in transit to and from the off-site location in every respect as though they were stored on the Project Site.

**Closing Inspections**

**Substantial Completion Inspection.** When the Contractor considers the entire Work or part thereof Substantially Complete, the Contractor shall inspect the Work, or designated portion thereof, for compliance with the Contract Documents and notify the County in writing that the Work will be ready for Substantial Completion Inspection on a date certain. The Contractor shall include with this notice a copy of its updated inspection list marked to indicate corrected items plus a list of items to be completed or corrected prior to final inspection which the Contractor recognizes exist but believes do not prevent the Work or part thereof from being substantially complete, and shall request a substantial completion inspection for the Work or designated portion thereof. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The County will review the Contractor's list of items and either will schedule the requested inspection or will inform the Contractor in writing that such an inspection would be premature because the Work





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is not sufficiently advanced or that conditions are not as represented on the Contractor's list.

Prior to the substantial completion inspection, the Contractor shall furnish to the County a copy of the As-Built blue-line prints, electronic files required by this contract, a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items. If the Contractor does not furnish these requirements and the County must of necessity otherwise obtain this information and data, the costs for obtaining it will be deducted from payments otherwise due the Contractor. The County, the User, and the Contractor will jointly conduct the substantial completion inspection.

On the date indicated by Contractor, or as soon thereafter as is practicable, the County and the Contractor shall inspect the work and if the County determines that the Work is Substantially Complete a Certificate of Substantial Completion shall be issued by the County for certification by the County and Contractor, fixing the date of Substantial Completion. The Contractor will provide with this certificate a list of items to be completed prior to final inspection (the Pre-Final Punchlist). This list may include additional items not included on the Contractor's list, which are deemed necessary by the County to correct or complete prior to Final Inspection.

**Final Inspection.** The Contractor shall fully complete the list of items listed on the Pre-final Punchlist prior to Final Inspection. Unless otherwise specified in Special Conditions, or otherwise agreed in writing by the parties, the Contractor shall complete this work within 30 days of the certified date of Substantial Completion. When the Contractor has completed the Pre-final Punchlist, he shall give written notice to the County that the Work will be ready for Final Inspection on a date certain. This notice shall be accompanied by a copy of the Contractor's updated Punchlist indicating resolution of all items. On this date, or as soon thereafter as is practicable, the County and the Contractor shall inspect the Work and the Contractor shall submit to the County a list of items which have been determined to require correction or completion before the Work will be accepted by the County (the Final Punchlist).

The Contractor shall correct or complete all items on the Final Punchlist before Acceptance and Final Payment. Unless otherwise specified in the Supplementary or Special Conditions, or otherwise agreed in writing by the parties, the Contractor shall complete this work within 7 days of receiving the Final Punchlist. Upon completion of the Final Punchlist, the Contractor shall notify the County in writing stating the disposition of each Punchlist item, and the County shall promptly inspect the completed items. When the Final Punchlist has been completed, and the Contract is fully performed according to the Contract Documents, and is acceptable to the County, the County shall issue a certificate fixing the date of Final Completion. Final Completion of all work shall be a condition precedent to the Contractor's right to receive Final Payment.

**Annotation.** Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the County.

**Purpose of Inspection.** Inspection by the County is for the purpose of determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and workmanlike fashion, in compliance with the Contract Documents. Failure of the County to identify Work that is not in compliance with the Contract Documents, or which is defective in operation or workmanship, or acceptance of the Work with Punchlist items left incomplete, does not constitute a waiver of such a defect or of the County's rights under the Contract Documents or relieve the Contractor of its warranties contained at Article 17.

**Additional Inspections.**

If on the basis of the Substantial Completion Inspection, the County determines that the Work is not Substantially Complete, the County shall give the Contractor written notice thereof, and shall inform the Contractor what Work was found to be incomplete, out of compliance with the Contract Documents, or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.

If on the basis of the Final Inspection, the County determines that the Work is not complete according to the Contract Documents, or that the Work required by the Pre-final Punchlist had not been performed, the County shall give the Contractor written notice thereof, and shall inform the Contractor what Work was found to be incomplete, out of compliance with the Contract Documents or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all Work so designated prior to requesting a second Final Inspection.

This Agreement contemplates three inspections only: the Substantial Completion Inspection, the Final Completion Inspection, and the Inspection of Completed Final Punchlist Items. The cost to the County of any and all additional inspections deemed necessary by the County because the Work was not ready for one or more of these inspections shall be borne by the Contractor, and the County may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, the County shall furnish documentation of all costs so deducted. Work added to the Contract by Change Order after Final Inspection shall not be considered as corrective work for purposes of determining timely completion or assessing the cost of additional inspections.

**Phased Completion.** The Special Conditions may provide, or other project conditions may warrant, as determined by the County, that designated elements or parts of the Work shall or may be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of Articles XIV (Closing Inspections) and Article XV (Early Occupancy) shall apply independently to each designated element or part of the project. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Substantially Complete, and Final Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Finally Complete.

**Early Occupancy**

**Right of Occupancy.** The County may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion, provided that such occupancy or use is consented to by any and all insurers of the Work. Should the County wish to use or occupy the Work, or part thereof, prior to substantial completion, the County shall so notify the Contractor in writing. Work performed on the premises by third parties on the County's behalf does not constitute occupation or use of the Work by the County for purposes of this Article.

**Occupancy of Substantially Completed Work.** If the County wishes to occupy all or part of the Work that has been Substantially Completed it shall so notify the Contractor prior to the Substantial Completion Inspection, and the County shall annotate the Certificate of Substantial Completion to set out the responsibilities of the County and the Contractor for maintenance, heat, utilities, operation of permanent equipment, and insurance. The Certificate of Substantial Completion shall be submitted to the Contractor for its written acceptance of the responsibilities assigned in such Certificate. The accepted Certificate shall not constitute a change in Contract



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Time which can only be modified by an agreed Change Order.

**Use and Possession Prior to Completion.** The County shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, the County shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that the County intends to take possession of or use. However, failure of the County to list any item of Work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The County's possession or use shall not be deemed an acceptance of any Work under the contract.

While the County has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from the County's possession or use. If prior possession or use by the County delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

**Non-waiver of Timely Completion.** Early occupancy of any portion of the Work does not waive the Contractor's duty to complete the remaining Work within the Contract Time as specified by the Contract Documents or as subsequently modified by Change Order.

**Contract Final Acceptance and Payment**

**Request for Final Payment.** At any time following the completion of all work, including all substantial completion Punchlist items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment, including all sums held as retainage, to the County for review and approval.

**Final Payment Documentation.** The Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, including executed Warranty form, maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract Documents. The Contractor shall also submit Consent of Surety to Final Payment, an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, have been paid or will be paid or otherwise satisfied within the period of time required by Chapter 2251, Texas Government Code. The Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract. The County is entitled to rely upon this affidavit; the Contractor may not submit a claim on behalf of a Subcontractor or vendor if that claim has not been noted as an exception in the affidavit.

**Offsets and Deductions:** The County may deduct from the Final Payment all sums due from the Contractor for any reason, and may apply for such purpose, all deductions authorized by 13.5, Liquidated Damages, and any amounts previously withheld by the County for any purpose. If the Certificate of Final Completion notes any Work remaining incomplete or defects not remedied, the County may deduct 150% of the reasonable cost of remedying such deficiencies from the Final Payment. If such deductions are made, the County shall identify each deduction made and the reason therefore, and furnish the Contractor with an explanation of the deduction and the amount deducted on or by the 21st day after County's receipt of an approved, or deemed approved Application for Final Payment.

**Final Payment Due.** Final Payment shall become due and payable by County, subject to all allowable offsets and deductions, on the 31st day next following County's approval of the Application for Payment. If the Contractor disputes any amount deducted by the County, the Contractor shall give notice of the dispute on or before the thirtieth day next following receipt of Final Payment; failure to

do so will bar any subsequent claim for payment of amounts deducted.

**Effect of Final Payment:** Final Payment shall constitute a waiver of all claims by the County, relating to the condition of the Work except those arising from (1) faulty or defective Work appearing after Substantial Completion (latent defects); (2) failure of the Work to comply with the requirements of the Contract Documents; (3) terms of any warranties required by the Contract Documents or implied by law, and (4) claims arising from personal injury or property damage to third parties. Final payment shall constitute a waiver of all claims by the Contractor except those specifically identified in writing and submitted to the County prior to the application for Final Payment. Provided, however, that the Contract shall not be deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

**Contract Warranty and Guarantee**

**Contractor's General Warranty and Guarantee.** Contractor warrants to the County that all Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. The County may, at its option, agree in writing to waive any failure of the Work to conform to the Contract Documents, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, however, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute and is not waived by any inspection or observation by the County, Architect/Engineer or others, by making any progress payment or final payment, except as provided in §16.6, by the use or occupancy of the Work or any portion thereof by the County, at any time, or by any repair or correction of such defect made by the County.

**Warranty Period.** Except as otherwise specified, the Contractor shall repair all defects in materials, equipment or workmanship appearing within one year from the date of Final Completion of the Work as a whole if such date establishes the beginning of the period of County occupancy and/or use of the Work, otherwise this warranty begins upon final completion and acceptance of the Work. Upon receipt of written notice from the County or the facility user, normally represented by the Physical Plant of the component institution, of the discovery of any defects, the Contractor shall promptly and at its own cost remedy the defects and replace any property damaged therefrom and shall promptly provide written notice to both the County and the Physical Plant indicating action taken to resolve the defect. In case of emergency where delay would cause serious risk of loss or damage to the County, or if the Contractor, after notice, fails to proceed promptly and remedy within 30 days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the County may have the defects corrected and the Contractor and his surety shall be liable for all expenses incurred.

**Separate Warranties.** Where a particular piece of equipment or component of the work for which a separate warranty is required under the Contract Documents is placed in continuous service before Substantial Completion, the date of service commencement shall be certified by the County and the Warranty Period for that equipment or component shall run from the date so certified. In addition to the Contractor's warranty and duty to repair, as set forth in §§17.1 and 17.2, the Contractor expressly assumes all warranty obligations required under the Contract Documents for specific building components, systems and equipment. The Contractor may satisfy any such obligation by obtaining and assigning to the County a complying warranty from a manufacturer, supplier, or subcontractor.



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Where an assigned-warranty is tendered and accepted by the County which does not fully comply with the requirements of the Contract Documents, the Contractor shall remain liable to the County on all elements of the required warranty that are not provided by the assigned warranty.

**Certification of No Asbestos Containing Materials or Work**

The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

The Contractor shall provide at Substantial completion, a notarized certification to the County and the Architect that no asbestos containing materials or work was provided, installed, furnished or added to the project.

The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

The Contractor shall insure compliance with the following act – Asbestos Hazard Emergency Response Act (AHERA – 40 CFR 763-99 (7)) from all of his subcontractors and assigns as listed in item 17.4.3 above. All materials used on this project shall be certified as non Asbestos Containing building Materials (ACBM).

The Contractor shall provide a notarized certification that no ACBM's were used in the project.

**Good Faith Effort Subcontracting Program W/MBE**

**Not Used**

**Concealed Site Conditions**

The Contractor is responsible for having visited the Site and having ascertained pertinent local conditions such as utilities, location, accessibility, and general character of the Site or building, the character and extent of existing Work within and adjacent to the Site, and any other Work being performed thereon at the time of the submission of its proposal. Any failure to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the County.

If, in the performance of the Contract, subsurface, latent or concealed conditions at the Site are found to be materially different from the information included in the bid documents, or if unknown conditions of an unusual nature are discovered differing materially from the conditions usually inherent in Work of the character shown and specified, the Contractor shall notify the County in writing of such conditions before proceeding with the Work.

The County makes no representations as to the accuracy or completeness of the site information furnished to the Contractor by County and does not expressly or implicitly warrant same and is not responsible for any interpretations or conclusions reached by the Contractor with respect thereto. It is Contractor's sole responsibility to verify to its own satisfaction all site information, including but not restricted to topographical data, borings, subsurface information, utilities and easements and to account for all reasonably anticipated costs in their proposal for construction. The Design Build Contractor shall not be liable for existing environmental conditions including but not limited to environmental impact issues not revealed by Geotechnical Investigation. All environmental remediation shall be by Owner.

**Changes**

The scope of the Project will be set at the time the Guaranteed maximum price is established. The elements that make up the scope of the Project are:

Square footage of the Project;

Assumed occupancy of the various areas of the Project;

The quality of the Project;

Construction activity sequence and durations.

Any Change Order that changes any of the above elements will be considered a change in the scope of the Project and could result in a change in the Guaranteed Maximum Price and Construction Completion Date.

Refinement and detailing will be accomplished from time to time with respect to the Plans and Specifications. No adjustment in the Guaranteed Maximum Price or the Construction Completion Date shall be made therefore unless such refinement or detailing results in changes in the scope of the Project or the Plans and Specifications not reasonably foreseeable by a contractor of the Contractor's experience and expertise.

A Change Order is a written modification of the Contract between the County and the Contractor, signed by the County and the Contractor. A Change Order authorizes a change in the Scope of the Work or an adjustment in the Contract Sum or the Contract Time. Work performed under a Change Order is subject to all provisions of the Contract Documents. Change Order Requests may be initiated by the County or by the Contractor. The formal Change Order shall be prepared by the County.

The County may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes –

in the specifications (including drawings and designs);

in the method or manner of performance of the work;

in the facilities, equipment, materials, services, or site to be furnished by the County; or

directing acceleration in the performance of the work.

Any other written or oral order (which, as used in this paragraph 20.2, includes direction, instruction, interpretation, or determination) from the County that causes a change in the Contractor's obligations may be treated as a change order under this clause; provided, that the Contractor gives the County written notice stating:

the date, circumstances, and source of the order and

that the Contractor regards the order as a change order.

Except as provided in this clause, no order, statement, or conduct of the County shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the County shall make an equitable adjustment and modify the contract in writing. However, except for a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph 20.2 above, shall be allowed for any costs incurred more than 5 days before the Contractor gives written notice as required.

The Contractor must submit any proposal under this clause within 21 days after (1) receipt of a written change order under paragraph 20.1 above, or (2) the furnishing of a written notice under paragraph (b), above, by submitting to the County a written statement describing the general nature and amount of the proposal, unless this period is extended by the County. The proposal may be included in the notice under paragraph (b), above.





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No adjustment under this clause shall be allowed if asserted after final payment under this contract.

The County's Contingency Allowance is controlled solely by the County. This contingency is not included in the Project Cost Limitation.

Expenditures from the Contractor Contingency Allowance (Design-Build Contractor's Contingency) must be made by Change Order approved by the County, which approval will not be unreasonably withheld. These expenditures do not alter the total Contract Price. Any unused portion of the Contingency Allowance will be deducted from the final payment.

All changes in the scope of the Work, the Contract Sum and/or the Contract Time shall be documented by a Change Order. Change Orders are the exclusive method for modifying the Contract Sum or Contract Time. Neither the County nor any other party may change the scope of the Work, the Contract Sum or the Contract Time by any method, expressed or implied, other than by a Change Order.

Any direction, instruction, interpretation, or determination from the County shall not be considered for a Change Order under this clause unless the Contractor gives the County written notice within fifteen (15) days requesting a change order and stating the date, circumstances, and source of the directive. Any notice by the Contractor shall be given prior to commencement of any work allegedly required by the County and deemed to be change order.

Agreed and Unilateral Change Orders. A Change Order may be either an Agreed Change Order or a Unilateral Change Order.

Agreed Change Orders. An Agreed Change Order is a Change Order jointly executed by the County and the Contractor, in which each agrees to all of the terms of the amendment. The execution of a Agreed Change Order by the County and the Contractor constitutes the full, final, and complete settlement of all claims with regard to the modifications contained in the Change Order

Unilateral Change Order. A Unilateral Change Order is a Change Order issued by the County without the agreement of the Contractor. The issuance of a Unilateral Change Order does not prejudice any of the Contractor's rights to relief otherwise available under the Contract Documents. The Contractor may preserve such rights by submitting to the County a written objection to the Unilateral Change Order setting forth in detail the reasons for its objections and the contract provisions on which the objection is based within 30 days of receipt of the Unilateral Change Order. If the Contractor does not submit a written objection within that time, Contractor shall be deemed to have accepted the terms of the Unilateral Change Order and waived all claims related to the Unilateral Change Order and the Unilateral Change Order shall have the full force and effect of an Agreed Change Order.

#### Administration of Change Order Requests

A single Change Order may be issued, adjusting both Contract Time and Contract Sum, where both arise from the same claim or request.

As soon as practical allowing for consultant review after receipt of any Change Order Proposal Evaluation submitted by the Contractor, the County shall respond either directly to the Contractor in writing or verbally at a project meeting the outcome of which is committed to the written record as to the County's response (1) accepting the Contractor's proposal, (2) rejecting the same, (3) initiating negotiations with the Contractor concerning the proposed cost adjustment, or (4) requesting additional information.

When agreement has been reached concerning the adjustment of cost, the County shall accept the Contractor's Change Order Proposal Evaluation, or any subsequently revised Change Order Proposal Evaluation issued pursuant to negotiation, by endorsing the Change

Order Proposal Evaluation and returning it to the Contractor. A Change Order Proposal Evaluation that has been accepted is a Change Authorization. A Change Authorization is effective upon receipt and constitutes the Contractor's notice to proceed with the changed work, entitles the Contractor to adjust the cost of the Work in the approved Schedule of Values and on succeeding Pay Applications, as the changed Work is completed.

The County may, in writing, issue a notice to proceed for any portion of the Work in a Change Order for which final adjustment in Contract Sum and/or Contract Time has not been finalized. The Notice to Proceed letter may have a not-to-exceed cost amount for any or all portions of the Change Order. This amount is not to be exceeded without prior written approval by the County.

The County will authorize the Contractor to prepare a Change Order to include specific change items for which time and cost impacts have been agreed, and will state where the funding for the Change Order is derived.

When the County wishes to order changes in the Work, the County shall submit to the Contractor a Change Order Request consisting of a description of the request, including such Drawings and Specifications as are reasonably necessary to inform the Contractor of the nature of the change. This provision does not limit the County's right to order a unilateral change order as specified in Section 20.14.2.

When the Contractor considers that any written instruction or interpretation of the Contract Documents issued by the County constitutes a change in the Work affecting the Contract Sum, the Contractor shall so notify the County in writing as soon as possible, but not later than 15 days after receipt of the instruction or interpretation, and shall submit a Change Order Proposal Evaluation to the County as soon as possible thereafter, but not later than 30 days after issuance of the notice. The Contractor's failure to meet either of these time requirements shall constitute waiver of any and all claims related to such instruction, interpretation, or notice.

If the Contractor claims that additional cost or time is involved because of the occurrence of concealed conditions under Article 19, the Contractor shall give the County written notice of its intent to submit a claim and shall proceed immediately to document all increased costs or time delays actually incurred as a result. Such notice shall be given as soon as the Contractor becomes aware that such circumstances exist, but not later than 30 calendar days after the onset of the circumstance giving rise to the claim. This notice shall identify the circumstances giving rise to the additional cost or time delay, the elements of cost affected, and the claimed contractual basis for entitlement to relief. The Contractor shall certify that the claim is made in good faith and that the supporting data is current, accurate and complete to the best of its knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the County is liable. Failure to certify a claim will result in a determination that no claim has been filed. Such notices shall be accompanied by sufficient written evidence to document the occurrence of a an estimated cost impact, but the full amount of the claim need not be stated at the time the initial claim notice is given to the County. This notice shall include the following additional elements: (1) an analysis of the relevant contract provisions; (2) with description of the facts; and (3) the statement of why the particular facts warrant compensation under the terms of the contract. The Contractor and County recognize and agree that it is beneficial to each other to identify factors affecting the Contractor's cost of performance, and to take prompt action to control them. Therefore, it is agreed that the Contractor shall not be entitled to a cost adjustment unless the required notice is submitted timely and the Contractor hereby waives all claims for which such notice is not given.

Claims for adjustment of the Contract Sum based on the



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occurrence of concealed conditions shall be made in the format suitable to the County and submitted to the County no later than thirty (30) calendar days after the cessation of the circumstances giving rise to the claim. The submittal shall set forth the Contractor's proposed cost adjustment. Within thirty (30) days after completion of the work in question, the Contractor shall submit in writing to the County any additional elements of the claim such as supporting cost or pricing data; legal analysis, if appropriate; an expert's opinion, if appropriate; certification; and, if appropriate; formal request for decision, if appropriate. No such claim shall be valid unless these additional elements are so submitted, and the Contractor hereby waives all such invalid claims.

No claim shall be allowed for an adjustment under this or any other provision of the Contract if asserted after the County makes or tenders final payment under this contract.

**Pricing Change Order Work**

A change which involves either an increase or decrease to the GMP may be marked up or down for reasonable profit, which will be no more than 15% of the direct cost. However, General Conditions associated with the Change shall be separately itemized and justified.

Changes for additional work requested by the County which is to be funded within the either the Contractor's Contingency or the County's Contingency may be marked up to cover the Contractor's profit, additional general conditions, bond, insurance, and all other costs directly attributable to performance of the change Work.

Changes for additional work requested by the Contractor, which is to be funded within the Contractor's Contingency; and which covers errors or omissions of the Contractor, shall cover the cost of the change Work only, without a mark up for the Contractor's profit on the work, and without any increase to cover actual increased costs for additional general conditions required as a result of the change Work.

**Labor Costs**

Labor costs consist of the total cost of all labor, including supervision up to the level of Project Superintendent, itemized to show manhours by trade and classification, unburdened hourly rates, and total labor cost.

Labor Burden covers Social Security, Old Age Pension and/or other payroll taxes of like nature imposed by Local, State, or Federal Government upon the Subcontractor, or Contractor (when it performs the work).

Either party may request an equitable adjustment for a variation in quantity on any unit price work. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred and fifteen percent (115%) or below eighty-five percent (85%) of the originally specified amount.

**Time Allotted for Performance; Construction Schedules**

Contract Time will be measured from the date designated in the Notice to Proceed to the date specified for substantial completion by the Contract Documents, including any modification by Change Order.

**Work Progress Schedule.** Within the period set forth by the County, the Contractor shall submit in duplicate to the County, for review and acceptance, a proposed Progress Schedule for the Work. The Progress Schedule shall show the dates for starting and completing the various component activities making up the Work, and the logical relationships between them, and shall be in a format and in sufficient detail to permit the Work to be competently managed and its progress monitored. Unless otherwise provided in the Special Conditions, the schedule should utilize the Critical Path Method.

The Progress Schedule shall take account of the time required for the preparation and review of required Shop Drawings and submittals. If the Submittal Schedule is not fully integrated into the CPM Schedule, or if specifically required by the Special Conditions or elsewhere in the Contract Documents, the Contractor shall also submit a separate Submittal Schedule, correlated with the Progress Schedule that shows the dates the Contractor intends to make the required submittals.

**Schedule Requirements.** The Progress Schedule should be accurate and reliable representations of the progress of the Work to date, and of the Contractor's actual plans for its completion. The Progress Schedules shall be capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the County that the Contractor will follow the schedule as submitted in performing all Work as yet not completed, and that all progress to date shown on the schedule is accurately depicted.

**Schedule Updates.** The Progress Schedule and Submittal Schedule (if required) shall be updated periodically to reflect progress to date, and current plans for completing the Work. The form and content of the updates, and the required update interval, shall be as specified in the Planning and Scheduling Specification Section and/or the Special Conditions. The updated Progress Schedule shall be submitted to the County for acceptance, and the County shall have no duty to make progress payments until the updated Progress Schedule has been timely submitted. The Contractor shall show the anticipated date of completion reflecting all extensions of time granted as of the date of the update. The Contractor may revise the Progress Schedule logic only with the County's concurrence when in the Contractor's judgment a schedule revision becomes necessary for the management of the Work. The Contractor shall submit any schedule revision to County for acceptance before it is implemented.

**Effect of Schedule Submittal.** Submittal of the Progress Schedule, and successive updates or revisions, is for the information of the County, and to permit the coordination of their activities with those of the Contractor. County shall accept or reject the submittal of a schedule within the same period allowed for review of other submittals. Acceptance of a schedule, schedule update or revision constitutes the County's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule. Acceptance of a Progress Schedule, update or revision does not indicate the approval of the Contractor's proposed sequences and duration. Acceptance of a Progress Schedule update or revision indicating late completion does not constitute the County's consent to a late finish, or waive of either the Contractor's responsibility for timely completion, or the County's right to damages for the Contractor's failure to complete on time. The Contractor's scheduled dates for completion do not constitute a change in terms of the contract. The completion date(s) can only be modified by Change Order.

**Completion of Work:** The Contractor will be held to account for the Work being completed in the time that is stated in the Contract, or any extension thereof, granted by Change Order.

If, in the judgment of the County, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress so as to insure timely completion of the entire work or a separable portion thereof, the Contractor, when so informed by the County, shall immediately take action to increase the rate of work placement.

The Contractor shall, within five (5) calendar days after being so informed, notify the County in writing of the specific measures taken and/or planned to increase the rate of progress together with an estimate as to when scheduled progress will be regained and an updated Work Progress Schedule illustrating the Contractor's plan for



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achieving timely completion of the project.

**Modification of the Contract Time**

**Delays of and Extension of Time.** When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor shall be entitled to an extension of time. The Contract Time shall be extended by the number of calendar days lost by reason of excusable delay, as measured by the Contractor's progress schedule (or current update). All extensions of time shall be given in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which consume only float without delaying the project completion date.

**Time Extensions for Weather Days.** A "Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, on which inclement weather and related Site conditions prevented the Contractor from performing seven continuous hours of Work between the hours of 7:00 AM and 6:00 PM. Weather days are excusable non-compensable delays. When weather conditions at the site prevent work from proceeding, the Contractor shall immediately notify the County. At the end of each calendar month, the Contractor shall submit to the County a list of Weather Days occurring in the month.

Under Article 23 herein, the Contractor is required to cover in its time allotted for performance, normal weather delay at the project site based upon experiencing weather consistent with the 30-year normal temperature and precipitation averages published by the National Weather Service for Hays County, Texas. The Contractor shall be entitled to a non-compensable time extension for each day of delay which exceeds the weather delay in the Contractor's original schedule.

**Non-Weather Excusable Non-Compensable Delay.** The Contractor shall be entitled only to an extension of time for unforeseeable delays not within the control of or arising from the fault of either the Contractor or the County caused by: unusual delay in the delivery of materials, components or equipment to be incorporated into the work; strikes and labor disputes (but not the availability of adequately skilled labor, unless such impact is caused solely by the conduct of the County); physical damage to the work caused by circumstances beyond the control of the Contractor; war, civil unrest or insurrection; or other unforeseeable causes beyond the control of either the Contractor or the County.

**Excusable Delay.** The Contractor shall be entitled to an equitable adjustment of a time extension, issued via change order, for delays caused by: the failure of the County to take timely actions required under the Contract Documents, or to provide information required by the Contractor to proceed with the Work in a timely manner; detrimental or obstructive actions of separate Contractors employed by the County; failure of the County to provide access to the Site of the Work; failure of the County to provide materials which are to be furnished by the County under the Contract Documents, consistent with the Progress Schedule; concealed site conditions under Article 19; or changes in the work ordered by the County.

**No Damages for Delay.** Extension of time shall be the Contractor's sole remedy for delay unless such delay shall have been caused by acts constituting interference by the County with the Contractor's performance of the Work and to the extent such acts continue after Contractor's written notice to the County of such interference. The County's exercise of any of its rights under this Agreement, regardless of the extent or number of such changes, or the County's exercise of any of its remedies of suspension of work or requirement of correction of any defective work shall not be considered intentional interference with the Contractor's performance of the Work.

**Suspension of Work for Cause.** The County may, at any time without prior notice, suspend all or any part of the Work, if, in the County's sole discretion, it is considered reasonably necessary to do so to prevent or correct, any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed. The County shall give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work to be suspended. Upon receipt of such notice, the Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, the County shall initiate and complete an investigation of the circumstances giving rise to the suspension, and shall issue a written determination of their cause. The Contractor will not be entitled to an extension of time or compensation for delay resulting from a suspension if the County's investigation determines that the cause was within the control of the Contractor. If the cause is determined not to have been within the control of the Contractor, and the suspension prevents the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Delay and a Time Extension shall be granted through a Change Order. Suspensions of work under this provision shall be no longer than is reasonably necessary to identify and remedy the conditions giving rise to the suspension.

**Concurrent Delay.** When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable under the Contract Documents, the Contractor shall be entitled only to a time extension, and not to compensation, for the period of concurrent delay. When the completion of the Work is simultaneously delayed by an excusable delay and an excusable non-compensable delay, the Contractor shall be entitled to a time extension only as provided under § 24.1.3.

Except as expressly provided in this § 24.1, the Contractor shall not be entitled to an extension of the Contract Time, and shall bear all responsibility for financial risks which may accrue from various causes of delay in the construction progress.

**Time Extension Requests.** If the Contractor believes that the completion of the Work has been delayed by a circumstance designated as excusable under § 24.1, other than inclement weather, he shall give the County written notice, stating the nature of the delay and the activities potentially affected, within 30 calendar days after the onset of the event or circumstance giving rise to the excusable delay. Such claims should be accompanied by sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days. All requests for extensions of time not submitted in connection with proposed costs for changed or added work must be made in writing within 30 calendar days after the cessation of the delay. The Contractor and County recognize and agree that it is beneficial to each to identify delays and make necessary schedule adjustments promptly, and that a Progress Schedule prepared and updated by the Contractor provides an effective tool for measuring and tracking the impact of delays. Therefore, it is agreed that no extension of time will be granted unless the required notice is submitted timely, the required Work Progress Schedule has been regularly updated and submitted as specified, and the notice includes sufficient documentation.

All Changes to the Contract Time made as a result of such claims shall be by Change Order, as provided under Article 20, Changes.

No extension of time shall release the Contractor or the Surety furnishing a performance or payment bond from any obligations under the contract or such a bond. Those obligations shall remain in full force until the discharge of the Contract.





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**Contents of Time Extension Requests.** Each Time Extension Request shall be accompanied by a quantitative demonstration of the impact of the delay on the current Progress Schedule. Time Extension Requests shall include a reasonably detailed narrative setting forth (1) the nature of the delay and its cause, (2) the basis of the Contractor's claim of entitlement to a time extension, (3) documentation of the actual impacts of the claimed delay on the Progress Schedule, and any concurrent delays, (4) description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Progress Schedule, and (5) such other information that the Contractor and/or County considers necessary to justify the claim for an extension of time. No time extensions shall be granted for delays that do not affect the Project Schedule.

**County's Response.** The County shall respond to the Time Extension Request by providing to the Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by the Contractor. Such an Extension of Time is effective on the date the County's notice is received by the Contractor, but a Change Order reflecting the Extension of Time shall be executed by the parties in accordance with Article 20. The County will respond to each properly submitted Time Extension Request within 15 calendar days following its submittal; if the County cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the County shall so notify the Contractor in writing. Upon written agreement with the Contractor, the County shall then have not more than 30 additional calendar days to prepare a final response; provided, however, such final response may state that the prescribed time was inadequate to permit adequate investigation and evaluation by the County of the Contractor's request.

**Failure to Complete Work Within the Contract Time.** Time is of the essence of this Contract. The Contractor's failure to substantially complete the Work within the Contract Time or to achieve final completion as required will cause damage to the County. These damages shall be liquidated by agreement of the Contractor and the County, as set forth in the Contract Documents.

**Collection of Liquidated Damages**

If the Contractor fails to reach substantial completion by the date specified in the contract, or any extension, the Contractor shall pay to the County, as liquidated damages, the sum of \$2,000.00 (Two Thousand Dollars) for each day of delay.

If the County terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with all items not covered in liquidated damages as specified in paragraph 24.4.2. and any increased costs occasioned the County in completing the work.

If the County does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

**Suspension and Termination of the Contract Prior to Completion**

**Suspension of Work**

The County may order the Contractor in writing to suspend all or any part of the work for such period of time as the Contracting Officer may determine to be appropriate for the convenience of the County.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of the County in the administration of this contract, or by its failure to act

within the time specified in this contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the County in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

**Default**

If the Contractor refuses or fails after seven (7) days following receipt of written notice (i) to commence the work within the time required by this contract, (ii) to prosecute the work or any separable part with the diligence that will ensure its completion within the time specified in this contract, including any extension, (iii) to provide sufficient and properly skilled workmen or proper materials or equipment to complete the work in an acceptable manner and without delay, (iv) to promptly pay its subcontractors, laborers, and material men, (v) to perform any of its other obligations under this contract, or (vi) to complete the work within the time specified in this contract ("events of default"), the County may, by written notice to the Contractor, terminate the right to proceed with the work (or any separable part of the work). In this event, the County may take over the work and complete it by contract or otherwise for the account of the defaulted contractor, and may take possession of and use any tools, materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the County resulting from events of default, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

The Contractor's right to proceed shall not be terminated because of delays nor the Contractor charged with damages under this clause, if:

the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor (examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the County in either its public or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the County, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers); and

the Contractor, within 5 days from the beginning of any delay (unless extended by the County), notifies the County in writing of the causes of delay. The County shall ascertain the facts and the extent of the delay. If, in the judgment of the County, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the County shall be final and conclusive on the parties but subject to appeal under the Disputes Clause.



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If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the County.

The rights and remedies of the County in this clause are in addition to any other rights and remedies provided by law or under this contract. Time is of the essence for all delivery, performance, submittal, and completion dates in this contract.

The County reserves the right to terminate at any time for any of the above listed causes. Failure to exercise the right to terminate in any instance or for any proper reason shall not be construed as waiver of the right to do so in any other instance or for any other proper reason.

The County shall give the Contractor and its Surety seven (7) days' prior written notice of its intent to terminate for any of the above reasons. If the Contractor or the Surety demonstrates, to the satisfaction of the County, that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, then the County shall rescind the notice and the Contract shall continue unmodified, and the Contractor shall not be entitled an extension of time.

Should the Contractor or the surety fail to so demonstrate within seven (7) days following receipt of such notice, or fail to satisfy the County that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, the County may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract sum remaining, including all County contract administrative costs made necessary by such default or neglect, in which event no further payment shall then be made by the County until all costs of completing the Work shall have been paid. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or his surety shall pay the difference to the County. This obligation for payment shall survive the termination of the Contract. The County reserves the right, where the Contract is terminated for cause, to take assignment of any and all contracts between the Contractor and its Subcontractors, vendors and suppliers, and the County shall promptly notify the Contractor of the contracts the County elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.

Termination for Convenience of County. The County may, whenever the interests of the County so require, terminate this contract, in whole or in part, for the convenience of the County. The County shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set in the notice of termination, the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The County may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the County. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

The County may require the Contractor to transfer title and deliver to the County in the manner and to the extent directed by the County: (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had

been completed, would be required to be furnished to the County. The Contractor shall, upon direction of the County, protect and preserve property in the possession of the Contractor in which the County has an interest. If the County does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufactured materials.

If the parties are unable to agree on the amount of a termination settlement, the County shall pay the Contractor the following amounts:

For contract work performed before the effective date of termination, the total (without duplication of any items) of:-

the cost of work completed up to the date of termination;

the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (i), above; and

a sum, as profit on 25.3.3.1.1, above, determined by the County to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the County shall allow no profit under this subparagraph and shall reduce the settlement to reflect the indicated rate of loss.

The reasonable costs of settlement of the work terminated, including =

accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

the termination and settlement of subcontracts (excluding the amounts of such settlements); and

storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

Termination by Contractor. The Contractor may, upon thirty (30) additional days written notice to the County, terminate the contract for the County's failure to pay material amounts due the Contractor for a written notice more than 30 days after receipt of a valid invoice which must include all documentation required by the contract.

Settlement on Termination. When the Contract is terminated for any reason, the Contractor shall, at any time prior to 180 days of the effective date of termination, submit a final termination settlement proposal to the County based upon recoverable costs as provided under §§25.1, 25.2 or 25.3. If the Contractor fails to submit the proposal within the time allowed, the County may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor.

#### Disputes

It is the County's policy to try to resolve all controversies by mutual agreement without litigation. In appropriate circumstances, informal discussions between parties can aid in the resolution of differences by mutual agreement and are encouraged. The Contractor agrees to exhaust its administrative remedies in the County's Procurement Regulations or the Disputes Clause prior to seeking judicial relief of any type in connection with any matter related to this contract.

Except as otherwise provided in this contract, any dispute concerning a question of fact or law arising under or related to this contract which is not disposed of by agreement shall be decided by the County's Contracting Officer, who shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the County shall be final and conclusive unless, on or before the 90<sup>th</sup> day from the date of receipt of such



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copy, the Contractor mails or otherwise furnishes a written appeal addressed to the County's Board of Managers. The decision of the County or its duly authorized representative on such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. No action challenging such decision shall be brought more than two years from the date of the Contractor's receipt of such decision. In connection with any appeal of the County's Contracting Officer's decision, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending the final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the County's decision.

If it is determined, on appeal, that the County's interpretation of the contract, direction to the Contractor, or any other action required by the decision was an erroneous determination of the rights and obligations of the parties under the contract, the Contractor's remedy shall be the same as if such action were a change order under the Changes Clause of this contract.

**Miscellaneous**

**Order of Precedence.** In the event of any inconsistency between the provisions of the solicitation (including any resulting contract), the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule; (b) Special Solicitation Instructions and Conditions; (c) Solicitation Instructions and Conditions; (d) Special Provisions; (e) General Provisions; (f) other provisions of the contract whether incorporated by reference or otherwise; and (g) the specifications or statement of work, (h) plans or drawings

**Written Notice.** Written notice shall be considered to have been duly given if the document is delivered in person to the designated representative of the Contractor or County for whom it is intended, if delivered at or sent by registered or certified mail to the last business address of the designated representative known to one who gives the notice, or transmitted by fax machine to the last known business fax number of the designated representative, with a receipt retained to prove delivery. Notice is deemed effective when given rather than when received, however notice by mail is not effective until three (3) days after the date of mailing and notice by fax is not effective until the next business day after faxing.

**Federally Funded Projects.** If this project is federally funded, the Special Conditions will indicate that fact and will contain any modifications of these General Conditions required as a condition of obtaining federal funding.

**Computation of Time.** In computing any time period set forth in this Contract, the first day of the period shall not be included, but the last day shall be.

**Survival of Obligations.** All representations, indemnifications, warranties and guarantees made in accordance with the Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the Contractor by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Contract.

**No Waiver of Performance.** The failure of either party in any instance to insist on the performance of any of the terms, covenants or conditions of the Contract Documents, or to exercise any of the rights granted there under, shall not be construed as waiver of any such term, covenant, condition or right with respect to further performance.

**Governing Law.** The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the

interpretation of, or disputes arising under or related to, this contract (including contract formation issues and procurement protests), then federal common law, including the law developed by Federal Boards of Contract Appeals, the United States Court of Federal Claims, the Court of Appeals for the Federal Circuit, and the Comptroller General of the United States, shall govern. Venue for any action shall lie exclusively in Hays County, Texas. This is the complete agreement between the parties. If any provision of the contract is found to be invalid or unenforceable, the remaining provisions shall not be impaired

**Captions and Catchlines.** The captions and catchlines used throughout the General and Supplemental General Conditions are for ease of reference only and have no effect on the meaning of the terms and conditions set forth herein.

**Independent Contractor Status.** The Contract Documents create an independent Contractor relationship between the County and Contractor and neither party's employees or Contractors shall be considered employees, Contractors, partners or agents of the other party.

**No third party beneficiaries.** Except for the provisions in Section 7.3.10, the parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these Contract Documents from either the County or Contractor.

**Entire Agreement.** These Contract Documents supercede in full all prior discussions and agreements (oral and written) between the parties relating to the subject matter hereof and constitutes the entire agreement.

**Assignment.** The Contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the prior written consent of the County.

**Severability.** If any provision, sentence, clause or article of this Contract is found to be invalid or unenforceable for any reason, the remaining provisions shall continue in effect as is the invalid or unenforceable provision were not in the Contract. All provisions, sentences, clauses and articles of this Contract are severable for this purpose.

**Parties Bound.** Execution of this Contract by each party binds the entity represented as well as its employees, agents, successors and assigns to its faithful performance.

**No waiver of Sovereign Immunity.** Nothing herein shall be construed as a waiver of the County's sovereign immunity, to the extent it is applicable to this Contract but this provision shall not preclude Contractor from having the right to exercise the remedies described in this Contract.

**Interest of Public Officials.** - The Contractor represents and warrants that no employee, official, or member of the Commissioners Court of the County is or will be pecuniarily interested or benefited directly or indirectly in this contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member of the Commissioners Court of the County with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this contract. For breach of any representation or warranty in this clause, the County shall have the right to annul this contract without liability and/or have recourse to any other remedy it may have at law.

**County's Right to Carry Out the Work.** - If the Contractor fails or refuses to carry out all or any part of the work in accordance with the contract requirements or within the contract schedule and fails or refuses to correct such deficiency within seven days of receipt of written notice thereof from the County, the County, in its sole





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discretion and without waiving any other rights it may have, may elect to correct such deficiencies and charge the Contractor the cost of such corrections. Nothing in this clause shall relieve the Contractor of its obligation to perform the remainder of the work in accordance with the contract, nor preclude the Contractor from having the right to exercise the remedies described in this Contract.

END OF DOCUMENT



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## Exhibit C

### SUPPLEMENTARY GENERAL CONDITIONS TO THE CONTRACT

#### Permits and Responsibilities

The Contractor shall, without additional expense to the County, be responsible for obtaining any necessary licenses and permits and for complying with any federal, state, county, and municipal laws, codes, and regulations applicable to the performance of the work, including, but not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

#### Specifications and Drawings

a. Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the County is intended; and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the County otherwise expressly stated.

b. Where, "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise.

c. The word "furnish", unless specifically limited in context, shall mean design, manufacture, factory testing and delivery of the item(s) specified to the project site or other location(s) specified.

d. The word "install", unless specifically limited in context, shall mean unloading, unpacking, disposal of packing materials, assembly, placement, final connection and operational testing of the item(s) at the location(s) specified such that the item(s) is (are) ready for use by the County, all as may be further described in County-Furnished Property.

e. The word "provide" as used herein shall mean, "furnish and install, complete and ready for use by the County".

f. Shop drawings means drawings submitted to the County by the Contractor, subcontractor, or supplier through the appropriate channels, or any lower tier subcontractor through the appropriate channels pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of elements and/or (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The County may duplicate, use, and disclose in any manner and for any purpose, relating to the work, shop drawings delivered under this contract.

#### Other Contracts

The County may undertake, or award other contracts for, additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with employees of the County and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the County. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by employees of the County.

#### Protection of Existing Site Conditions

The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the County may have the necessary work performed and charge the cost to the Contractor.

#### Operations and Storage Areas

a. The Contractor shall confine all operations (including storage of materials) on County premises to areas authorized or approved by the County. The Contractor shall hold and save the County, and its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

b. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the County and shall be built with labor and materials furnished by the Contractor without expense to the County. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the County, the buildings and utilities may be abandoned and need not be removed.

c. The Contractor shall, under regulations prescribed by the County, use only established roadways or use temporary roadways constructed by the Contractor when and as authorized by the County. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

#### Responsibility of the Contractor's Architect Engineer

(a) The Design-Build Contractor's Architect-Engineer shall be responsible for the



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professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor's Architect Engineer under this contract. The Contractor's Architect Engineer shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, and other services, so that the Work remains on schedule.

(b) Neither the County's review, approval, or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor's Architect Engineer shall be and remain liable to the County in accordance with Section 7.3.10 of the General Conditions and all applicable law for all damages to the County caused by the Contractor's Architect Engineer's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the County provided for under this contract are in addition to any other rights and remedies provided by law.

**Composition of Contractor's Architect Engineer**

If the Contractor's Architect Engineer hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**Subcontractors and Outside Consultants**

Any subcontractors and outside associates or consultants required by the Contractor's Architect Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to by the County in connection with the award of this contract. Any substitution in such subcontractors, associates, or consultants will be subject to the prior written approval of the County.

**Notice and Approval of Restricted Designs**

In the performance of this contract, the Contractor's Architect Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the County, the Contractor's Architect Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Contractor's Architect Engineer to be available only from a sole source. As to any such design or specification, the Contractor shall report to the County giving the reason or reasons why it is considered necessary to so restrict the design or specification.

**Construction Contract Administration**

The Contractor's Architect Engineer's responsibilities in connection with administration of the construction contract contemplated by this contract shall not be an assumption of, or relieve the construction contractor of liability for, the construction contractor's obligations to the County for satisfactory performance and timely completion of the construction contract.



**AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY**

**Exhibit D**

**GMP Submission Form**

(to be provided by the Owner's Representative after RFP response)

DRAFT



AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY

**Exhibit E**

Subcontractors List

(to be provided by the contractor at buyout)

DRAFT





**AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY**

**Exhibit F**

**Project Overall Schedule**

(to be provided by the contractor at Notice to Proceed)

DRAFT



AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY

## Exhibit G

### Performance and Payment Bond

#### PERFORMANCE BOND

STATE OF TEXAS       §  
                                      §  
HAYS COUNTY§

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and fully authorized to transact business in the State of Texas, whose address is \_\_\_\_\_, hereinafter called Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and fully authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto Hays County, Texas, hereinafter called the "Owner," in the penal sum of \$\_\_\_\_\_ plus 10% of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees and liquidated damages arising out of or connected with the below identified Contract in lawful money of the United States, to be paid in Hays County, Texas, for the payment of which sum and the performance of such Contract well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be increased or decreased by the amount of any Modification, which increases or decreases the Contract Sum.

The obligation to pay same is conditioned as follows:

WHEREAS, the Principal entered into a written Contract with Owner, (acting through its authorized representative, \_\_\_\_\_), dated the \_\_\_\_\_ day of \_\_\_\_\_, 2009, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein (including, but not limited to, all provisions in the Contract with respect to obligations to correct *defective* Work, obligations in connection with defaults under the Contract, indemnification obligations, obligations to provide reimbursement and repayment, and obligations to pay liquidated damages), for design and construction of the new Hays County Government Complex.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the Contract Documents during the original term thereof and any extension thereof which may be granted by the Owner, notice of which extension being hereby waived by the Surety, and during the life of any guaranty or warranty required under said Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized Modifications of said Contract that may hereafter be made, notice of which Modifications to the Surety being hereby waived by the Surety, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, if the Owner declares Principal in default under the Contract and the Owner formally terminates the Principal's right to complete the Contract by written notice to the Principal and the Surety, the Surety shall promptly and at the Surety's sole expense either (a) arrange for the Principal, with the consent of the Owner, to perform and complete the Contract in accordance with the Contract Documents, including without limitation all Modifications or subcontracts that may hereafter be made, notice of which Modification or subcontracts to the Surety being hereby waived; or (b) undertake to perform the Contract through its agents or through independent contractors. In any event, Surety's obligations hereunder to perform and complete the Contract shall remain in full force and effect. If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on this Bond ten (10) days after delivery of written notice from the Owner to the Surety demanding the Surety perform, and the Owner shall be entitled to enforce any remedy available to the Owner at Surety's cost and expense, including, without limitation, reasonable legal fees.



**AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY**

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Hays County, State of Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work performed or to be performed, thereunder or the Specifications, Drawings, etc., accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive (i) notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications, Drawings, etc., and (ii) notice of any subcontracts, purchase orders, or other obligations related to the Contract.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Hays County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas. All notices hereunder shall be deemed given and received (i) when deposited in a post office or other depository under the care or custody of the United States Postal Services, properly stamped and addressed as a registered or certified item, return receipt requested, or (ii) when delivered by express mail or parcel service or delivery service to the party's address.

IN WITNESS WHEREOF, this instrument is executed in four copies, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

\_\_\_\_\_  
Secretary

ATTEST:

\_\_\_\_\_  
Secretary

PRINCIPAL:

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

SURETY:

By: \_\_\_\_\_  
Attorney-in-Fact

The Resident Agent of the Surety in Travis County, Texas, for delivery of notice and service of process is:

Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
\_\_\_\_\_

APPROVAL OF OWNER:

Hays County

By: \_\_\_\_\_  
XXXXXXXX, Title

(NOTE: Date of Performance Bond must be date of Contract. If Resident Agent is not a corporation, give a person's name.)



**AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY**

(insert form of Dual Obligor Rider)

**PAYMENT BOND**

STATE OF TEXAS       §  
                                      §  
HAYS COUNTY§

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and fully authorized to transact business in the State of Texas, whose address is \_\_\_\_\_, hereinafter called Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and fully authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto Hays County, Texas, hereinafter called the "Owner", in the penal sum of \$\_\_\_\_\_ plus ten percent (10%) of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees and liquidated damages arising out of or connected with the below identified Contract in lawful money of the United States, to be paid in Hays County, Texas, for the payment of which sum well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be increased or decreased by the amount of any Modification, which increases or decreases the Contract Sum.

The obligation to pay same is conditioned as follows:

WHEREAS, the Principal entered into a written Contract with Owner, (acting through its authorized representative, \_\_\_\_\_), dated the \_\_\_\_\_ day of \_\_\_\_\_, 2003, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein (including, but not limited to, all provisions in the Contract with respect to obligations to correct defective Work, obligations in connection with defaults under the Contract, indemnification obligations, obligations to provide reimbursement and repayment, and obligations to pay liquidated damages), for design and construction of the new Hays County Government Complex.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material and specially fabricated materials in the prosecution of the Work provided for in said Contract, and normal and usual extras not exceeding fifteen percent (15%) of the Contract Sum, notice of which Modifications or subcontracts to the Surety is hereby expressly waived by the Surety, then this obligation shall be void; otherwise Surety is obligated to make prompt payment for all labor, subcontracts, materials, specially fabricated materials, and normal and usual extras not exceeding fifteen percent (15%) of the Contract Sum, and such obligation shall remain in full force and effect; labor, subcontracts, materials and specially fabricated materials shall be construed in accordance with Section 53.001, et seq. of the Texas Property Code, as amended, and this Bond shall be construed in accordance with Section 53.202 of the Texas Property Code, as amended.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Hays County, State of Texas.

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Contract or to the Work performed, or to be performed, thereunder, or the Specifications, Drawings, etc. accompanying the same, shall in anywise affect its obligation on this Bond, and it does hereby waive (i) notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or to the Specifications, Drawings, etc. accompanying the same and (ii) notice of any subcontract, purchase order, or other obligation related to the Contract.



**AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY**

This Bond is given pursuant to the provisions of Subchapter I of Chapter 53 of the Texas Property Code, as amended, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Hays County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas. All notices hereunder shall be deemed given and received (i) when deposited in a post office or other depository under the care or custody of the United States Postal Service, properly stamped and addressed as a registered or certified item return receipt requested, or (ii) when delivered by express mail or parcel service or delivery service to the party's address.

IN WITNESS WHEREOF, this instrument is executed in four copies, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

\_\_\_\_\_  
Secretary

ATTEST:

\_\_\_\_\_

PRINCIPAL:

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

President

SURETY:

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

Attorney-in-Fact

The Resident Agent of the Surety in Travis County, Texas, for delivery of notice and service of process is:

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

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

Tel. No. ( ) \_\_\_\_\_

APPROVAL OF OWNER:

Hays County

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

XXXXXXXX, Title

(NOTE: Date of Payment Bond must be date of Contract. If Resident Agent is not a corporation, give a person's name.)

(insert form of Dual Oblige Rider)





AGREEMENT  
BETWEEN HAYS COUNTY AND CONTRACTOR  
FOR  
MUNICIPAL GOVERNMENT COMPLEX FACILITY

**Exhibit H**

**Hays County Design Build Conceptual Program Budget**

DRAFT

## *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 Automated Clearing House Processing Agreement between Hays County and Teledraft, Inc. for the processing of electronic checks in the Office of Tax Assessor/Collector.

**TYPE OF ITEM:** ACTION

**PREFERRED MEETING DATE REQUESTED:** October 27, 2009

**AMOUNT REQUIRED:** N/A

**LINE ITEM NUMBER OF FUNDS REQUIRED:** N/A

**REQUESTED BY:** SUMTER/CARAWAY

**SPONSORED BY:** SUMTER

**SUMMARY:** The Office of Tax Assessor/Collector is currently set up to accept credit cards. Accepting electronic checks would offer more options and would be an added convenience for taxpayers. There is no cost to the county for this service.

## Jeff Laws

---

**From:** Cristina Bales [cristina.bales@co.hays.tx.us]  
**Sent:** Wednesday, October 21, 2009 4:00 PM  
**To:** Jeff Laws  
**Subject:** FW: Checks  
**Attachments:** Teledraft-ACH Application -GOVT-HaysCoTX-Tax\_9-4-09.pdf

Here it is Jeff...Mark is still reviewing it so it's not final yet!

Thanks!

Warm Regards,

**Cristina Bales**  
**Paralegal - Civil Division**  
**Hays County District Attorney's Office**  
**512-393-2208**

CONFIDENTIAL COMMUNICATIONS: this electronic communication is being sent to the receipt(s) for the specific purpose of the matters therein stated, and is not to be distributed or used for any other purpose. This is an attorney-client communication, work product, and confidential communication, and is not intended for public disclosure. Please contact the Office of the Hays County District Attorney at 512-393-7600 if you have received this email in error or are aware of the misuse of this communication.

---

**From:** Cristina Bales [mailto:cristina.bales@co.hays.tx.us]  
**Sent:** Wednesday, October 21, 2009 11:34 AM  
**To:** 'Mark Kennedy'  
**Subject:** FW: Checks

Warm Regards,

**Cristina Bales**  
**Paralegal - Civil Division**  
**Hays County District Attorney's Office**  
**512-393-2208**

CONFIDENTIAL COMMUNICATIONS: this electronic communication is being sent to the receipt(s) for the specific purpose of the matters therein stated, and is not to be distributed or used for any other purpose. This is an attorney-client communication, work product, and confidential communication, and is not intended for public disclosure. Please contact the Office of the Hays County District Attorney at 512-393-7600 if you have received this email in error or are aware of the misuse of this communication.

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**From:** Mark Kennedy [mailto:mark.kennedy@co.hays.tx.us]  
**Sent:** Friday, October 16, 2009 2:36 PM

## ACH APPLICATION INTRODUCTION

Welcome to TELEDRAFT, Inc. We look forward to being of service to you. These instructions are for the purpose of assisting you in completing the TELEDRAFT Application for ACH Origination. We appreciate your time in completing this application.

### APPLICATION TIPS

- ✓ This application is available in a writable pdf electronic file at <http://www.teledraft.com>. If filling out a paper copy of the form, please make your application as clear and legible as possible.
- ✓ Please pay careful attention to the required documents that must be submitted with your application. **Your application cannot be processed until all applicable documents have been provided.** We highly recommend imaging all documents and submitting them via email as opposed to fax. Faxed applications and documents, specifically the Photo ID's often times are not legible.
- ✓ Please ensure that the name of the entity or business on the application (either the legal name or DBA) is the same exact name that appears on the Articles of Incorporation, Voided Check, and Bank Statements.
- ✓ Please sign the ACH Processing Agreement on page 10.
- ✓ The typical application processing time is two (2) business days from receipt of **complete** application (including all required documents) to Merchant account activation.
- ✓ Based upon the nature of your business, Teledraft Underwriting/Risk Management may require additional documentation prior to approval for account activation. In this case please allow additional time for application processing.
- ✓ Read the ACH Processing Agreement in its entirety.
- ✓ Include ALL pages of this application in your returned package.

If you have any questions in regard to your application, our Customer Service hours are 7:30 AM to 4:30 PM Arizona Time. You can reach us at 800-848-5826 or at [applications@teledraft.com](mailto:applications@teledraft.com).

### TYPICAL SERVICE CONFIGURATION

The typical merchant account will be configured as follows:

- Net Settlement; Processing fees are deducted from the merchant settlement
- Transactions received by 5:00 PM Pacific Standard Time will be submitted to the Federal Reserve for Clearing that day making the "Effective Date" of the transaction the following banking day
- Transaction totals received by 5:00 PM Pacific Standard Time in any given banking day will be settled to the merchant bank account on the second business day. As an example; transactions submitted on Monday are available funds in the merchant bank account on Wednesday.
- Credits or Electronic Funds Transfer payments are submitted to the Federal Reserve for clearing the same day they are received by the Teledraft System such that the funds are available to the recipient the next banking day.
- Credit Items or Returned Items received by the Teledraft System in a given day are totaled and an off-setting debit will be initiated that day to the merchant bank account.

Options to include Gross Settlement (processing fees are billed to the merchant at the conclusion of the month), Next Day Settlement (funds from transactions received in a given banking day are available funds in the merchant bank account the following banking day).

Based upon the nature of your business, modifications to the Typical Service Configuration may be required to include extended settlement times, credits and returns debited out of pending settlement funds and possible retention of reserves.

Training on the use of the Teledraft system is available to you at no cost once your account is activated.

*Final account terms will be communicated to you upon account activation.*

## TELEDRAFT, INC. MERCHANT APPLICATION FOR ACH ORIGATION

AUTHORIZED MERCHANT SERVICE PROVIDER (Sales Agent on Behalf of Teledraft) Merchant MultiService, LLC, dba: Gov-Pay

MERCHANT INFORMATION	
FULL LEGAL NAME: HAYS COUNTY TAX ASSESSOR COLLECTOR	DBA NAME: Hays County Tax Assessor Collector
LEGAL ADDRESS: 102 N. LBJ Dr.	PHYSICAL ADDRESS (if different from legal address): 102 N. LBJ Dr.
CITY, STATE, ZIP: San Marcos, TX 78666	CITY, STATE, ZIP: San Marcos, TX 78666
CORP PHONE: 512.393.5545      FAX:	DBA PHONE: 512.393.5545      FAX: Fax Gov-Pay Only: 866.347.7263
WEB SITE ADDRESS (Please list all websites):	

BUSINESS/ SALES PROFILE (Provide copy of Articles of Incorporation or License applicable to type of Business)		
TYPE OF OWNERSHIP, Check one <input checked="" type="checkbox"/> GOVERNMENT <input type="checkbox"/> UTILITY  STATE AND FEDERAL TAX ID/SSN: 74 - 6002241 # OF LOCATIONS: OMITTED OMITTED CURRENTLY ACCEPT: <input type="checkbox"/> CREDIT CARD <input type="checkbox"/> ACH (PLEASE PROVIDE LAST 2 MONTHS STATEMENTS)	<u>Payment Authorization Method</u> <input type="checkbox"/> 5 % Paper Contract: Payment Authorization is in writing and signed by the buyer. <input type="checkbox"/> 95 % Internet Order: Payment Authorization is completed online. <input type="checkbox"/> % Phone Order: Payment Authorization is completed over the phone. 100% Total	Average Transaction: <b>\$400.00</b>  Average Monthly ACH Vol \$:  High Ticket \$:  Max Vol/Day \$:  Max Transactions Per Day:
CUSTOMER SERVICE CONTACT NAME:		CUSTOMER SERVICE PHONE NUMBER:
DESCRIPTOR TO APPEAR ON BUYER'S BANK STATEMENT IDENTIFYING YOUR COMPANY (15 LETTERS OR LESS + Customer Service ph#):      County Tax Assessor Collector		
PERSON FOR TELEDRAFT TO CONTACT TO ACQUIRE PROOF OF AUTHORIZATION ON ANY GIVEN TRANSACTION: GOV-PAY		AUTHORIZATION CONTACT PHONE NUMBER: 830.438.7100
AUTHORIZATION CONTACT EMAIL ADDRESS: CONTACTUS@GOV-PAY.COM		NOTE: All Telephone payment authorizations must be recorded and accessible for review by Teledraft. All authorizations (recordings, digital signatures and hard copy) must be retained and available for all transactions.

BUSINESS BANK INFORMATION (PROVIDE COPIES OF TWO (2) RECENT BANK STATEMENTS AND ONE (1) VOIDED CHECK)	
BENEFICIARY BANK NAME:	PHONE NUMBER:
STREET ADDRESS:	CITY, STATE, ZIP
ABA ROUTING NUMBER (should be 9 digits):	ACCOUNT NUMBER:
NAME ON ACCOUNT (Must match name on bank statements and checks as well as name on merchant information section of application):	



PRINCIPAL INFORMATION (PROVIDE LEGIBLE COPY OF DRIVERS LICENSE FOR EACH PRINCIPAL)			
PRINCIPAL 1 NAME: FIRST, LAST, MI LUANNE CARAWAY		PRINCIPAL 2 NAME: FIRST, LAST, MI	
PRINCIPAL 1 TITLE: HAYS COUNTY TAX ASSESSOR COLLECTOR		PRINCIPAL 2 TITLE:	
HOME STREET ADDRESS:		HOME STREET ADDRESS:	
CITY, STATE, ZIP:	RENT <input type="checkbox"/> OWN <input type="checkbox"/>	CITY, STATE, ZIP:	RENT <input type="checkbox"/> OWN <input type="checkbox"/>
HOME PHONE NUMBER:		HOME PHONE NUMBER:	
EMAIL:		EMAIL:	
SOCIAL SECURITY NUMBER:	DOB:	SOCIAL SECURITY NUMBER:	DOB:
DRIVER LICENSE NUMBER / STATE:		DRIVER LICENSE NUMBER / STATE:	
IF ADDITIONAL INFORMATION REQUIRED: <input type="checkbox"/> CONTACT MERCHANT <input type="checkbox"/> CONTACT AGENT		PREFERRED CONTACT METHOD: <input type="checkbox"/> PHONE <input type="checkbox"/> EMAIL	
PRIMARY CONTACT (PROVIDE NAME, EMAIL, PHONE NUMBER):			

MERCHANT BUSINESS PRACTICE ADDENDUM	
PLEASE DESCRIBE IN DETAIL THE PRODUCT(S) AND/OR SERVICE(S) THAT YOU MARKET: COLLECTION OF TAXES, FEES	
HOW DO YOU GENERATE/ ADVERTISE/ SOLICIT BUSINESS? N/A	
HOW DOES THE CUSTOMER ORDER YOUR PRODUCT? N/A	
DO YOU USE A THIRD PARTY FULFILLER (A third party who produces and/or stores your product)? If yes, list Name and Address; List address of where inventory is located. NO	
WHAT IS YOUR RETURN/REFUND POLICY? CASE-BY-CASE	
DO YOU PERFORM RECURRING BILLING? YES <input type="checkbox"/> NO <input type="checkbox"/> If yes, what is the frequency? Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually <input type="checkbox"/> Other _____	
SAMPLES OF MARKETING MATERIAL SUBMITTED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

**Please Be Sure to Include:**

\_\_\_ Voided Check from account to be used for settlement (or letter from bank);

N/A \_\_\_ Last 2 months Bank Statements from settlement account;

N/A \_\_\_ Clear Copies of Drivers License for each Principal;

N/A \_\_\_ Copy of Article of Incorporation or license;

N/A \_\_\_ Last 2 months Statements from current ACH processing (if applicable);

N/A \_\_\_ Signatures, 2 locations, page 10:

- Authorizations and Representations
- Personal Guarantee

\_\_\_ All Pages of application

**NOTE:** Teledraft may request additional documentation

**All fees billed to Gov-Pay**

**MERCHANT FEE SCHEDULE**

Charge Type	Merchant Fee	Description of Charge
*Application Fee		The Cost to process and underwrite application
*Support Setup		Expenses associated with activation of account and programming costs
Discount Rate		A percentage of the debit amount to accommodate financial risk
Per Transaction		The charge to process an ACH debit or credit transaction
Per Chargeback / Unauthorized Return or Revoke		The charge assessed for an unauthorized returned item wherein the buyer revokes authorization or claims that the transaction was not authorized and reverses it through their bank
Per Returned Item		The fee assessed when an item is returned by the buyers bank
Annual System Access		The cost to maintain the account on the TELEDRAFT System
Per Batch Settlement	\$0.35	The fee assessed when a deposit of funds from a day's transactional activity is made to your designated bank account
Bill-Back Fee (if applicable)	\$0.15	The fee charged in cases where your checking account is billed for the value of returned check items received in a given banking day
Billing Reject Fee	\$25.00	This is the fee charged in the event that TELEDRAFT generates an ACH debit to bill your checking account for a fee and the item is returned for reasons to include insufficient funds
Monthly Statement Fee		A monthly fee to cover the cost of maintaining the account to include customer service, security, data storage and account administration
Monthly Minimum		A minimum charge assessed only if total processing activity is negligible for a given month and total processing fees generated are less than this amount

**Optional Services**

Services	Merchant Fee	Description of Charge
Internet Gateway Transaction Fee		An incremental fee per ACH debit or credit if the TELEDRAFT Payment gateway is used to process transactions occurring online
Internet Gateway Monthly Fee		The monthly fee assessed for utilization of the payment gateway
IdCHEK		A solution which verifies the address age and identity of the buyer

ReliaCHEK		An application which verifies the transaction against the nationwide ATM database in an attempt to determine whether the transaction is likely to clear the buyers bank account when submitted for processing
AssureCHEK		A service which checks the account numbers against a national banking database of closed, overdrawn and frozen accounts
TotalCHEK		A comprehensive solution that combines the ReliaCHEK and AssureCHEK applications to further validate transactions
Verification System Monthly Fee		A monthly fee to participate in the verification systems

There may be a cash reserve deposit required or a reserve retained from daily settlements. If Merchant Underwriting determines that a reserve is required in order to initiate processing privileges, you will be notified by TELEDRAFT or your Merchant Services Provider. In addition, your settlement cycle (the time elapsed between the day the transaction is originated and the day in which funds are settled to your bank account) will be determined as a result of the underwriting process. Settlement timeframes vary between 48 hours or the second banking day following the transaction to five banking days following the transaction.

Merchant understands and agrees that by sending the first payments to be processed and Teledraft Inc. agrees to process those payments, Merchant accepts the terms and conditions of this Merchant Fee Schedule and the corresponding Teledraft ACH Processing Agreement.

\*If approved, charges will be withheld from initial settlements or billed to Merchant monthly on Merchant Statement.

## TELEDRAFT, Inc. ACH Processing Agreement

This ACH Processing Agreement is part of the application and is effective upon acceptance by TELEDRAFT and BANK and upon the "Merchant" sending the first transaction(s) (the "Effective Date". This ACH Processing Agreement is between TELEDRAFT, Inc., a Delaware Corporation (hereinafter "TELEDRAFT"), the Originating Depository Financial Institution (hereinafter "Bank") and Merchant with regard to Merchant's use of the TELEDRAFT, Inc. Payment Services or the Merchant Web Site, as defined herein.

### Definitions.

"TELEDRAFT Payment Services or TPS" means the activities, processes and services provided in support of the processing of electronic payments in the form of either ACH transactions or Check Drafts utilizing the Internet-based payment system developed and licensed by TELEDRAFT that Merchant shall utilize to enable Merchant to facilitate payment from customers for goods or services from an existing, eligible bank account, and includes any Web site, computer hardware, equipment and software operated by TELEDRAFT and/or its agents and designees, whether located on TELEDRAFT's or a third party's premises.

"Verification Services" means the employment of web based third party applications for the purpose of attempting to verify the identifying of a Payer or the condition of a bank account on which a payment is to be drafted or debited.

"Business Day" means Monday through Friday except National and Banking holidays.

"Credit Slip" means evidence of a refund or price adjustment to a previous TPS Sale to be credited to a customer and transmitted to either TELEDRAFT or the Merchant by the other party in the form and within the time period specified by TELEDRAFT.

"ACH" means the Automated Clearing House of the Federal Reserve

"ACH Chargeback" means Any ACH item which is returned designated with the following return codes: R5, R6, R7, R10, R29, R51.

"Draft" means a paper or electronic rendering of a check for deposit in a financial institution

"Goods" means goods and/or services available for purchase by Merchant.

"Integrated Product" means a Merchant offering (such as on a Merchant Web Site) that has been integrated with the Software and any derivative works, for the sole and limited purpose of incorporating the TPS as an available feature of the Merchant offering.

"Launch Date" means the date that the Integrated Product is launched on the Merchant Web Site and/or TELEDRAFT Web Site.

"Merchant Administrator" is the person or persons designated by Merchant who will have access to, and full rights to change Merchant account information. The Merchant Administrator may change from time to time upon prior written notice to TELEDRAFT.

"Merchant Web Site" means any World Wide Web page(s) or site(s) (whether located on Merchant's or a third party's servers) operated or maintained by or on behalf of Merchant from which Merchant may facilitate customer's purchase Goods through the TPS.

"TELEDRAFT Interfaces" or "Software" means the protocols, software components and other interfaces and software that permit data transfers between TELEDRAFT and Merchant for the purpose of fulfilling the product, technical and functional specifications of the Integrated Product.

"TPS Sale" means any sale of Goods that Merchant makes to a customer through the TPS on the Integrated Product. TPS Sales shall be denominated in U.S. dollars.

"TPS Transaction" means any TPS Sale, Credit Slip or Chargeback (as defined herein.)

### Merchant Account and Underwriting Procedures

Merchant has or will establish a commercial checking account with a depository approved by TELEDRAFT in its sole discretion, and will maintain such account for settlement and billing purposes associated with the processing of payments under this ACH Processing Agreement (the "Merchant Account"). Merchant will maintain a minimum balance of funds (in an amount that may change from time to time and as determined by TELEDRAFT, in its sole discretion), in the Merchant Account for the purpose of covering reversals, Chargebacks, and other fees. Merchant shall reimburse TELEDRAFT for any costs or expenses incurred as a result of insufficient balances in the Merchant Account. Merchant acknowledges that the actions of

the Merchant Administrator will be deemed actions by Merchant hereunder, and Merchant accepts full responsibility and liability for such acts and/or omissions of said Merchant Administrator. TELEDRAFT reserves the right to put Merchant transaction settlement limits in place if it determines (in TELEDRAFT's sole discretion) such limits are necessary.

Merchant understands that a consumer report of each of the officers, directors, partners, proprietors, and/or owners of the Merchant may be requested from a Consumer Reporting Agency. A Consumer Report is a routine report on credit worthiness, frequently used by creditors. If Merchant is approved for any payment processing service, subsequent Consumer Reports may be required or used in connection with the maintenance, updating, renewal or extension of such services. Merchant agrees that all business reference, including banks, may release any and all credit and financial information to TELEDRAFT. Merchant acknowledges and agrees that the information provided pursuant to this ACH Processing Agreement and other relevant credit data, is being supplied to TELEDRAFT and may be used as set forth herein. If Merchant's application for business credit is denied, Merchant has the right to a written statement of the specific reason for the denial. To obtain the statement, Merchant shall contact the credit initiation department at TELEDRAFT, 4625 S. Wendler Dr. Ste. 204 Tempe, AZ 85282 602 454-9575 within sixty (60) days from the date of notification of TELEDRAFT's decision. TELEDRAFT will send a written statement of reason for the denial within thirty (30) days of receiving a request.

#### Fees and Payments

TELEDRAFT shall charge to Merchant and Merchant agrees to pay to TELEDRAFT the fees and rates set forth on Fee Schedule, entitled "Merchant Fee Schedule." Merchant acknowledges and agrees that TELEDRAFT reserves the right to adjust such fees and rates based upon the TELEDRAFT Underwriter's evaluation of the Merchant application. Any such imposed changes to the Merchant Fee Schedule will be communicated to the Merchant upon account activation, and Merchant acknowledges that it accepts such changes upon submission of first transaction(s).

TELEDRAFT will deduct all fees from the amounts collected for each TPS Sale prior to settlement of funds to Merchant or, alternatively, TELEDRAFT may, at its option, invoice Merchant for said fees as provided herein. TELEDRAFT will deduct the face amount of any Chargeback from amounts payable to Merchant hereunder, or from the Merchant Account, at TELEDRAFT's option; or, upon TELEDRAFT's demand, Merchant will immediately make payment to TELEDRAFT in the face amount of any such Chargeback. TELEDRAFT may deduct any fees set forth on the Merchant Fee Schedule attached hereto, whether or not TELEDRAFT accepts said TPS Sale for settlement. A charge of 1½ % per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account that is thirty (30) days or more delinquent. TELEDRAFT reserves the right to suspend its service and obligations to Merchant during any period in which Merchant's account is delinquent. TELEDRAFT may suspend or hold any funds to be paid to Merchant for any period of time if deemed necessary by TELEDRAFT in its sole discretion, and TELEDRAFT may offset any indebtedness of Merchant to TELEDRAFT against any such funds. It is acknowledged that any payment to Merchant hereunder is provisional and may be revoked by a Chargeback under this ACH Processing Agreement for any other reason deemed necessary by TELEDRAFT.

Merchant is solely responsible and liable for any and all applicable federal, state and/or local sales, use, excise or similar taxes in connection with the sale or distribution of Goods to customers through the TPS and any services provided by TELEDRAFT hereunder (other than taxes on TELEDRAFT's income).

#### Settlement

For TPS Sales accepted by TELEDRAFT, TELEDRAFT will, on behalf of Merchant, initiate ACH entries to Merchant's Account from

customer's accounts as authorized by each customer and as directed by Merchant by and through its Merchant Administrator. For any amounts due under this ACH Processing Agreement, Merchant authorizes TELEDRAFT, Bank or TELEDRAFT's designee to initiate credit entries, debit entries and adjustments to the Merchant Account by ACH or other funds transfer, and authorizes TELEDRAFT, Bank or TELEDRAFT designee to credit or deposit funds to the Merchant Account in accordance with such credit entries and to debit, withdraw and transfer funds from the Merchant Account to TELEDRAFT, Bank or TELEDRAFT's designee in accordance with such debit entries and adjustments. This authority shall remain in effect pursuant to the Merchant Fee Schedule contained herein, and cannot be terminated by Merchant by its submission to TELEDRAFT of written notice of Merchant's cancellation or termination of such authorization. Neither TELEDRAFT nor Bank shall not be liable to Merchant for any delays in receipt or transmittal of funds or errors in credit or debit entries caused by third parties, including without limitation the ACH, any depository, or any agent of Merchant.

Merchant agrees to provide TELEDRAFT with the information it requests regarding each of Merchant's TPS Sales to its customers. In the event the information that Merchant provides to TELEDRAFT is incomplete and/or incorrect, TELEDRAFT may, in its sole discretion, request additional information from Merchant regarding the TPS Sale; however at no time is TELEDRAFT under any obligation to seek such additional information and shall not be liable for failing to make such inquiries. Any and all information solicited, received, or otherwise collected from Merchants' customers by Merchant and forwarded to TELEDRAFT, its agents and/or designees under this ACH Processing Agreement is and shall remain the sole property of TELEDRAFT.

#### Chargebacks

In its sole discretion, TELEDRAFT may immediately charge back to Merchant the face amount of any TPS Sale (a "Chargeback"). TELEDRAFT shall have the right at any time to charge Merchant for such amounts or to deduct such amounts from any funds payable to Merchant, or any account of Merchant (including, without limitation, the Merchant Account), without notice in any situation relating to such TPS Sale, including, but not limited to, circumstances where (i) Goods are not delivered or are alleged not to have been delivered to the customer or the recipient designated by the customer; (ii) Goods are returned to Merchant; (iii) Merchant has engaged in, or TELEDRAFT reasonably believes that Merchant has engaged in, an any type of dishonesty, fraud or misrepresentation, whether or not a Credit Slip is delivered to TELEDRAFT by Merchant; (iv) any TPS Sale is returned unpaid to TELEDRAFT by the customer's financial institution for insufficient funds, invalid account status, or for any other reason; (v) any TPS Sale is alleged to have been authorized improperly, or the customer's account is alleged to have been used without the specific authority of such customer, or an authorized user thereof; (vi) a Merchant's customer disputes participating in the transaction, disputes any aspect of the transaction including the sale, quality, or delivery of the Goods, or disputes the performance or quality of services covered by any such TPS Sale and accepted or not accepted by such customer; or (viii) such TPS Sale fails to comply with the terms and conditions of this ACH Processing Agreement or fails to comply with the requirements, rules and regulations of the FTC or NACHA. In the event TELEDRAFT or Bank receives an excessive number of complaints and/or requests for reversal of transactions by Merchant's customers and/or Chargebacks or other reversals of previous payments to Merchant for TPS Sales (the excessiveness of which shall be determined solely by TELEDRAFT or Bank), TELEDRAFT may suspend or terminate the TPS to Merchant immediately without prior written notice and may, in its sole discretion, retain any and all money it holds on Merchant's account and may debit any of Merchant's Accounts to cover any contemplated shortfall.

#### Billing Inquiries and Customer Disputes

Merchant and TELEDRAFT recognize that customers may direct to Merchant or TELEDRAFT inquiries and/or complaints concerning, purchases, unauthorized purchases, deliveries, returns, adjustments,



charges, credits, payments, alleged fraud and other matters, some or all of which cannot be properly answered without the full and prompt cooperation of the other party. Each party agrees to cooperate and to maintain in its own operations high standards of quality and courtesy and full compliance with law and good business practice. Merchant will provide TELEDRAFT a copy of its refund and cancellation policies prior to the Effective Date. Merchant shall not change its refund or cancellation policies without TELEDRAFT's prior written approval.

With respect to any disputes or inquiries concerning the quality of merchandise or service forward to Merchant by TELEDRAFT, Merchant shall reply in a timely manner to such disputes or inquiries directly to the customer with a copy to TELEDRAFT within a reasonable period after the date on which TELEDRAFT sends the dispute to the Merchant. If Merchant fails to comply with the TELEDRAFT disputed transaction policies in effect from time to time and that are incorporated herein by reference (a copy of which has been previously provided to Merchant), Merchant will be subject to a Chargeback.

If Merchant and a customer agree in response to a dispute or inquiry, to accept a return of Goods, or to make an adjustment to the price of Goods or to issue a refund of the price of Goods purchased pursuant to a TPS Sale, Merchant will prepare and transmit a Credit Slip to TELEDRAFT.

Merchant agrees to cooperate in good faith in any inquiry into any allegations concerning any TPS transactions or other Merchant activities. Merchant further agrees that TELEDRAFT may take any actions it deems necessary, in its sole discretion, to insure that Merchant and its employees, agents and/or designees are complying with this ACH Processing Agreement and all laws, rules and regulations governing TPS Sales. Such actions include, but are not limited to, listening to recordings of verifications of transactions, listening as sales calls are being made by Merchant, and/or requiring that Merchant records sales calls or portions of sales calls and forwarding them to TELEDRAFT immediately.

#### **Representations and Warranties**

Merchant represents and warrants that all Goods sold or distributed to customer through the TPS or through the Merchant Web Site shall conform to Merchant's own representations and warranties regarding such Goods.

Merchant represents and warrants that it shall not violate any federal, state or local governmental laws, rules and/or regulations related to selling or offering the Goods, including any laws, rules and/or regulations regarding selling over the telephone.

Merchant represents and warrants to TELEDRAFT and Bank that each telephone sale is a legitimate transaction in compliance with all applicable laws and regulations.

Merchant represents and warrants that it or any of its officers, directors, partners, proprietors, owners or principals have not been or are currently not under investigation by any governmental agency. In the event that Merchant becomes aware that it is under investigation, either through direct or indirect means, it will immediately inform TELEDRAFT in writing of the nature of such information.

Merchant represents and warrants that all statements made by Merchant to TELEDRAFT and Bank, including without limitation statements contained in applications, are true and correct. Merchant will immediately notify TELEDRAFT of any changes to any fact previously stated to TELEDRAFT.

#### **Laws, Rules and Regulations (Adherence to Laws)**

TELEDRAFT and Merchant will comply with all existing and future rules and regulations (which are incorporated herein by reference) issued by TELEDRAFT for processing of TPS Transactions. TELEDRAFT and Merchant will comply with all applicable state and

federal laws, rules and regulations affecting the use of checks, drafts and ACH transactions, and Verification Services including without limitation, rules and procedural guidelines established by the Federal Trade Commission (FTC) and other entities or laws which apply to or have regulatory authority or jurisdiction over merchants activities to include but not limited to, the National Automated Clearing House Association (NACHA), the US Federal Reserve, the GLB Act, and the Fair Credit Reporting Act and Notwithstanding the foregoing, Merchant agrees to terminate any preauthorized and/or recurring payment in the event a customer notifies Merchant of such customer's recession of such authorization at least three (3) Business Days prior to the scheduled transfer. Merchant will comply with any and all operating instructions and any amendments thereto that may be provided by TELEDRAFT during the term of this ACH Processing Agreement. Merchant acknowledges and agrees that TELEDRAFT is under no obligation to initiate or carry out any transaction where to do so could violate any local, state, national, or international law or regulation. Without the prior written consent of TELEDRAFT, Merchant will not allow customers to engage in gambling through the TPS on or through the Merchant Web Site, nor will Merchant add a surcharge or other extra fee of any kind to the sales amount when a customer is paying via the TPS. Merchant will not establish any minimum sales amount below which Merchant will not accept payment via the TPS.

Merchant acknowledges and agrees that, even if its business is domiciled in a country outside of the United States, it will adhere to U.S. laws, rules and regulations and be subject to its jurisdiction.

#### **Assistance in Litigation and Response to Court Orders and Subpoenas**

If any Merchant's act or omission causes TELEDRAFT or Bank to respond to a court order, subpoena or otherwise in litigation, Merchant shall, in addition to its duty to indemnify as set forth in Section 14 below, furnish any such information and assistance to TELEDRAFT or Bank as required. In the event that Merchant's conduct in any way results in a court order subpoena or any other process that requires TELEDRAFT or Bank to respond, Merchant shall be invoiced and shall pay for all costs and fees related to such response. These fees include, but are not limited to, attorney's fees, accounting fees, hourly costs of TELEDRAFT or Bank employees involved, any travel fees, postage and/or courier fees and any other cost or fee incurred. TELEDRAFT or Bank shall forward an invoice to Merchant and shall deduct such costs and fees from any Merchant Account. If there are insufficient funds to cover such costs and fees, TELEDRAFT and Bank shall be entitled, at their sole option, to deduct such fees from any other Merchant account, to offset from any pending or future transactions or to invoice Merchant.

#### **Term and Termination**

**Term.** This ACH Processing Agreement shall have an initial term of three (3) years and, unless thirty (30) days prior written notice is provided by either party, shall be automatically extended for successive one (1) year terms on the same terms and conditions expressed herein, or as amended by the parties in writing signed by the parties. Notwithstanding the provisions of any other agreements between Merchant and TELEDRAFT, if any, Merchant is not entitled to terminate this ACH Processing Agreement during its initial three (3) year term or during any automatically extended successive one (1) year term. TELEDRAFT shall be entitled to terminate this ACH Processing Agreement at any time with or without cause upon thirty (30) days prior written notice. In the event of a breach of this ACH Processing Agreement or suspected improper conduct by Merchant, TELEDRAFT may terminate this ACH Processing Agreement immediately without prior notice. In that case, or, if Merchant effectively ceases business activity or otherwise ceases performance of this ACH Processing Agreement through action or inaction before the expiration of the initial term or any successive term, TELEDRAFT shall have the right to retain all deposits in Merchant's Account and all reserves then held by TELEDRAFT.



**Termination: Survival.** Without limiting TELEDRAFT's right to suspend or terminate this ACH Processing Agreement as set forth herein, if either party defaults in the performance of any of its obligations hereunder, and if any such default is not corrected within thirty (30) days after it receives notice in writing, the non-defaulting party may terminate this ACH Processing Agreement upon ten (10) days prior written notice. However, this ACH Processing Agreement may immediately be terminated by TELEDRAFT (i) upon the institution by Merchant of insolvency, receivership or bankruptcy proceedings or any other proceeding for the settlement of its debts that are not dismissed or otherwise resolved in its favor within sixty (60) days thereafter; (ii) upon Merchant's making a general assignment for the benefit of creditors; or (iii) upon Merchant's dissolution or ceasing to conduct business in the ordinary course. TELEDRAFT may terminate this ACH Processing Agreement at any time without notice if Merchant has become inactive, engaged in, or TELEDRAFT reasonably believes that Merchant has engaged in, any type of dishonesty, fraud or misrepresentation in connection with making or processing of TPS Sales and/or transactions. In the event of termination or cancellation of this ACH Processing Agreement, sections that by their nature should survive, shall survive and shall continue to apply in accordance with their terms. The termination of this ACH Processing Agreement shall not affect the rights and obligations of the parties with respect to transactions and occurrences that took place prior to the date of termination, except as otherwise provided herein.

### Intellectual Property

**Confidentiality of Proprietary Information.** Each party agrees that the terms and conditions of this ACH Processing Agreement will be treated as confidential information. Merchant further understands that certain information vital to the success of TELEDRAFT is considered highly confidential and proprietary in nature, and is not to be shared, disseminated, disclosed, divulged, sold or otherwise made available to any person, firm corporation or entity either during or after this ACH Processing Agreement. Proprietary, confidential information and trade secrets include, but are not limited to, client lists, client information of any kind, price lists, training manuals, lead lists, memorandums, written documentation related to office policies or procedures, information relating in any fashion to any other TELEDRAFT client, methods, processes, compositions, pricing data, sources of supply, financial data, and marketing, production or merchandising systems or places (collectively "Confidential Information"). Merchant understands the sensitive nature of this Confidential Information and expressly agrees that for each breach or threat of breach of his or her promise to keep such Confidential Information confidential, TELEDRAFT shall be entitled to an injunction, without need to post bond, restraining Merchant from disclosing Confidential Information, or from rendering any service to any person or entity to whom said Confidential Information has been or is threatened to be disclosed. The right to secure an injunction is not exclusive and TELEDRAFT shall be entitled to pursue any other remedies it has against Merchant for a breach or threatened breach of this provision, including but not limited to the recovery of damages from Merchant for lost business and lost opportunity.

**Licenses.** Subject to the terms and conditions herein, TELEDRAFT hereby grants, and Merchant hereby accepts, a non-exclusive, non-transferable license, without right to sublicense, to use the software for the sole and limited purpose of creating and operating the Integrated Product as set forth herein (hereinafter "Software"). TELEDRAFT retains the right to materially redesign, modify, update or upgrade the organization, navigation, structure, branding, features, functionality and look and feel of the TPS at any time without prior notice.

**Ownership in Modifications and Derivative Works.** TELEDRAFT shall own all right, title, and interest in any modifications, derivatives, improvements, enhancements or extensions of or to the Software, including any related intellectual property rights throughout the world, regardless of which party creates such derivative work. Merchant hereby irrevocably transfers, conveys and

assigns to TELEDRAFT in perpetuity all right, title, and interest in such derivative works of the Software, including without limitation, all copyrights, including the right to make derivative works and collective works with respect thereto; it being understood, however, that Merchant has, and transfers, no rights with respect to the Merchant Goods (exclusive of the Software and derivative works of the Software). TELEDRAFT will have the exclusive right to apply for or register copyrights and such other proprietary protections as it wishes with respect to the derivative works of the Software. Merchant agrees to execute such documents, render such assistance, and take such other action as TELEDRAFT may reasonably request, at TELEDRAFT's expense, to apply for, register, perfect, confirm, and protect TELEDRAFT's rights in the derivative works of the Software including (without limitation) an assignment of copyright and/or release of any other intellectual property rights associated with the Software or Integrated Product. Without limiting the foregoing, TELEDRAFT will have the exclusive right to commercialize, prepare and sell products based upon, sublicense, prepare derivative works from, or otherwise use or exploit the derivative works of the Software. Merchant hereby waives any and all moral rights, including any right to identification of authorship or limitation on subsequent modification that Merchant (or its employees, agents or

consultants) has or may have in any derivative works of the Software. Merchant will not remove, modify, or obscure any copyright or other proprietary notices on the TELEDRAFT materials.

**Trademarks.** Merchant may only use TELEDRAFT's trademarks, trade names, services marks and/or logos (collectively "Trademarks") with TELEDRAFT's prior written approval for each specific use of its Trademark. Nothing herein will grant to Merchant any right, title or interest in Trademarks of TELEDRAFT or any good will arising from use of the TELEDRAFT Trademarks. Merchant agrees not to challenge the validity of or attempts to register any Trademark of the other party, nor will it adopt any derivative or confusingly similar trademarks, brands or marks or create any combination marks with any TELEDRAFT Trademark. If given written approval, Merchant will use the Trademarks only in accordance with TELEDRAFT's trademark usage policies as such may be in effect from time to time and only in accordance with the provision of the terms of this ACH Processing Agreement. If at any time TELEDRAFT believes that the use of its Trademarks by Merchant fails to otherwise comply with the trademark usage guidelines, such party shall so notify the other party in writing. Upon receipt of such notification, Merchant shall immediately initiate steps to conform to the trademark usage guidelines and shall affect such conformance or cure within fifteen (15) days.

### No Warranty

Merchant acknowledges and agrees that neither TELEDRAFT nor Bank has control over the conditions under which Merchant uses the payment processing system, and does not and cannot warrant the results obtained by such use. **TELEDRAFT AND BANK DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PROCESSING AND/OR TELEDRAFT'S OR BANK'S SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES AGAINST INFRINGEMENT OF THIRD-PARTY RIGHTS OR THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER TELEDRAFT NOR BANK WARRANTS THAT OPERATION OF THE PAYMENT PROCESSING SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. MERCHANT ACKNOWLEDGES THAT THE PAYMENT PROCESSING SYSTEM IS PROVIDED FOR USE BY MERCHANT "AS IS." MERCHANT FURTHER ACKNOWLEDGES THAT NEITHER TELEDRAFT NOR BANK BEARS ANY RESPONSIBILITY FOR THE MERCHANT WEB SITE(S). MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION FOR PAYMENT IS NEITHER A WARRANTY THAT THE PERSON PRESENTING THE AUTHORIZATION IS THE RIGHTFUL ACCOUNT HOLDER NOR A PROMISE OR GUARANTEE BY**

TELEDRAFT OR BANK THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION. MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT CHARGEBACK OF A PREVIOUSLY AUTHORIZED TRANSACTION PURSUANT TO THIS ACH PROCESSING AGREEMENT.

#### Limitation of Liability

IN NO EVENT SHALL TELEDRAFT'S OR BANK'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS ACH PROCESSING AGREEMENT FROM ANY CAUSE, EXCEED THE TOTAL MERCHANT FEES PAID BY MERCHANT TO TELEDRAFT UNDER THIS ACH PROCESSING AGREEMENT FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE DISPUTE AND/OR CAUSE OF ACTION AROSE. IN ADDITION, IN NO EVENT SHALL TELEDRAFT, BANK OR THEIR RESPECTIVE AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES OR LOSS OF PROFITS), EVEN IF TELEDRAFT, BANK, THEIR RESPECTIVE AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNDER ANY CONTRACTUAL, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE TRANSACTION, SERVICES AND/OR PRODUCTS, OR ANY OTHER SUBJECT MATTER OF THIS ACH PROCESSING AGREEMENT. MERCHANT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING SERVICES OR PRODUCTS TO MERCHANT OR ITS CUSTOMERS OR ANY OTHER PERFORMANCE UNDER THIS ACH PROCESSING AGREEMENT. It is agreed that in no event will TELEDRAFT or Bank be liable for any claim, loss, billing error, damage, or expense caused by TELEDRAFT's or Bank's performance or failure to perform hereunder that is not reported in writing by Merchant to TELEDRAFT within thirty (30) days of such failure to perform or, in the event of a billing error, within sixty (60) days of the date of the invoice or applicable statement. However, under no circumstances will TELEDRAFT or Bank be liable to Merchant for delays in data transmission.

#### Indemnity

Merchant agrees to indemnify, defend and hold TELEDRAFT, Bank and their respective officers, directors, agents and employees, harmless from and against any liability, claims, demands, costs, loss, damages and/or reasonable attorney's fees incurred or suffered by TELEDRAFT or Bank as a result of or arising from Merchant's conduct of its business, any transactions processed under this ACH Processing Agreement, Merchant's breach of any obligations or provisions under this ACH Processing Agreement or Merchant's violation of applicable law, regulation or rule. In the event that TELEDRAFT or Bank receives any claim or demand or becomes subject to any suit, proceeding or other action under which a claim of indemnification may be made by TELEDRAFT or Bank under this ACH Processing Agreement, TELEDRAFT or Bank shall (a) promptly notify Merchant in writing of the claim or legal action; (b)

reasonably cooperate with Merchant in the making of any of Merchant's claims or defenses if such cooperation does not conflict with TELEDRAFT's or Bank's position; and (c) provide information, assist in the resolution of the claim and make available at least one employee or agent who can testify regarding said claims or defenses if such information, and assistance does not conflict with TELEDRAFT's or Bank's position. Any and all costs for responding to court orders of any type including subpoenas for transactions generated by Merchant or from doing business with Merchant shall be due and payable to TELEDRAFT or Bank upon demand. Such costs include but are not limited to attorney's fees, administrative costs and costs for employee time relative to such response. The Merchant shall, upon written notice from TELEDRAFT or Bank, immediately undertake payment to counsel selected by TELEDRAFT or Bank for the defense of any such claim or action. If Merchant wishes to settle any such claim involving TELEDRAFT or Bank, Merchant shall obtain TELEDRAFT's or Bank's prior written approval of such settlement.

#### General Provisions

TELEDRAFT reserves the right to amend at any time and from time to time any term or condition of this ACH Processing Agreement including, without limitation, transaction fees by providing Merchant written notice, and such amendments shall be effective thirty (30) days following said notice. If TELEDRAFT so amends this ACH Processing Agreement, Merchant shall have the right to terminate this ACH Processing Agreement if Merchant provides written notice to TELEDRAFT within said thirty (30) day period. TELEDRAFT may use designees to assist in the performance of TELEDRAFT's obligations hereunder and, notwithstanding any other provision of this ACH Processing Agreement, TELEDRAFT may delegate any of its obligations hereunder to such designees. Merchant may not assign or delegate any rights or obligations under this ACH Processing Agreement without TELEDRAFT's prior written approval. Nonperformance by either party will be excused, except Merchant's obligation to pay under this ACH Processing Agreement, to the extent that performance is rendered impossible by any force majeure event and not caused by the gross negligence or willful misconduct of the non-performing party. The relationship of the parties established by this ACH Processing Agreement is that of independent contractors. This ACH Processing Agreement will be governed by and construed under the laws of the State of Arizona without reference to conflict of law principles. The parties agree that jurisdiction shall be in Superior Court of the State of Arizona and that venue shall be in Maricopa County. This ACH Processing Agreement, together with all exhibits and attachments hereto, sets forth the entire Agreement and understanding of the parties relating to the subject matter herein (other than agreements relating to confidentiality) and merges all prior discussions between them. Except as otherwise specifically provided in this ACH Processing Agreement, no modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by both parties, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default. If any provision in this Agreement is found invalid by a court of competent jurisdiction, such provision will be construed, if feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement.

#### Notice Address for TELEDRAFT:

TELEDRAFT, Inc  
Attn: Al Slaten  
4625 So. Wendler Dr. Suite 204  
Tempe, AZ 85282  
Phone: 602 454-9575  
Fax: 602 454-9576

## Authorizations and Representations

- 1.) This complete and legible ten (10) page Merchant Application for ACH Origination, Teledraft ACH Processing Agreement and Merchant Fee Schedule serves as the entire "Agreement" between Teledraft, Bank and the Merchant named herein. Merchant acknowledges that this document has been provided to the applying entity and Merchant agrees to be bound by all governing terms and conditions contained herein, effective as of date of signature. It is understood that no strikeouts, interlineations, additions or modification to this preprinted Merchant Application for ACH Origination and ACH Processing Agreement may be made and that this "Agreement" may be transmitted to or from Teledraft and/or retained electronically by Teledraft, which will constitute an original. Merchant acknowledges that they will not receive a countersigned agreement from TELEDRAFT unless such is requested by the merchant in writing.
- 2.) The information provided herein is provided for the sole purpose of establishing ACH origination privileges and utilized confidentially and exclusively by Teledraft and its sponsoring financial institutions in order to determine eligibility. Merchant agrees that all the information provided herein is truthful and accurate.
- 3.) Corporate and personal credit and criminal background inquiries on both the legal entity contracting for payment services with Teledraft and the designated Principals of that entity are required for all private corporations and certain not for profit organizations (501 C-3 Tax Entities). The objective of these inquiries is to confirm that the entity and principals meet Teledraft's qualifications to originate Automated Clearing House (ACH) debit and credit transactions and to comply with Teledraft's and its affiliated bank's OFAC (Office of Foreign Asset Control) and KYC (Know Your Customer) requirements. All inquiries and information is for the sole purpose of determining merchant qualifications, to comply with Federal Regulations and act in concert with payments and financial services industry "best practices". The acquisition of all such information shall be in strict compliance with the Fair Credit Reporting Act (FCRA) and Bank Secrecy Act (BSA).  
  
By signing this "Agreement", the principal(s) of the applying entity and as an authorized officer of such, hereby authorizes Teledraft to conduct the credit and background inquiries for the above stated purposes.
- 4.) Merchant authorizes Teledraft Inc. to collect fees and charges via an electronic ACH (Automated Clearing House) debit from the bank account(s) indicated herein on a periodic basis as they become due and payable, and signer(s) attests to be a duly authorized signatory on the bank account indicated for such transactions.
- 5.) Signer(s) asserts that he or she is a duly authorized officer or representative of Merchant.

Principal One	Signature	Date	Principal Two	Signature	Date
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No Personal Guarantee for Govt.

## Personal Guarantee

I/We hereby guarantee to Teledraft, Inc., its successors and assigns, the full, prompt, and complete performance of Merchant and all of Merchant's obligations under the Merchant Application for ACH Origination and Teledraft ACH Processing Agreement ("Agreement"), including but not limited to all monetary obligations arising out of Merchant's performance or non-performance under the "Agreement", whether arising before or after termination of the "Agreement". This guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of the "Agreement", unless specifically discharged or amended. I/We understand that my/our obligations are independent of Merchant obligations. I/We understand that I/we have no right to enforce a remedy which Teledraft, Inc. now has, or may later have, against Merchant or to participate in security now or later held by Teledraft, Inc. I/We hereby waive any notice of acceptance of this guaranty, notice of nonpayment or nonperformance of any provision of the "Agreement" by Merchant, and all other history, business relationships, and employment information. I/We have read, understand, and agree to be bound by the Terms and Conditions provided to the Merchant and those terms and conditions contained in the Merchant Application for ACH Origination and Teledraft ACH Processing Agreement ("Agreement").

<p>N/A</p> <p>_____ Signature of Guarantor, an individual</p> <p>_____ Date</p> <p>_____ Printed Name</p> <p>_____ Title</p>	<p>N/A</p> <p>_____ Signature of Guarantor, an individual</p> <p>_____ Date</p> <p>_____ Printed Name</p> <p>_____ Title</p>
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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: Adopt a resolution supporting the 4-H Club and the use of the Civic Center on designated dates.**

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

**PREFERRED MEETING DATE REQUESTED: October 27, 2009**

**AMOUNT REQUIRED: none**

**LINE ITEM NUMBER OF FUNDS REQUIRED: N/A**

**REQUESTED BY: Conley/Ingalsbe**

**SPONSORED BY: Conley/Ingalsbe**

**SUMMARY:**

**See attached resolution.**





**A Resolution of the Hays County Commissioners' Court  
Supporting the 4-H Club and the Use of the Hays County Civic Center  
on Designated Dates**

**STATE OF TEXAS       §  
                                  §  
COUNTY OF HAYS     §**

**Whereas**, there are 10 4-H clubs that meet across Hays County. These clubs offer a variety of life skill training to its members through the dedication of adult volunteer leaders; and

**Whereas**, 4-H is the largest youth development program in the United States, with membership more than seven million. Nearly 60 million young people across America have been 4-H members since the program began in 1902; and

**Whereas**, 4-H members are guided through a network of 3,600 professional educators associated with 106 State Land-Grant Universities. The Texas 4-H program is supported by the Texas A&M University System through the Texas AgriLife Extension Service staff in each of the 254 counties; and

**Whereas**, the symbol of the 4-H program is a green four leaf clover with an "H" on each leaf. Each "H" stands for head, heart, hands and health; and

**Whereas**, 4-H engages youth in hands-on learning projects and activities. Hays County 4-H programs include livestock, foods and nutrition, dog training, clothing and textiles, shooting sports, aquatic science, public speaking, leadership, horse and horticulture.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS:** Our support of the 4-H Club and the use of the Hays County Civic Center on the last Saturday's of February and March.

ADOPTED THIS THE 27TH DAY OF OCTOBER, 2009

\_\_\_\_\_  
**Elizabeth "Liz" Sumter**  
Hays County Judge

\_\_\_\_\_  
**Debbie Gonzales Ingalsbe**  
Commissioner, Pct. 1

\_\_\_\_\_  
**Jefferson W. Barton**  
Commissioner, Pct. 2

\_\_\_\_\_  
**Will Conley**  
Commissioner, Pct. 3

\_\_\_\_\_  
**Karen Ford**  
Commissioner, Pct. 4

**ATTEST:**

\_\_\_\_\_  
**Linda C. Fritsche**  
Hays County Clerk



## *Agenda Item Request Form*

### **Hays County Commissioners' Court**

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**AGENDA ITEM:** 30-minute workshop on the new Hays County Web site that is in development.

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

**PREFERRED MEETING DATE REQUESTED:** **October 27, 2009**

**AMOUNT REQUIRED:** **NA**

**LINE ITEM NUMBER OF FUNDS REQUIRED:** **NA**

**REQUESTED BY:** **Baen**

**SPONSORED BY:** **Sumter**

**SUMMARY:** As a follow-up to individual meetings with Court members, other elected officials and department heads, IT webmaster Rafael Marquez and HR communications specialist Laureen Chernow will brief the Court on updated and new content added to the existing Web site as well as the new design and functionality that will be rolled out in October, and address any questions.

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:** Workshop to discuss performance appraisal system, evaluation forms, format and schedules, as well as overall County goals and objectives and their relation to department goals. In preparation for upcoming individual department head reviews, court may adjourn into executive session.

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

☒ **WORKSHOP**

☐ **PROCLAMATION**

**PRESENTATION**

**PREFERRED MEETING DATE REQUESTED:** Tuesday, October 27, 2009

**AMOUNT REQUIRED:** na

**LINE ITEM NUMBER OF FUNDS REQUIRED:** na

**REQUESTED BY:** Baen

**SPONSORED BY:** Ford

