

**Commissioners Court -January 26, 2010
NOTICE OF A MEETING OF THE
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS**



This Notice is posted pursuant to the Texas Open Meetings Act. (VERNONS TEXAS CODES ANN. GOV. CODE CH.551). The Hays County Commissioners Court will hold a meeting at **9:00 A.M.** on the **26TH day of January, 2010**, 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	Presentation of Retirement Gift to Tom Tvrdik. SUMTER
---	---	--

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	4	Approve payments of county invoices. HERZOG
3	5-9	Approve Commissioner Court Minutes of January 19, 2010. SUMTER/FRITSCH
4	10-11	Approve purchasing a filing cabinet instead of a Desk for Treasurer's Office and amend the budget accordingly. SUMTER/TUTTLE
5	12-14	Approve additional funds for equipment for DPS radar and amend the budget accordingly. SUMTER/JAIRAL/HERZOG
6	15-18	Discussion and possible action to authorize the County Judge to accept and execute Grant Award from the Texas Judicial Council Task Force on Indigent Defense for \$68,346. SUMTER/HAUFF

SUBDIVISIONS

7	19-21	09-4-32 Polo Club Center Subdivision. Discussion and possible action to consider approval of preliminary plan. FORD/GARZA
8	22-24	08-3-58 Re-subdivision of a 10.13 acre portion of land, River Oaks of Wimberley, Unit 1, Section 2. Discussion and possible action to consider approval of Final Plat. CONLEY/GARZA

MISCELLANEOUS

9	25-60	Discussion and possible action to authorize the County Judge to execute an Interlocal (Grant) Contract with the Capital Area Council of Governments (CAPCOG) for funding to conduct a Household Hazardous Waste Collection Event in northern Hays County, in the amount of \$27,000, and amend the budget accordingly. FORD/HAUFF/PINNIX
10	61	Discussion and possible action to designate a task force on Records Management for Hays County in order to study situation, needs and bring recommendations to the Court. FORD
11	62-65	Discussion and possible action of County Jail facility repair progress and presentation to the Texas Commission on Jail Standards on February 4, 2010. SUMTER
12	66	Discussion and possible action to accept recommendations from the Real Estate RFQ review team and/or the selected respondents. FORD/CONLEY
13	67-75	Discussion and possible action to authorize the County Judge to execute a Memorandum of Understanding between Hays County and the Dahlstrom family for the lease of approximately 360 acres that will serve as a public access open-space project. BARTON

14	76-120	Discussion and possible action to authorize the County Judge to execute a contract for Design/Build Services related to expansion of the RPTP facility on Yarrington Road. INGALSBE
15	121-149	Discussion and possible action to change the personnel position in the Hays County Sheriff's Department that is funded by the ALERRT program and accept the sub Awards from Texas State University and amend the budget accordingly. BARTON/DAVENPORT
16	150-151	Discussion and possible action to approve a change order to the contract for the roof replacement or go out for bid for additions at the Law Enforcement Center. INGALSBE
17	152-156	Discussion and possible action to approve further departmental reorganization for the Development Services Division of the Resource Protection, Transportation, and Planning (RPTP) Department and the proposed related job description. FORD/BORCHERDING/WRIGHT
18	157-163	Discussion and possible action to pass a Resolution by Commissioners Court of Hays County, Texas approving and authorizing publication of notice of intention to issue one or more series of certificates of obligations; complying with the requirements contained in securities and exchange commission rule 15c2-12; and resolving other matters in connection therewith. SUMTER

WORKSHOP

19	164	10AM - Discussion about future debt, its impacts and possible strategies to deal with its budget impacts. Possible action may follow. SUMTER
20	165	1:30PM – Presentation regarding collective bargaining by Lowell Denton from Denton, Navarro, Rocha, and Burnell, PC, Attorneys at Law. Possible action may follow. SUMTER

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.

21	166	Executive Session pursuant to 551.071 of the Texas Government Code, regarding THK, L.L.C vs. Hays County and pending litigation related thereto. SUMTER
22	167	Executive Session pursuant to 551.071 of the Texas Government Code: consultation with counsel regarding collective bargaining. Possible action may follow in open Court. SUMTER

STANDING AGENDA ITEM

23		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. INGALSBE
----	--	---

ADJOURNMENT

Posted by 5:00 o'clock P.M. on the 22nd day of January, 2010.

COMMISSIONERS COURT, HAYS COUNTY, TEXAS

CLERK OF THE COURT

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

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Presentation of Retirement Gift to Tom Tvrdik

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

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

PREFERRED MEETING DATE REQUESTED: Tuesday, January 26, 2010

AMOUNT REQUIRED: 0

LINE ITEM NUMBER OF FUNDS REQUIRED: -

REQUESTED BY:

SPONSORED BY: Sumter

SUMMARY: Tom Tvrdik has 23 years and 11 months of service with Hays County. He joined the County on March 3, 1986. This presentation in Court is to thank and honor Tom Tvrdik for his years of service.

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: 1/26/10

AMOUNT REQUIRED: None

LINE ITEM NUMBER OF FUNDS REQUIRED: As attached.

REQUESTED BY: Auditor's Office

SPONSORED BY: Bill Herzog 

SUMMARY:

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: APPROVE COMMISSIONERS COURT MINUTES OF JANUARY 19, 2010

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

PREFERRED MEETING DATE REQUESTED: JANUARY 26, 2010

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: FRITSCH

SPONSORED BY: SUMTER

SUMMARY:



JANUARY 19, 2010

VOLUME U PAGE 273

STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 19TH DAY OF JANUARY A.D., 2010, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

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

AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

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

26770 ADOPT A PROCLAMATION DECLARING CANCER AWARENESS MONTH FOR APRIL 2010

A motion was made by Judge Sumter, seconded by Commissioner Ford to adopt a Proclamation declaring Cancer Awareness Month for April 2010. All voting "Aye". MOTION PASSED

PRESENTATION BY LUANNE CARAWAY, TAX ASSESSOR ABOUT PROPERTY TAX REVENUE COLLECTIONS

Tax Assessor-Collector Luanne Caraway spoke of Hays County and other entities showing an increase in tax collection compared to last year figures. In July 2009 county collection was at 98%.

26771 ADOPT A PROCLAMATION DECLARING JANUARY 19, 2010 AS ALERRT DAY

Former Sheriff Don Montague and former San Marcos Police Officer Terry Nichols spoke of growth of the ALERRT program. A motion was made by Commissioner Conley, seconded by Commissioner Barton to adopt a Proclamation declaring January 19, 2010 as ALERRT Day. All voting "Aye". MOTION PASSED

26772 APPROVE PAYMENTS OF COUNTY INVOICES

A motion was made by Commissioner Ford, seconded by Commissioner Barton to approve payment of county invoices in the amount of \$1,074,608.26 as submitted by the County Auditor. All voting "Aye". MOTION PASSED

26773 APPROVE COMMISSIONER COURT MINUTES OF JANUARY 12, 2010

A motion was made by Commissioner Ford, seconded by Commissioner Barton to approve Commissioner Court Minutes of January 12, 2010 as presented by the County Clerk. All voting "Aye". MOTION PASSED

26774 APPROVE UTILITY PERMITS

A motion was made by Commissioner Ford, seconded by Commissioner Barton to approve utility permit #801 on Bunton Lane issued to PEC; permit #802 on Wayside Drive issued to Verizon; permit #803 on Old Red Ranch Road issued to PEC as submitted by the County Road Department. All voting "Aye". MOTION PASSED

26775 ACCEPT TJPC COMMITMENT REDUCTION PROGRAM GRANT FUNDING AND AMEND THE BUDGET ACCORDINGLY

A motion was made by Commissioner Ford, seconded by Commissioner Barton to accept TJPC Commitment Reduction Program Grant Funding and amend the budget accordingly. All voting "Aye". MOTION PASSED



26776 AMEND BUDGET FOR THE TJPC ICBP GRANT IN ORDER TO PURCHASE EQUIPMENT FOR THE GED PROGRAM

A motion was made by Commissioner Ford, seconded by Commissioner Barton to amend budget for the TJPC ICBP Grant in order to purchase equipment for the GED Program. All voting "Aye". MOTION PASSED

26777 AUTHORIZE INFORMATION TECHNOLOGY TO DISPOSE OF COMPUTER EQUIPMENT

Goodwill has expressed an interest in receiving the computer equipment from the County. IT has stripped the equipment of any usable parts. The recommendation to the court would be to dispose of the equipment as worthless (pursuant to LGC 263.152 - Disposition (3) and send to Goodwill for recycling. A motion was made by Commissioner Ford, seconded by Commissioner Barton to authorize Information Technology to dispose of computer equipment. All voting "Aye". MOTION PASSED

26778 APPROVE A RESOLUTION TO HAVE HAYS COUNTY CONSTRUCT, IMPROVE, OR REPAIR ROADS UNDER AN INTERLOCAL CONTRACT WITH THE CITY OF MOUNTAIN CITY, TEXAS

A motion was made by Commissioner Ford, seconded by Commissioner Barton to approve a Resolution to have Hays County construct, improve, or repair roads under in an Interlocal Contract with the City of Mountain City, Texas. All voting "Aye". MOTION PASSED

26779 ACCEPT ROAD AND DRAINAGE IMPROVEMENTS IN SAVANNAH RIDGE SUBDIVISION, SECTION ONE AND ACCEPT SAME INTO THE COUNTY ROAD MAINTENANCE SYSTEM

A motion was made by Commissioner Ford, seconded by Commissioner Barton to accept road and drainage Improvements in Savannah Ridge Subdivision, Section One and accept same into the County Road Maintenance System. All voting "Aye". MOTION PASSED

26780 APPROVE THE NAMING OF A PRIVATE DRIVE IN THE HAYS COUNTRY OAKS SUBDIVISION [T1-480]

A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve the naming of a Private Drive in the Hays Country Oaks Subdivision as "Zach's Path". All voting "Aye". MOTION PASSED

26781 AUTHORIZE THE COUNTY JUDGE TO EXECUTE CHANGE ORDERS #1 & #2 TO THE CONSTRUCTION CONTRACT WITH HARRIS ROAD COMPANY, INC. IN THE TOTAL AMOUNT OF \$33,300.00 FOR THE FIVE MILE DAM PARK PHASE 2 (BUILDING) PROJECT [T1-2272]

Grants Administrator Jeff Hauff spoke of three separate projects that are ongoing. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Ford to authorize the County Judge to execute Change Orders #1 & #2 to the Construction Contract with Harris Road company, Inc. in the total amount of \$44,300.00 for the Five Mile Dam park Phase 2 (Building) Project. All voting "Aye". MOTION PASSED

26782 AUTHORIZE THE COUNTY JUDGE TO EXECUTE CHANGE ORDERS #1 - #3 TO THE CONSTRUCTION CONTRACT WITH HARRIS ROAD COMPANY, INC. IN THE AMOUNT OF \$24,752.50 FOR THE FIVE MILE DAM PARK PHASE 2 (SITE) PROJECT [T1-2340]

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Barton to authorize the County Judge to execute Change Orders #1 - #3 to the Construction Contract with Harris Road Company, Inc. in the amount of \$24,752.50 for the Five Mile Dam Park Phase 2 (site) Project. All voting "Aye". MOTION PASSED



- 26783 AUTHORIZE PAYMENT OF \$500.00 TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY FOR AN EXCEPTION REQUEST REVIEW FOR THE WATER POLLUTION ABATEMENT PLAN, UNDER THE EDWARDS AQUIFER PROTECTION PROGRAM, FOR THE SPRING LAKE PRESERVE PROJECT, AND TO AUTHORIZE THE GRANTS ADMINISTRATOR TO SIGN DOCUMENTS ASSOCIATED WITH THIS REVIEW [T1-1943]**

Grants Administrator Jeff Hauff spoke. A motion was made by Commissioner Conley, seconded by Commissioner Ford to authorize payment of \$500.00 to the Texas Commission on Environmental Quality for an exception request review for the Water Pollution Abatement Plan, under the Edwards Aquifer Protection Program, for the Spring Lake Preserve Project, and to authorize the Grants Administrator to sign documents associated with this review. All voting "Aye". MOTION PASSED

- 26784 PROVIDE AN ADMINISTRATIVE VARIANCE TO SUBCHAPTER 5 OF CHAPTER 701 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS AND DIRECTING STAFF TO SUBMIT A LIST OF POSSIBLE AMENDMENTS TO THE COURT FOR FUTURE CONSIDERATION [T1-2356]**

A motion was made by Commissioner Conley, seconded by Judge Sumter to provide an Administrative Variance to Subchapter 5 of Chapter 701 of the Hays County Development Regulations and directing staff to submit a list of possible amendments to the Court for future consideration. All voting "Aye". MOTION PASSED

- 26785 APPROVE RESOLUTION AUTHORIZING THE COUNTY JUDGE TO SUBMIT A GRANT APPLICATION TO THE TEXAS WATER DEVELOPMENT BOARD, FLOOD PROTECTION PLANNING PROGRAM FOR UP TO \$175,000.00 AND TO SIGN ALL DOCUMENTS ASSOCIATED WITH THIS APPLICATION [T1-1988]**

Grants Administrator Jeff Hauff spoke of this project (flood protection planning study associated with waterways in northern Hays County that drain into the Colorado River and addresses both the Pedernales and Barton Creek drainage basins). \$130,000 has been budgeted, therefore an additional \$45,000 is needed. A motion was made by Commissioner Ford, seconded by Judge Sumter to approve Resolution authorizing the County Judge to submit a Grant Application to the Texas Water Development Board, Flood Protection Planning Program for up to \$175,000 and to sign all documents associated with this Application. All voting "Aye". MOTION PASSED

- 26786 AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN INTERLOCAL DEVELOPMENT AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS, TEXAS RELATED TO THE GOVERNMENT CENTER PROJECT ON STAGECOACH TRAIL IN SAN MARCOS [T1-1371]**

Special Counsel Mark Kennedy spoke of proposed changes in the contract that have not yet been approved by the City of San Marcos. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Conley to authorize the County Judge to execute an Interlocal Development Agreement between Hays County and the City of San Marcos, Texas related to the Government Center Project on Stagecoach Trail in San Marcos. All voting "Aye". MOTION PASSED

- 26787 APPROVE THE MEMORANDUM OF UNDERSTANDING IN AND BETWEEN THE CITY OF SAN MARCOS, TEXAS STATE UNIVERSITY AND HAYS COUNTY [T1-492]**

Eric Mendelman, Program Manager-River Systems Institute/Texas State University, spoke. Commissioner Conley and Commissioner Ford spoke of co-funding/cooperative effort between all three entities (Hays County, City of San Marcos, and Texas State University). A motion was made by Judge Sumter, seconded by Commissioner Conley to approve the Memorandum of Understanding in and between the City of San Marcos, Texas State University and Hays County. All voting "Aye". MOTION PASSED

- 26788 APPROVE OUT OF STATE TRAVEL FOR A REPRESENTATIVE OF THE SHERIFF'S DEPARTMENT [T1-1305]**

Out of State travel request was made for Erica Carpenter to attend a Navigator Training session in regards to communication and dispatch in Orlando Florida. A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve out of state travel for a representative of the Sheriff's Department. All voting "Aye". MOTION PASSED



26789 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A LETTER OF INTENT BETWEEN J.E. DUNN CONSTRUCTION AND HAYS COUNTY FOR CONSTRUCTION RELATED TO CAPITAL IMPROVEMENTS IN THE HAYS COUNTY CORRECTIONS FACILITY
[T1-835]

Phil Butterbaugh (Broadus & Assoc.) spoke. Special Counsel Mark Kennedy spoke of costs. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Barton to authorize the County Judge to execute a Letter of Intent between J.E. Dunn Construction and Hays County for construction related to Capital Improvements in the Hays County Corrections Facility in an amount not to exceed \$200,000.00. All voting "Aye". **MOTION PASSED**

WORKSHOP ON SUBJECT OF RECORDS MANAGEMENT - INCLUDING BUT NOT LIMITED TO LEGAL REQUIREMENTS, BEST MANAGEMENT PRACTICES, COSTS & FUNDING AND COMPLIANCE ISSUES. POSSIBLE ACTION MAY FOLLOW [T1-2693]

Arann Sheperd from the Texas State Library & Archives Commission gave a powerpoint presentation regarding "Basic Records Management". Steven Broberg, Travis County Records Management Department, spoke of his experience in records management and he explained the program in Travis County. He suggested that the county hire a Records Manager (duties would be to manage the records, archives, & law library). A study is needed of records that have been scanned and those that need to be scanned. Commissioner Conley left at this time. Judge Sumter spoke of need to put together a records management task force.

EXECUTIVE SESSION PURSUANT TO 551.074 OF THE TEXAS GOVERNMENT CODE, TO DISCUSS PERSONNEL MATTERS AND TO DELIBERATE THE EVALUATION OF ALL INDIVIDUAL DEPARTMENT HEADS

Court convened into closed executive session at 11:45 a.m. and reconvened into open meeting at 12:45 p.m. and then again the Court convened into closed executive session at 3:36 p.m. and reconvened into open meeting at 5:07 p.m. No action taken.

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 JANUARY 19, 2010.



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



Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Allow Treasurer's Office to purchase a filing cabinet instead of a Desk

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

PREFERRED MEETING DATE REQUESTED: 1/26/10

AMOUNT REQUIRED: \$ 580.00

LINE ITEM NUMBER OF FUNDS REQUIRED: 001-602-00.57 11

REQUESTED BY: Michele Tuttle, Hays County Treasurer

SPONSORED BY: JUDGE SUMTER

SUMMARY:

We were approved for a desk in the 2010 budget for \$500. We were able to acquire one of the county's used desks and do not need a new one. We do need a filing cabinet and respectfully request to be allowed to purchase a four drawer lateral filing cabinet for \$580 instead of the desk. We are requesting \$80 additional for the difference in the purchase.

Agenda Item Routing Form

DESCRIPTION OF Item: Approve purchase a filing cabinet instead of a Desk for Treasurer's Office.

We were approved for a desk in the 2010 budget for \$500. We were able to acquire one of the county's used desks and do not need a new one. We do need a filing cabinet and respectfully request to be allowed to purchase a four drawer lateral filing cabinet for \$580 instead of the desk.

We are requesting \$80 additional for the difference in the purchase.

PREFERRED MEETING DATE REQUESTED: January 26, 2010

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$80.00 01-602-00.5711

COUNTY PURCHASING GUIDELINES FOLLOWED: ____ Yes ____

PAYMENT TERMS ACCEPTABLE: ____ Yes ____

COMMENTS: This will require a budget amendment to transfer funds from office supplies (5211) to equipment (5711) for \$80.

Bill Herzog

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE: ____

COMMENTS:

COMMISIONERS' COURT

APPROVED/DISAPPROVED AND DATE: ____

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: ____

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Approve additional funds for equipment for Dept. of Public Safety radar and amend from within department

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

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: \$14 from 001-650-00.5717 Law Enforcement Eqpt.

LINE ITEM NUMBER OF FUNDS REQUIRED: \$14 from 001-650-00.5212 Postage

REQUESTED BY: Sgt. Jiral/Auditor's Office

SPONSORED BY: Sumter

SUMMARY: Policy is that payment will not exceed amount budgeted for equipment items, this will allow payment for radar that is above budgeted funds, if approved.

Agenda Item Routing Form

DESCRIPTION OF Item: Approve additional funds for equipment for DPS radar and amend from within department.

PREFERRED MEETING DATE REQUESTED: January 26, 2010

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$14 001-650-00.5212

COUNTY PURCHASING GUIDELINES FOLLOWED: ____ Yes ____

PAYMENT TERMS ACCEPTABLE: ____ Yes ____

COMMENTS: This radar equipment had a price increase since being approved in the budget last summer. It is recommended that \$14 be transferred from Postage (5212) to Law Enforcement Equipment (5717).

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: ____

10 MOVE WITHIN SAME CATEGORY:

- ① Salary & Related
- ② Supplies & Svcs
- ③ Continuing Ed
- ④ EQPT & Related

Line-item Budget Amendment

(*must be within the same category)

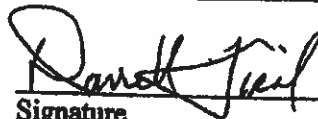
Date: 1/6/09

Please make the following line-item transfer(s) to my departmental budget as stated below;

FUND: 001

DEPT: 650 Dept of Public Safety - Highway Patrol

	ACCT. #	DESCRIPTION	AMOUNT
From:	04-650-00.5212	POSTGE	<14>
To:	001-650-00.5717	LAWFEN EQPT	14
Reason:	to pay bal of Radar -		
From:		Budget -1750	
To:		New Cost -1764	
Reason:			
From:			
To:			
Reason:			
From:			
To:			
Reason:			


Signature

Elected Official/Department Head
(if emailing form, please type name in signature field)

Date Received in Auditor's Office: 1/6/10

Date Entered into System: _____

Signature
County Auditor's Office

*interoffice form or email to Berry James @ bjames@co.hays.tx.us FAX 512 313-2279

(*category amendments must be approved by the Court - contact the Judge's office for agenda item)

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 accept and execute grant Award from the Texas Judicial Council Task Force on Indigent Defense for \$68,346.

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Hauff

SPONSORED BY: Sumter

SUMMARY: On October 6, 2009 Commissioner's Court authorized submission of a grant application to the Texas Task Force on Indigent Defense. The statement of award FY 2010 which is attached. The award amount is based on initial funds budgeted by the Task Force on Indigent Defense- in the amount of \$68,346.00-and must be signed and returned by February 13, 2010.

The 2009 Biennial Indigent Defense Plan submission is pending and funds will not be disbursed until all conditions indicated on the statement of Grant Award have been met.



RECEIVED
01-14-2010

TEXAS TASK FORCE ON INDIGENT DEFENSE
205 West 14th Street, Suite 700 Tom C. Clark Building (512)936-6994
 P.O. Box 12066, Austin, Texas 78711-2066
 www.courts.state.tx.us/tfid

CHAIR:
 THE HONORABLE SHARON KELLER
 Presiding Judge, Court of Criminal Appeals

DIRECTOR:
 MR. JAMES D. BETHKE

VICE CHAIR:
 THE HONORABLE OLEN UNDERWOOD

Dear JudgeSumter:
 Via FAX:5123932282

I am pleased to inform you that the Texas Task Force on Indigent Defense has awarded Hays County a formula grant estimated to be \$68346. The *Statement of Grant Award FY2010 Formula Grant* is attached. Please have the person designated by your FY10 Formula Grant commissioners' court resolution sign the Statement of Grant Award and return it via fax to (512) 475-3450. You do not need to mail the original.

Many statements contain special conditions because of courts hearing felony, misdemeanor or juvenile cases are required to submit the Biennial Indigent Defense Plan. The submission process was changed this year. Please make note that we will not disburse funds until these and other conditions indicated on the Statement of Grant Award have been met.

The Task Force works together with counties to promote innovation and improvement in indigent defense systems statewide. On behalf of the Task Force, I congratulate Hays County for its efforts to improve indigent defense in Texas. **If you have any questions or need clarification on the information contained in this letter, please call Bryan Wilson, Grants Administrator at the Task Force office, toll free in Texas at (866) 499-0656,**

Sincerely,

Sharon Keller
 Chair, Task Force on Indigent Defense
 Presiding Judge, Court of Criminal Appeals

Task Force on Indigent Defense
Statement of Grant Award
FY2010 Formula Grant

Grant Number: 212-10-105
Grantee Name: Hays County
Program Title: Indigent Defense Services
Grant Period: 10/01/2009-9/30/2010
Grant Award Amount: The sum of \$5000.00 and 0.590365% of the remaining funds budgeted for FY10 formula grants by the Task Force. Based on the initial funds budgeted, this amount is estimated to be \$68,346.

The Task Force on Indigent Defense (Task Force) has awarded the above-referenced grant for indigent defense services. Formula Grants are provided by the Task Force to meet its statutory mandates and to promote Texas counties' compliance with standards adopted by the Task Force. The authorized official named on the grant application must sign this Statement of Grant Award and return it to the Task Force by **February 13, 2010**. The grantee will not receive any grant funds until this notice is executed and returned to the Task Force.

Standard Grant Conditions:

- The authorized official for the grantee accepts the grant award.
- The authorized official, financial officer, and program director, referred to below as grant officials, agree to the terms of the grant as written in the Request for Applications issued on September 1, 2009, including the rules and documents adopted by reference in the Task Force on Indigent Defense's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Task Force placing a temporary hold on grant funds, permanently deobligating all or part of the grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.
- Disbursement of funds is always subject to the availability of funds.
- Any plan documents submitted to the Task Force must continue to meet all grant eligibility requirements.

Special Grant Conditions:

The grant officials understand that they must satisfy all special conditions placed on this grant before receiving any funds. Only those items marked with an "X" below are needed:

- ☐ The financial officer shall submit by May 1, 2010 an expenditure report showing the indigent defense expenditures by the county from October 1, 2009-March 31, 2010. No funds will be disbursed to the county under the FY 2010 Formula Grant Award until the county demonstrates to the Task Force that it has expended the same amount it expended in its FY 2001 baseline plus a portion of the FY 2010 formula grant funds.

- ☐ The county must remit unexpended balances from the FY 2009 Formula Grant in the amount of _____ required to be submitted to the Task Force by February 28, 2010.
- ☐ The County must mail or fax to the Task Force the Resolution/Internet Submission Form authorizing the county to apply for the grant. The resolution must have been adopted by the commissioners' court of the county.
- ☒ The judges hearing criminal matters and the juvenile board in the county shall complete the 2009 Biennial Indigent Defense Plan Submission process as required by Government Code §71.0351. The plan level marked by an "X" have not been completely submitted to the Task Force: ☒ District Court Plan ☒ County Court Plan ☒ Juvenile Board Plan
- ☐ The District/County Clerk in the County shall submit electronically the Official District/County Court Monthly Report to the Office of Court Administration unless a waiver has been obtained.

The authorized official for this grant program has read the preceding and indicates agreement by signing this Statement of Grant Award below:

Signature of Authorized Official

Name & Title (must print or type)

Date

PLEASE FAX SIGNED AWARD STATEMENT TO 512-463-8854

Do not mail the original- Keep the original in your file.

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:

09-4-32 Polo Club Center Subdivision. Discussion and possible action to consider approval of preliminary plan.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: January 27, 2010

AMOUNT REQUIRED: N/A

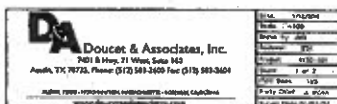
LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Garza

SPONSORED BY: Ford

SUMMARY:

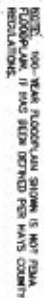
The Polo Club Center Subdivision is a proposed division of 19.823 acres located at the entrance of Polo Club Drive/Sawyer Ranch Road on Highway 290 in Precinct 4. The proposed division consists of 6 lots with an average lot size of 3.304 acres. The actual sizes of the lots are as follows: Lot 1(2.829 Ac.), Lot 2(1.350 Ac.), Lot 3(1.397 Ac.), Lot 4(1.357 Ac.), Lot 5(1.693 Ac.), and Lot 6(11.197 Ac.) The developer plans to sell the lots for commercial use and Lot 1 is planned to be the site for a CVS pharmacy. All lots will utilize LCRA for water and individual on-site sewage facilities for wastewater.



SHEET 1 OF 8

20





Experiment	D_1	Δ	D_2	D_3	D_4
Free flow (500 mm/sec)	1.22	8.45	17.86	17.46	16.46
Control (1.5 mm/sec)	1.42	2.55			
Control (0.5 mm/sec)	1.49	3.56	13.67	11.43	16.55
Control (0.1 mm/sec)	1.55	3.46	8.65	16.52	12.62

[illegible]

1	Blank	10	100	1.0	UV
2	Sample A	15	100	1.0	UV
3	Sample B	20	100	1.0	UV
4	Sample C	25	100	1.0	UV
5	Sample D	30	100	1.0	UV
6	Sample E	35	100	1.0	UV
7	Sample F	40	100	1.0	UV
8	Sample G	45	100	1.0	UV
9	Sample H	50	100	1.0	UV
10	Sample I	55	100	1.0	UV
11	Sample J	60	100	1.0	UV
12	Sample K	65	100	1.0	UV
13	Sample L	70	100	1.0	UV
14	Sample M	75	100	1.0	UV
15	Sample N	80	100	1.0	UV
16	Sample O	85	100	1.0	UV
17	Sample P	90	100	1.0	UV
18	Sample Q	95	100	1.0	UV
19	Sample R	100	100	1.0	UV
20	Sample S	105	100	1.0	UV
21	Sample T	110	100	1.0	UV
22	Sample U	115	100	1.0	UV
23	Sample V	120	100	1.0	UV
24	Sample W	125	100	1.0	UV
25	Sample X	130	100	1.0	UV
26	Sample Y	135	100	1.0	UV
27	Sample Z	140	100	1.0	UV
28	Sample AA	145	100	1.0	UV
29	Sample AB	150	100	1.0	UV
30	Sample AC	155	100	1.0	UV
31	Sample AD	160	100	1.0	UV
32	Sample AE	165	100	1.0	UV
33	Sample AF	170	100	1.0	UV
34	Sample AG	175	100	1.0	UV
35	Sample AH	180	100	1.0	UV
36	Sample AI	185	100	1.0	UV
37	Sample AJ	190	100	1.0	UV
38	Sample AK	195	100	1.0	UV
39	Sample AL	200	100	1.0	UV
40	Sample AM	205	100	1.0	UV
41	Sample AN	210	100	1.0	UV
42	Sample AO	215	100	1.0	UV
43	Sample AP	220	100	1.0	UV
44	Sample AQ	225	100	1.0	UV
45	Sample AR	230	100	1.0	UV
46	Sample AS	235	100	1.0	UV
47	Sample AT	240	100	1.0	UV
48	Sample AU	245	100	1.0	UV
49	Sample AV	250	100	1.0	UV
50	Sample AW	255	100	1.0	UV
51	Sample AX	260	100	1.0	UV
52	Sample AY	265	100	1.0	UV
53	Sample AZ	270	100	1.0	UV
54	Sample BA	275	100	1.0	UV
55	Sample BB	280	100	1.0	UV
56	Sample BC	285	100	1.0	UV
57	Sample BD	290	100	1.0	UV
58	Sample BE	295	100	1.0	UV
59	Sample BF	300	100	1.0	UV
60	Sample BG	305	100	1.0	UV
61	Sample BH	310	100	1.0	UV
62	Sample BI	315	100	1.0	UV
63	Sample BJ	320	100	1.0	UV
64	Sample BK	325	100	1.0	UV
65	Sample BL	330	100	1.0	UV
66	Sample BM	335	100	1.0	UV
67	Sample BN	340	100	1.0	UV
68	Sample BO	345	100	1.0	UV
69	Sample BP	350	100	1.0	UV
70	Sample BQ	355	100	1.0	UV
71	Sample BR	360	100	1.0	UV



Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM:

**08-3-58 Resubdivision of a 10.13 acre portion of land, River Oaks of Wimberley, Unit 1, Section 2.
Discussion and possible action to consider approval of Final Plat.**

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: January 27, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Garza

SPONSORED BY: Conley

SUMMARY:

The River Oaks of Wimberley Subdivision is a recorded division located off of Wayside Drive in precinct 3. At the time of original platting, 1972, there were a few lots left unnumbered. This proposed resubdivision is a 10.13 acre parcel located adjacent to lot 25, unit 2, section 2. If approved, the proposed action will divide the parcel into 3 new lots of 2.0, 4.0, and 4.124 acres in size. The original application for platting has been on file for over one year. During this time, the property owner had a flood study performed on the 100 year floodplain on the property as required in our flood ordinance at that time.

The engineer performing the study has submitted a letter of map revision to FEMA to reflect the true conditions found in the recent elevation study. The current limit of the 100 year flood plain is shaded in gray and the proposed "new" floodplain is delineated by a dashed line inside of the shaded area.

The subdivision will be served by individual wells and OSSF's. There are no variances and the division is located outside the limits of any ETJ. Preliminary Plan was approved

VOLUME 1, PAGES 191-193, HAYS COUNTY FLAT RECORDS

Linda Pitts, County Clerk, Mayo County, Texas

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

Driftwood Surveying
Professional Land Surveyors - Serving the Hill Country
Area

P.O. Box 378
Winkelman, TX 78792
PH. (512) 847-7222
FAX (512) 847-7272
PROJ. NO. NC0808

SHEET 1 OF 2

PLOTTED 01/11/2019 12:30

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Discussion and possible action to authorize the County Judge to execute an Interlocal (Grant) Contract with the Capital Area Council of Governments (CAPCOG) for funding to conduct a Household Hazardous Waste Collection Event in northern Hays County, in the amount of \$27,000, and amend the budget accordingly.

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: N/A – no matching funds are required.

LINE ITEM NUMBER OF FUNDS REQUIRED: TBD

REQUESTED BY: Hauff/Pinnix

SPONSORED BY: Ford

SUMMARY:

On October 13, 2009 the Commissioners Court authorized submission of a grant application to the Capital Area Council of Governments, Regional Solid Waste Grants Program, for funding to conduct a Household Hazardous Waste (HHW) collection event in northern Hays County (Precinct 4). The grant has been awarded for this project - in the amount of \$27,000.00 – to conduct this event. The Interlocal Contract for acceptance of the award is attached for review and approval.

Pending contract approval, the event will take place at the Driftwood Citizens Collection Center, tentatively in mid- to late April, 2010. An RFP to solicit a firm to conduct the event will be developed and submitted for Commissioners Court approval at a later date.

**CAPITAL AREA COUNCIL OF GOVERNMENTS
INTERLOCAL CONTRACT FOR
FY2010 SOLID WASTE EQUIPMENT AND SERVICES**

The Capital Area Council of Governments (hereafter, CAPCOG) and the agreeing party (hereafter, SUBCONTRACTOR) each certifies that it has authority to perform this Contract under Chapter 391 of the Local Government Code, and Chapter 361 of the Health and Safety Code.

This Solid Waste Interlocal Contract is entered into by and between the parties named below. Neither the Texas Commission on Environmental Quality (TCEQ) nor the State of Texas is a party to this agreement.

I. CONTRACTING PARTIES:

Contractor: Capital Area Council of Governments

Subcontractor: Hays County

Contract #: 10-12-G11

Award: \$27,000

II. SERVICES TO BE PERFORMED:

See Attachment B – "Work Program of SUBCONTRACTOR"

See Attachment C – "Schedule of Deliverables from SUBCONTRACTOR"

III. BUDGET AND PAYMENT PROCEDURES:

See Attachment D – "Budget and Authorizations"

IV. ADDITIONAL CONTRACT PROVISIONS:

See Attachment A – "Special Contract Provisions"

See Attachment E – "General Contract Provisions"

CONTRACTING PARTIES

CONTRACTOR: Capital Area Council of Governments (CAPCOG)

SIGNATURE: 

NAME: Betty Voights

TITLE: Executive Director

DATE: 1-13-10

SUBCONTRACTOR: Hays County

SIGNATURE: _____

NAME: Hon. Elizabeth Sumter

TITLE: Hays County Judge

DATE: _____

TABLE OF CONTENTS

Attachment A: Special Contract Provisions.....	4
Article 1: Period of Performance.....	4
Article 2: Scope of Services	4
Article 3: CAPCOG Obligations	4
Article 4: Reporting Requirements.....	7
Article 5: Monitoring Requirements.....	8
Article 6: Title To & Management of Real Property & Equipment.....	8
Article 7: Compliance with Applicable Laws	11
Article 8: Authorized Representatives.....	11
 Attachment B: Work Program of SUBCONTRACTOR	 13
 Attachment C: Schedule of Deliverables from SUBCONTRACTOR	 14
 Attachment D: SUBCONTRACTOR Budget and Authorizations.....	 15
Article 1: Expense Category Standards.....	15
Article 2: Supplemental Funding Standards	18
Article 3: SUBCONTRACTOR Authorized Budget	20
 Attachment E: General Contract Provisions.....	 21
Article 1: Legal Authority & Indemnification	21
Article 2: Scope of Services	21
Article 3: Purpose.....	21
Article 4: Eligible Entities.....	22
Article 5: Implementation Project Categories.....	23
Article 6: Liability Insurance	26
Article 7: Audit/Access to Records.....	26
Article 8: Independent Financial Audit	27
Article 9: Amendments to Contract.....	28
Article 10: Termination of Contract for Convenience	28
Article 11: Suspension or Termination of Contract for Unavailability of Funds.....	29
Article 12: Termination for Breach of Contract	29
Article 13: Severability	30
Article 14: Data and Publicity	30
Article 15: Intellectual Property	30
Article 16: Energy Efficiency Standards.....	31
Article 17: Identification of Funding Sources	31
Article 18: Dispute Resolution.....	31
Article 19: Oral and Written Contracts	32
Article 20: Nondiscrimination and Equal Opportunity	32
Article 21: Utilization of Small, Minority, & Women's Business Enterprises	32
Article 22: Force Majeure.....	32
Article 23: Conflict of Interest.....	33
Article 24: Miscellaneous.....	33

ATTACHMENT A

Special Contract Provisions

Article 1: Period of Performance

The period of performance of this Solid Waste Interlocal Contract (hereafter, the Contract) begins on the date that it is executed on behalf of CAPCOG and ends, unless sooner terminated under Attachment E, on **December 31, 2010**. The SUBCONTRACTOR has from the time the Contract is executed to the ending date shown above to complete the tasks as shown in Attachment B of this Contract. The SUBCONTRACTOR may request in writing a time extension, but CAPCOG is not obligated to provide the time extension.

Article 2: Scope of Services

All parties agree that Hays County, in consideration of compensation hereinafter described, shall provide as specifically described in the Special and General Provisions of this Solid Waste Interlocal Contract, the services of: Household Hazardous Waste.

The SUBCONTRACTOR agrees to implement the Project according to the agreed upon budget in an amount not to exceed \$27,000 as detailed in Attachment D, Article 3 of this Contract.

Failure on the part of the SUBCONTRACTOR to comply with the conditions set forth in this Contract shall be the basis for termination of the Contract and recovery of any unexpended or inappropriately expended funds.

Article 3: CAPCOG Obligations

(a). Consideration

In consideration of full and satisfactory performance hereunder, CAPCOG will be liable to SUBCONTRACTOR in an amount equal to the allowable costs defined in OMB Circular No. A-87 and incurred by SUBCONTRACTOR in rendering such performance, subject to the following limitations:

1. CAPCOG is not liable for expenditures made in violation of the Authorized Budget and funding guidelines in Attachment D, which outline the standards which shall apply to the SUBCONTRACTOR'S use of funds provided under this Contract, including prohibited activities and expense categories as defined by the TCEQ.
2. CAPCOG is not liable for any costs incurred by SUBCONTRACTOR in the performance of this Contract which have not been billed to CAPCOG within thirty (30) days following termination of this Contract.

3. CAPCOG is not liable to SUBCONTRACTOR for costs incurred or performance rendered by SUBCONTRACTOR for costs incurred by SUBCONTRACTOR before commencement of this Contract or after termination of this Contract.
4. Except as specifically authorized by CAPCOG in writing, CAPCOG is liable only for expenditures made in compliance with the cost principles and administrative requirements set forth in Federal OMB Circular No. A-87. CAPCOG is not liable for expenditures made in violation of Attachment D, Article 2 of this Contract.

(b). Additional Documentation and Financial Monitoring Program

1. **Financial Monitoring Program.** The SUBCONTRACTOR will adhere to the following financial monitoring requirements in order to receive reimbursement for authorized expenditures and to ensure that the expenditures incurred were reasonable and necessary to the project.
 - i) Payments to the SUBCONTRACTOR will be made only on a reimbursement basis. To receive reimbursement the SUBCONTRACTOR must submit the following:
 - a) Reimbursement Request Form
 - b) Copies of checks
 - c) Copies of invoices
 - d) List of bid responses for purchases over \$5,000 up to \$15,000
 - e) Copy of RFP and list of RFP responses (if applicable)
 - f) Equipment inventory information (if applicable)
 - ii) If the SUBCONTRACTOR does not have a Purchasing Policy that complies with state law, the SUBCONTRACTOR must adhere to the general provisions of CAPCOG's Purchasing Policy, which are outlined below:
 - a) Purchases over \$10,000 must be approved by the organization's governing body (i.e. school board, city council, and commissioner's court)
 - b) Purchases above \$25,000 require formal competitive sealed bids
 - c) Purchases between \$5,000 and \$25,000 require informal bids (at least three written quotes) and must be approved by the governing body
 - d) Purchases between \$2,500 and \$4,999 require informal bids (at least three written quotes)
 - e) Purchases between \$300 and \$2,499 require at least three verbal quotes
 - f) Purchase less than \$300 do not require quotes
 - g) Split purchases to avoid bidding requirements will not be allowed
 - h) Cumulative purchases of like items through the fiscal year could be considered circumvention of the policy if it was reasonable to anticipate the purchases in advance

Note: The use of State Contract items can eliminate the need for many of the bidding requirements. However, purchases over \$10,000 still require approval of the organization's governing body.

- iii) The SUBCONTRACTOR is allowed to account for expenses incurred and request reimbursement of outlays under either a cash or an accrual basis, as defined and authorized under the UGMS. To be eligible for reimbursement under this Contract, a cost must have been incurred and either paid by the SUBCONTRACTOR prior to claiming reimbursement from CAPCOG or incurred by the last day of the time period indicated on a request for reimbursement form and liquidated no later than thirty (30) days after the end of that time period.
 - iv) CAPCOG will review all materials provided by the SUBCONTRACTOR with a request for reimbursement, and will not make a reimbursement payment unless all required items listed under Article 3 (b)1(i) of this Attachment have been provided and are deemed to be accurate.
 - v) CAPCOG shall reimburse or otherwise make payment to the SUBCONTRACTOR only for expenses incurred during the term of the Contract between CAPCOG and the SUBCONTRACTOR.
 - vi) CAPCOG will not reimburse or otherwise make payment to the SUBCONTRACTOR for an expenditure that is not authorized under this Contract. If it is determined by either CAPCOG or the TCEQ that an expenditure that was reimbursed is not an authorized expense, CAPCOG shall request return and reimbursement of those funds from the SUBCONTRACTOR or, where appropriate, the application of those funds to other authorized expenses, and shall not provide additional reimbursements to the SUBCONTRACTOR until the funds are returned or are applied to other authorized expenses.
2. **Documentation required.** In general, expenditure documentation to be maintained by the SUBCONTRACTOR should be whatever is necessary to show that the work was indeed performed and that the expense was, in fact, incurred. In addition, the documentation should also support the fact that the expenditure was reasonable and necessary to this Contract. Documents that should be maintained, as appropriate for the expense, include but are not limited to the following:
- i) **Salary/Wages** – Time sheets that have been signed and approved.
 - ii) **Travel** – Documentation which, at a minimum, is consistent with State Travel Regulations. The purpose of the travel should be documented and supported with actual receipts for hotel accommodations, public transportation receipts, airline receipts, etc.
 - iii) **Equipment** – Purchase orders, invoices, and canceled checks.
 - iv) **Supplies** – Purchase orders (if issued), invoices, and canceled checks.
 - v) **Contractual** – All of the above plus documentation that the costs were reasonable and necessary. The same standards should be applicable to subcontractors.
3. **Additional Documentation.** If requested by CAPCOG, the SUBCONTRACTOR agrees to provide to CAPCOG the additional expense records and documentation materials, as listed

in Section (b) 2 of this Article and appropriate for the expense, for the time period requested by CAPCOG, except that the SUBCONTRACTOR will not be asked to submit records that have already been provided to CAPCOG with a Financial Status Report. CAPCOG will provide reasonable time for the SUBCONTRACTOR to comply with a request for additional records. If CAPCOG requests to review additional records to be provided by the SUBCONTRACTOR under CAPCOG's financial monitoring program, CAPCOG will review those records and provide the SUBCONTRACTOR a written summary of the findings of that review. CAPCOG will also allow the SUBCONTRACTOR reasonable time to respond to any findings of noncompliance or other problems identified by the records review.

(c). **SUBCONTRACTOR Close Out Report**

No later than thirty (30) days following the termination of this Contract, SUBCONTRACTOR must submit to CAPCOG final Progress Reporting and Reimbursement Request Forms, which indicates that the reports are the "Final Reports." If all expenditures have been completed before the end of the Contract, SUBCONTRACTOR shall submit a final Progress Reporting Form, indicating project completion. SUBCONTRACTOR shall also submit a final Results Tracking Form one year after the termination of the biennium under which funding was received.

(d). **Independent Contractor**

SUBCONTRACTOR is not an employee or agent of CAPCOG, but provides goods and performs services under this Contract solely as an independent contractor.

Article 4: Reporting Requirements

(a). The SUBCONTRACTOR shall prepare and submit to CAPCOG progress reports as designated in Attachment C of this Contract. These reports concern the performance under this Contract documenting program accomplishments and units of work performed under Attachment B of this Contract. These progress reports, to be submitted by the SUBCONTRACTOR, shall include:

1. **Progress Reporting Form** which documents the progress and completion of tasks and includes the Results Tracking Form.
2. **Reimbursement Request Form** which will be used to request reimbursement and will require sufficient backup documentation. Reimbursement requests may be submitted at any time during the grant period, but must be submitted at least as often as required under Attachment C Schedule of Deliverables. Requirements for reimbursement requests are detailed under Subsection (b) of Article 3.

Payments (reimbursements) required under this Contract will be withheld by CAPCOG until such time as any past due progress reports are received.

(b). The SUBCONTRACTOR progress reports required under Subsection (a) of Article 4 contain descriptions of activities and costs for CAPCOG to ensure that the provisions of this Contract are being complied with. In particular, any legal research and related legal activities shall be

clearly detailed in the quarterly progress reports in order to assure CAPCOG that the activities are not prohibited under Attachment D Article 2 of this Contract (relating to Supplemental Funding Standards). The SUBCONTRACTOR shall comply with any reasonable request by CAPCOG for additional information on activities conducted in order for CAPCOG to adequately monitor the SUBCONTRACTOR's progress in completing the requirements of and adhering to the provisions of this Contract.

- (c). The SUBCONTRACTOR will certify in writing to CAPCOG through a final progress report, the satisfactory completion of all activities and deliverables required under this Contract. The final progress report shall consist of the forms described in Section A of this Article 4.
- (d). The SUBCONTRACTOR shall maintain the information required by the forms listed in Part (a) of this Section so that a follow-up results report can be prepared. **The SUBCONTRACTOR shall provide CAPCOG with a follow-up Progress Reporting Form to be due approximately September 2012** so that CAPCOG can report to the TCEQ the results of the projects funded under this Contract.
- (e). The SUBCONTRACTOR'S failure to comply with the requirements of this Article shall constitute a breach of this Contract.
- (f). The SUBCONTRACTOR shall maintain documentation on the results of the project activities for the life of the program or activity.
- (g). The reporting requirements of this Article 4 survive the ending or early termination of this Contract.

Article 5: Monitoring Requirements

- (a). CAPCOG may periodically monitor SUBCONTRACTOR for:
 - 1. The degree of compliance with the terms of this Contract, including compliance with applicable rules, regulations, and promulgations referenced herein; and
 - 2. The administrative and operational effectiveness of the project.
- (b). CAPCOG shall conduct periodic analysis of SUBCONTRACTOR'S performance under this Contract for the purpose of assessing the degree to which contractual objectives and performance standards, as identified in this Contract or as subsequently amended, are achieved by SUBCONTRACTOR.

Article 6: Title To and Management of Real Property and Equipment

- (a). Subject to the obligations and conditions set forth in this Agreement, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under this Agreement by the SUBCONTRACTOR will vest upon acquisition or construction in CAPCOG or the SUBCONTRACTOR respectively.

- (b). Subject to the provisions of this Agreement, and as otherwise provided by state statutes, property acquired or replaced under this Agreement shall be used for the duration of its normally expected useful life to support the purposes of this Agreement whether or not the original projects or programs continue to be supported by state funds.
- (c). The SUBCONTRACTOR shall not grant or allow to a third party a security interest in any original or replacement property purchased or constructed with funds made available to the SUBCONTRACTOR under this Agreement.
- (d). The use of property acquired under this Agreement, both during the term of this Agreement and for the useful life of the property or until compensation is provided to the FUNDING AGENCY for the applicable percentage share of the fair market value of the property, shall be in compliance with §361.014(b) of the TEXAS HEALTH & SAFETY CODE ANN., which directs that a project or service funded under this program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.
- (e). The SUBCONTRACTOR may develop and use their own property management systems, which must conform with all applicable federal, state, and local laws, rules and regulations. If an adequate system for accounting for property owned by the SUBCONTRACTOR is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the SUBCONTRACTOR must meet the requirements set forth in this Section.
 1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, and the cost of the property, percentage of state participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 2. A physical inventory of all equipment acquired or replaced under this Agreement shall be conducted no less frequently than once every two years and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the SUBCONTRACTOR shall include adequate safeguards to prevent loss, damage, or theft of the acquired property. Any loss, damage, or theft shall be investigated. The SUBCONTRACTOR shall develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such property is sold.
 3. Certain types of equipment are classified as "controlled assets" and are subject to annual revision. In accordance with the UGMS, the SUBCONTRACTOR should contact the Texas Comptroller of Public Accounts' property accounting staff or review the Comptroller's state Property Accounting User Manual available on the Internet, for the most current listing.

- (f). The SUBCONTRACTOR may for the purpose of replacing property acquired under this Agreement, either trade in or sell the property and use the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property.
- (g). The SUBCONTRACTOR agrees that if a determination is made that any property acquired with funds provided under this Agreement with a current per-unit fair market value of \$1,000 or more is no longer needed for the originally authorized purpose, CAPCOG has the right to require disposition of the property by the SUBCONTRACTOR in accordance with the provisions of this Article.
- (h). When, during the useful life of property acquired with grant funds under this Agreement by the SUBCONTRACTOR and with a current per-unit fair market value of \$1,000 or more, the property is no longer needed for the originally authorized purpose, SUBCONTRACTOR agrees to request disposition instructions from the CAPCOG or, if CAPCOG is no longer administering a Regional Solid Waste Grants Program, the TCEQ. CAPCOG shall, in turn, request authorization from the TCEQ to provide disposition instructions to the SUBCONTRACTOR. Disposition instructions shall solicit, at a minimum, information on the source and amount of funds used in acquiring the property, the date acquired, the fair market value and how the value was determined (e.g., by appraisal, bids, etc.), and the proposed use of the proceeds. The assessment of whether to authorize the proposed disposition of the property must include a determination that the disposition plan will comply with the private industry provisions of §361.014(b) of the TEXAS HEALTH & SAFETY CODE ANN. In cases where SUBCONTRACTOR fails to take appropriate disposition actions, CAPCOG may direct SUBCONTRACTOR to take appropriate disposition actions. The disposition instructions may provide for one of the alternatives as set forth in this Section.
 - 1. Retain title, sell, or otherwise disposed of with no obligation to compensate CAPCOG.
 - 2. Retain title after compensating CAPCOG. If CAPCOG is compensated by the SUBCONTRACTOR for property acquired using funds provided under this Agreement, CAPCOG will in turn compensate the TCEQ or, upon authorization by the TCEQ, use those funds for other projects or activities that support this or similar future programs conducted by the TCEQ. The amount due will be computed by applying the percentage of state-funded participation in the cost of the original purchase to the fair market value of the property.
 - 3. Sell the property and compensate CAPCOG. If CAPCOG is compensated by the SUBCONTRACTOR for property acquired using funds provided under this Agreement, CAPCOG will in turn compensate the TCEQ or, upon authorization by the TCEQ, use those funds for other projects or activities that support the goals of this or similar future programs conducted by the TCEQ. The amount due will be calculated by applying CAPCOG's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When SUBCONTRACTOR is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

4. Transfer title to CAPCOG or to a third-party designated/approved by the TCEQ. If the SUBCONTRACTOR participated financially in the original purchase of the property, the SUBCONTRACTOR may be authorized payment from the receiving party of an amount calculated by applying the percentage of the participation in the original purchase of the property to the current fair market value of the property.
- (i). Items of property with a current per-unit fair market value of less than \$1,000 may be retained, sold or otherwise disposed of by the SUBCONTRACTOR with no further obligation to CAPCOG. Methods used to determine per-unit fair market value must be documented, kept on file and made available to CAPCOG and the TCEQ upon request.

Article 7: Compliance with Applicable Laws

The SUBCONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and order of any public authority bearing on the performance of this Contract including, but not limited to, the laws referred to in this Contract. If the SUBCONTRACTOR or CAPCOG observes that this Contract is at variance, the observing party shall promptly notify the other party in writing, and any necessary changes shall be addressed by appropriate Contract modification. On request, the SUBCONTRACTOR shall furnish CAPCOG modification. The main governing standards include, but may not be limited to the following:

- (a). Section 361.014, TEX. HEALTH & SAFETY CODE ANN;
- (b). Section 330.569 of the TCEQ Municipal Solid Waste Regulations (30 TAC Chapter 330); and
- (c). The Uniform Grant and Contract Management Act, Chapter 783 of the TEX. GOV'T CODE ANN, and the Uniform Contract Management Standards, 1 Texas Administrative Code Section 5.141 et. seq. (UGMS).

Article 8: Authorized Representatives

- (a). CAPCOG hereby designates the person named in Exhibit A-1, Project Representative, to this Attachment A, as the individual authorized to give direction to the SUBCONTRACTOR for the purposes of this Contract. CAPCOG Project Representative shall not be deemed to have authority to bind CAPCOG in Contract unless the Executive Director of CAPCOG has delegated such authority in writing.
- (b). Immediately upon execution of this Contract, the SUBCONTRACTOR shall identify, as its Project Representative, the person authorized to receive direction from CAPCOG, to manage the work being performed, and to act on behalf on the SUBCONTRACTOR as Project Representative. The SUBCONTRACTOR's Project Representative shall be deemed to have authority to bind the subcontractor in Contract unless the SUBCONTRACTOR, in writing, specifically limits or denies such authority to the SUBCONTRACTOR's Project Representative with respect to the administration of the Contract.
- (c). Either party may change its Project Representative. In addition, the Project Representative of either party may further delegate his or her authority as necessary, including any delegation of authority to a new Project Representative. The party making the change in Project Representative shall provide written notice of the change to the other party.

- (d). The SUBCONTRACTOR shall ensure that its Project Representative, or his or her delegate, is available at all times for consultation with CAPCOG. If the project representative will be absent during the term of this Contract, the SUBCONTRACTOR shall designate an alternate that will be available to consult with CAPCOG.

Exhibit A-1

The Capital Area Council of Governments hereby designates the individual below as the person to give direction to the SUBCONTRACTOR as Project Representative of CAPCOG:

Name: Kelly Freeman
Title: Solid Waste Program Coordinator
Address: 6800 Burleson, Bldg 310, Ste 165
Austin, TX 78704
Phone: (512) 916-6040
Fax: (512) 916-6001
E-mail: kfreeman@capcog.org

The SUBCONTRACTOR hereby designates the individual named below as the person authorized to receive direction from CAPCOG, to manage the work being performed, and to act on behalf of the SUBCONTRACTOR as a Project Representative:

(Please complete all of the following information)

Name: Jerry Pinnix
Title: Parks Director
Address: 111 East San Antonio Street Ste 303
San Marcos, Texas 78666
Phone: 512-393-2212
E-mail: jpinnix@co.hays.tx.us

The SUBCONTRACTOR designates the following location for record access and review pursuant to Attachment A & Attachment E of this Contract or any other applicable provision:

111 East San Antonio Street
San Marcos, Texas 78666

ATTACHMENT B
Work Program of SUBCONTRACTOR

Task 1: Select date, plan and advertise HHW collection event
Person: Jerry Pinnix
Deadline: December 2010

Task 2: Conduct HHW collection event
Person: Jerry Pinnix
Deadline: December 2010

ATTACHMENT C
Schedule of Deliverables from SUBCONTRACTOR

REQUIRED REPORTS

Report	Reporting Period	Due Date
Report #1 Progress, Results, Reimbursement	Jan. 2010 – July 2010	Aug. 15, 2010
Report #2 Progress, Results, Reimbursement	July 2010 – Dec. 2010	Jan. 15, 2011
Report #3 Results Only	Jan. 2010 – Aug. 31, 2012	Sept. 15, 2012

NOTE: Additional Reimbursement Requests may be submitted at any time during the grant period, as needed. For the purposes of preparing progress and results reports, it is suggested that the SUBCONTRACTOR maintain the Results Tracking Form on a monthly basis.

Please see **Attachment A Article 4** for forms that are due at the above due dates. The reporting forms will be sent to the SUBCONTRACTOR after this Contract becomes effective.

ATTACHMENT D

SUBCONTRACTOR Budget and Authorizations

Article 1: Expense Category Standards

In addition to the other standards and requirements of this Agreement, the definitions and requirements set forth in Sections (a) – (h) of this Article shall apply to the SUBCONTRACTOR's use of funds provided under this Agreement and assignment of expenses to the expense categories of the budget set forth in Attachment D Article 3 of this Agreement.

- (a). **Personnel.** In accordance with §391.0117 of the Local Government Code, as amended by the 76th Legislature, the SUBCONTRACTOR shall utilize the Salary Administration Provisions and Schedules, and Position Classification Schedules applicable to state agencies for all salaries of employees of the SUBCONTRACTOR funded under this Agreement.
 - 1. The SUBCONTRACTOR's employee positions covered in this Agreement are set forth in Detailed Budget Sheet 2 of the grant application. Any change in employee position constitutes a minor amendment pursuant to Article 9 of the General Provisions (Attachment E) of this Agreement.
- (b). **Travel.** The SUBCONTRACTOR shall comply with state travel regulations as required by §391.0115 of the Local Government Code, for all of the SUBCONTRACTOR's travel expenses to be reimbursed with funds provided under this Agreement as set forth in this Section.
 - 1. The SUBCONTRACTOR shall obtain prior written authorization from CAPCOG for reimbursement under this Agreement of any travel outside of the State of Texas.
 - 2. Except as provided for under Subsection 1 of this Section, the SUBCONTRACTOR shall obtain prior written authorization from CAPCOG for reimbursement from the travel expense category of the budget set forth in Attachment D Article 3, of any travel expenses for persons not employed by the SUBCONTRACTOR, and for travel by any employee not included in Detailed Budget Sheet 2 of the grant application.
- (c). **Supplies.** Expenses included under the Supplies expense category of the budget set forth in Attachment D Article 3, shall be for non-construction related costs for goods and materials having a unit acquisition cost (including freight) of less than \$1,000. Such expenditures shall generally relate to the routine purchase of office supplies (paper, pencils, and staplers) or other goods which are consumed by the SUBCONTRACTOR in a relatively short period of time, in the regular performance of the general activities funded under this Agreement.
 - 1. Non-routine expenditures of goods and materials, not falling under the definition of Equipment under Section (d). of these Program Conditions, shall be charged to the Other expense category.
- (d). **Equipment.** Expenses included under the Equipment expense category of the budget set forth in Attachment D Article 3, shall be for non-construction related, tangible, personal property

having a unit acquisition cost of \$5,000 or more (including freight and set up costs) with an estimated useful life of over one year.

1. No purchases of equipment to be charged to the equipment expense category of the budget set forth in Attachment D Article 3, shall be allowed under this Agreement unless approved ahead of time, in writing, by CAPCOG. Approvals for equipment purchases in conjunction with COG-managed projects shall be included with the overall approvals for those projects.
2. Any equipment that will be used for other projects or activities, in addition to the funded project, may only be funded at an amount reflecting the appropriate percentage of time that the equipment will be directly used for the funded project. The special conditions and requirements set forth in the grant agreement (relating to Title to and Management of Equipment and Constructed Facilities), also apply to equipment purchased with pass-through grant funding.

(e). **Construction.** Expenses included under the Construction expense category of the budget set forth in Attachment D Article 3, shall be for costs related to projects, administered by the SUBCONTRACTOR, concerned with the enhancement or building of permanent facilities.

1. Expenses budgeted under the construction expense category of the budget set forth in Attachment D Article 3, should be for costs related to the enhancement or building of permanent facilities. Appropriate costs to include under the Construction expense category are set forth in this Section.
 - i) The cost of planning the project.
 - ii) The cost of materials and labor connected to the construction project.
 - iii) The cost of equipment attached to the permanent structure.
 - iv) Any subcontracts, including contracts for services, which are performed as a portion of the project administered by the SUBCONTRACTOR.
2. No expenditures under the Construction expense categories of the budget set forth in Attachment D Article 3, shall be allowed under this Agreement unless approved ahead of time, in writing, by CAPCOG.

(f). **Contractual Expenses.** Expenses included under the Contractual expense category of the budget set forth in Attachment D Article 3, shall be for costs for professional services or tasks provided by a firm or individual who is not employed by the SUBCONTRACTOR as set forth in the Section.

1. No contractual expenses included under the contractual expenses category of the budget set forth in Attachment D Article 3, shall be allowed under this Agreement unless such contracts' scope of work has been approved ahead of time, in writing, by CAPCOG.
2. Any amendment to the SUBCONTRACTOR's subcontract authorized for reimbursement under this Agreement, whether or not such subcontract required CAPCOG pre-approval, which will result in or require substantive changes to any of the tasks required to be performed under this Agreement, as set forth in these Program Conditions, must be approved in writing by CAPCOG.

3. All applicable laws and regulations concerning bidding and contracting for services shall be followed.
- (g). **Other Expenses.** All expenses under the Other expense categories of the budget set forth in Attachment D Article 3, shall be in connection with the tasks and activities to be performed under this Agreement. Expenses not falling under the main expense categories may be included under the Other expense category if appropriate for the proposed project as set forth in this Section.
1. No expenses under the Other expense category including computer hardware or software purchases not included under the Equipment expense category, shall be eligible for reimbursement under this Agreement unless approved ahead of time, in writing, by CAPCOG.
 2. Subcategories of Other expenses for which prior authorization, as described in Subsection 1. of this Section, is not required are set forth in this Section.
 - i) Books and reference materials.
 - ii) Dues and membership fees for the SUBCONTRACTOR's affiliation with organizations and associations which directly relate to the performance of activities under this Agreement (dues for individual employee affiliation to particular organizations or professional associations, unless listed in Detailed Budget Sheet 8 of the grant application, must be approved individually, in writing, by CAPCOG).
 - iii) Subscriptions, only inasmuch as they relate directly to the performance of activities under this Agreement.
 - iv) Postage, telephone, FAX, and utilities expenses.
 - v) Printing and reproduction expenses.
 - vi) Advertising and public notices.
 - vii) Registration fees and other staff training costs (fees and training costs for persons not employed by the SUBCONTRACTOR, unless listed in Detailed Budget Sheet 8 of the grant application, must be approved individually by CAPCOG).
 - viii) Repair and maintenance costs.
 - ix) Office furniture, not falling under the definition of equipment under Attachment D Article 1 of the Agreement.
 - x) Space and equipment rentals.
 - xi) Signs.
 - xii) Additional Other expenses listed in Detailed Budget Sheet 8 of the grant application.
 3. The SUBCONTRACTOR shall ensure that expenditures charged under the Other expense category are not also included within the expenses reimbursed through the Indirect Costs category.
- (h). **Indirect Cost Rates.** Notwithstanding this section or any other part of this Agreement, the SUBCONTRACTOR shall comply with all provisions of §391.0115 of the Texas Local Government Code relating to the restrictions on commission costs, and shall advise CAPCOG in writing in the event such compliance will necessitate a reduction or other change to the indirect cost rate(s) set forth in the budget portion of this Agreement. The SUBCONTRACTOR

shall comply with all requirements and rules to be adopted by the Office of the Governor pursuant to §391.009 of the Texas Local Government Code relating to the operations and oversight of Regional Planning Commissions.

Article 2: Supplemental Funding Standards

In addition to the standards set forth in applicable laws and regulations, the standards outlined below apply to all uses of the funds provided under this Agreement. Unless authorization is otherwise specifically provided for in or under the terms of this Agreement, the use of funds provided under this Agreement shall be in accordance with the supplemental funding standards set forth in this Article.

1. **Payment of Fees.** Local and regional political subdivisions subject to the payment of state solid waste disposal fees and whose payments are in arrears are not eligible to receive grant funding.
2. **Land Acquisition Costs.** Funds provided under this Agreement may not be used to acquire land or an interest in land.
3. **Municipal Solid Waste-Related Programs Only.** Funds provided under this Agreement may not be used for programs dealing with wastes that are not considered municipal solid waste (MSW), including programs dealing with industrial or hazardous wastes.
4. **Programs Solely Related to Collection of Certain Wastes.** Funds provided under this Agreement may not be used for programs and activities solely related to the management of automotive wastes, to include: scrap tires, used oil, oil filters, antifreeze, lead-acid batteries, or other similar wastes excluded from disposal in MSW landfills. Funds may also not be used for the processing of scrap tires, such as through the purchase of equipment to shred or split the tires. However, collection of these materials may be included as part of a comprehensive household hazardous waste collection and management program, so long as that is not the sole intent of the program.
5. **Activities Related to the Disposal of Municipal Solid Waste.** Except as may be specifically authorized under an eligible project category, funds provided under this Agreement may not be used for activities related to the disposal of municipal solid waste. This restriction includes: solid waste collection and transportation to a disposal facility; waste combustion (incineration or waste-to-energy); processing for reducing the volume of solid waste which is to be disposed of; any landfill-related facilities or activities, including the closure and post-closure care of a landfill; or other activities and facilities associated with the ultimate disposal of municipal solid waste. This provision does not apply to activities specifically included under an authorized project category, to include citizens' collection stations, and small registered transfer stations.
6. **Projects Requiring a TCEQ Permit.** Funds may not be used for expenses related to projects or facilities that require a permit from the TCEQ and/or that are located within the boundaries of a permitted facility, including landfills, wastewater treatment plants, and other facilities. This provision, however, may be waived by the TCEQ, at its discretion, for otherwise eligible activities to be located at a closed permitted facility and/or for recycling activities that will take place within the boundaries of an open facility. Recycling activities that may qualify for such a waiver may include recyclables collection, composting, and land application of biosolids for

beneficial use. The applicant should request a preliminary determination from the TCEQ as to the eligibility of the project prior to consideration for funding.

7. **Projects Requiring TCEQ Registration.** Projects or facilities that require registration from the TCEQ, and which are otherwise eligible for funding, may be funded. However, the registration for the facility must be finally received before that project can be selected for funding.
8. **Projects that Create a Competitive Advantage Over Private Industry.** In accordance with §361.014(b) of the Texas Health and Safety Code, a project or service funded under this Agreement must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services. Under this definition, the term private industry includes non-profit entities.
9. **Supplanting Existing Funds.** Funds provided under this Agreement may not be used to supplant existing funds. In particular, staff positions where the functions assigned to that position will remain the same and that were active at the time of the grant application, and were funded from a source other than a previous solid waste grant, are not eligible for grant funding. This provision does not apply to the salaries for staff of the SUBCONTRACTOR in its conduct of activities under this Agreement.
10. **Food/Entertainment Expenses.** Funds provided under this Agreement may not be used for food or entertainment expenses, including refreshments at meetings and other functions. This provision does not apply to authorized employee per diem expenses for food costs incurred while on travel status.
11. **Use of Alcoholic Beverages.** Funds provided under this agreement may not be used for payment of salaries to any employee who uses alcoholic beverages on active duty. None of these funds may be used for the purchase of alcoholic beverages, including travel expenses reimbursed with these funds.
12. **Funds to Law Enforcement Agencies.** Funds provided under this Agreement may not be provided to any law enforcement agency regulated by Chapter 415 of the Texas Government Code, unless the law enforcement agency is in compliance with all rules developed by the Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 415 of the Texas Government Code, or the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

Article 3: SUBCONTRACTOR's Authorized Budget

GRANT BUDGET SUMMARY	
Budget Categories	CAPCOG Solid Waste Grant Funding
1. Personnel (Salary)	\$0.00
2. Fringe Benefits	\$0.00
3. Travel	\$0.00
4. Supplies (unit cost of less than \$1,000)	\$200.00
5. Equipment (unit cost of \$5,000 or more)	\$0.00
6. Construction	\$0.00
7. Contractual (other than for construction)	\$25,500.00
8. Other	\$1,300.00
9. Indirect charges	\$0.00
TOTAL	\$27,000.00

10. Fringe Benefit Rate:	0%
11. Indirect Cost Rate:	0%

1. Personnel (Salary)				
Position	Function	Monthly Salary	%FTE	
				\$0.00
				\$0.00
				\$0.00

3. Travel		
Position	Purpose of travel	
		\$0.00
		\$0.00
		\$0.00

4. Supplies	
Type of Supplies	
Printing supplies for advertisement of event	\$200.00
	\$0.00
	\$0.00

5. Equipment				
Equipment	Model	Unit Cost	No. of Units	
		\$0.00	0	\$0.00
		\$0.00	0	\$0.00
		\$0.00	0	\$0.00

6. Construction		
Type of Construction	Sub-Contracted (Y/N)	

		\$0.00
		\$0.00
		\$0.00

7. Contractual		
Contractor	Purpose	
TBD	HHW collection, transportation, disposal	\$25,000.00
Hays County Sheriff's Dept.	Overtime for site security	\$500.00
		\$0.00

8. Other				
Type Other	Description			
Books / Reference				\$0.00
Postage / Delivery				\$0.00
Telephone / Utilities				\$0.00
Printing / Reproduction	Brochures and educational material			\$300.00
Advertising / Public Notices	Newspaper advertisement of event			\$500.00
Training / Registration				\$0.00
Repair / Maintenance				\$0.00
Basic Office Furnishings				\$0.00
Space / Equipment Rental				\$0.00
Signage	Event and directional signage			\$500.00
Additional Other	Description	Unit Cost	No. of Units	
Computer Hardware				\$0.00
Computer Software				\$0.00
Additional Other				\$0.00
Additional Other				\$0.00
Additional Other				\$0.00

* Regardless of the amounts included in the fringe and indirect budget categories, the charges to those categories may not exceed the rates shown and authorized herein. If desired, the COG will have the opportunity to request changes to the indirect rate based on the approval of a new indirect cost rate for the period of the contract term. TCEQ accepts an approval granted by the COG's Federal Cognizant Agency or State Coordinating Agency, for a new indirect cost rate which is based on a recent, independently performed audit that specifically examines and reports the indirect cost rate for the accounting period covered by the grant contract. Indirect charges must conform to §391.0115(e), Local Government Code.

ATTACHMENT E

General Contract Provisions

Article 1: Legal Authority and Indemnification

The SUBCONTRACTOR warrants and assures CAPCOG that it possesses adequate legal authority to enter into this Contract. The SUBCONTRACTOR'S governing body where applicable has authorized the signatory official(s) to enter into this Contract and bind the SUBCONTRACTOR to the terms of this Contract and any subsequent amendments hereto. The SUBCONTRACTOR agrees to adhere to the provisions of Section 361.014 of the Texas Health and Safety Code, Title 30 Texas Administrative Code section 330.569, to the provisions of section 330.59 of the TCEQ Municipal Solid Waste Regulations, this agreement and the Uniform Grant Management Standards ("UGMS").

Indemnification

- (a) **To the extent allowed by Texas law**, SUBCONTRACTOR agrees at its own expense to defend CAPCOG and TCEQ, their governing body members, officers, employees, and agents, against any claim, suit, or administrative proceeding, and to indemnify them against any liability (including all expenses and reasonable counsel fees incurred), arising out of any act or omission of SUBCONTRACTOR's governing body member, officer, employee, or agent under this Contract.
- (b) If SUBCONTRACTOR is served with process in a suit or proceeding described in Subsection (a), SUBCONTRACTOR agrees to furnish CAPCOG promptly with a copy of the process.
- (c) SUBCONTRACTOR agrees that its indemnification obligations under Subsection (a) apply to causes of action accruing during the term of this Contract, and that for this purpose the obligations will survive the ending or early termination of this Contract.

Article 2: Scope of Services

The services to be performed by the SUBCONTRACTOR are herewith outlined in the General Contract Provisions (Attachment E) and the Special Contract Provisions (Attachment A), which are hereby incorporated into and made a part of this Contract as if set out word-for-word herein.

Article 3: Purpose

- (a). The purpose of this Contract is to accomplish the goals of the Solid Waste Disposal Act of 1989, as amended, as they relate to distributing solid waste fee revenue funds to support local and regional solid waste projects consistent with the regional solid waste management plans approved by the TCEQ and to update and maintain those plans.

- (b). Under the overall goals of the funding program the purposes of this Contract are:
1. To enable CAPCOG to carry out or conduct various municipal solid waste management-related services and support activities within CAPCOG's regional jurisdiction; and
 2. To enable CAPCOG to report to the Legislature and promote the continuation of pass-through grant funding; and
 3. To administer an efficient and effective, region-wide, pass-through (subgrantee) assistance grants program and/or, where authorized by CAPCOG in accordance with Article 5 of this Attachment, to conduct various CAPCOG - managed projects.

Article 4: Eligible Entities

- (a). Only those local and regional political subdivisions located within the State of Texas as listed below are eligible to receive funding from CAPCOG as a pass-through grant:
1. Cities;
 2. Counties;
 3. Public schools and school districts (does not include Universities or post secondary educational institutions); and
 4. Other general and special law districts created in accordance with state law, and with the authority and responsibility for water quality protection or municipal solid waste management, to include river authorities;
 5. Councils of Governments.
- (b). Local and regional political subdivisions that are subject to the payment of state solid waste disposal fees and whose fee payments are in arrears, as determined by CAPCOG, are not eligible to receive pass-through grant funding from CAPCOG. CAPCOG shall allow a potential pass-through grant applicant that is listed as being in arrears in its fee payments the opportunity to provide documentation of payment of the fees owed the state. If the potential applicant provides CAPCOG with documentation of payment of the fees, such as a canceled check or receipt from the state, CAPCOG may consider that applicant to be eligible to receive pass-through grant funding under this Contract.

Article 5: Implementation Project Categories

The standards and requirements set forth in this Article shall apply to all implementation projects funded under this Agreement. CAPCOG shall be responsible for ensuring that the implementation projects funded under this Agreement comply with the standards set forth in this Article.

- (a). **Implementation Project Categories.** CAPCOG shall ensure that all implementation projects funded under this Agreement fit within the categories set forth in this Section. The category-specific funding limitations outlined for each category shall apply to all uses of funds under implementation projects conducted for that category.

1. **Local Enforcement.** This category consists of projects which contribute to the prevention of illegal dumping of municipal solid waste, including liquid wastes. Under this category, grant recipients may investigate illegal dumping problems; enforce laws and regulations pertaining to the illegal dumping of municipal solid waste, including liquid waste; establish a program to monitor the collection and transport of municipal liquid wastes, through administration of a manifesting system; and educate the public on illegal dumping laws and regulations. Funding limitations specific to this category are set forth in this Section.
 - i) Funds provided under this Agreement may not be used for enforcement activities related to the illegal disposal of industrial or hazardous waste. Instances where industrial or hazardous waste may be discovered at an investigation site do not preclude the general investigation of that site, so long as the funded program is specifically aimed at the illegal disposal of municipal solid waste.
 - ii) Funds provided under this Agreement may not be used for either the cleanup of illegal disposal sites nor the transportation and/or disposal of wastes collected at those sites. Note that while this restriction applies to ongoing enforcement programs dealing with illegal dumping, general community cleanup events that may include the cleanup and transportation of general litter and materials may be authorized under a separate category.
2. **Source Reduction and Recycling.** This category includes projects which provide a direct and measurable effect on reducing the amount of municipal solid waste going into landfills, by diverting various materials from the municipal solid waste stream for reuse or recycling, or by reducing waste generation at the source. Activities funded under this category may include: diversion from the waste stream and/or collection, processing for transport, and transportation of materials for reuse and/or recycling; implementation of efficiency improvements in order to increase source reduction and recycling, to include full-cost accounting systems and cost-based rate structures, establishment of a solid waste services enterprise fund, and mechanisms to track and assess the level of recycling activity in the community on a regular basis; and educational and promotional activities to increase source reduction and recycling. Funding limitations specific to this category are set forth in this Section.
 - i) Programs and projects funded under this category shall have as a goal and be designed to provide a measurable effect on reducing the amount of municipal solid waste being disposed of in landfills.
 - ii) Any program or project aimed at demonstrating the use of products made from recycled and/or reused materials shall have as its primary function the education and training of residents, governmental officials, and others, in order to encourage support for recycling efforts.
 - iii) Projects funded under this Agreement may not include programs dedicated to the collection and/or recycling of automotive wastes, to include scrap tires, used oil, oil filters, antifreeze, or lead-acid batteries. This restriction includes the purchase of equipment to shred or split scrap tires. However, this restriction does not apply to the ancillary collection of these materials as part of a comprehensive Household Hazardous Waste Collection facility or program.

3. Citizens' Collection Stations and "Small" Registered Transfer Stations. This category includes projects to construct municipal solid waste collection facilities in areas of the state which are under served by collection services or do not have access to proper disposal facilities. Projects funded under this category may include citizens' collection stations, as these facilities are defined under the TCEQ's Municipal Solid Waste regulations (30 TAC Chapter 330, §330.2). Municipal Solid Waste Transfer Stations that qualify for registration under §330.4(d)(1) - (3) or §330.4(r) of the regulations may also be funded. A project funded under this category shall include consideration of an integrated approach to solid waste management, to include providing recycling services at the site, if appropriate to the management system in place. Funding limitations specific to this category are set forth in this Section.

- i) Transfer stations that require a permit from the TCEQ may not be funded.
- ii) Municipal solid waste transfer stations that qualify for registration under §330.4(d)(1)-(3) of the Municipal Solid Waste regulations may be funded.
- iii) Transfer stations that qualify for a registration solely due to their location within a permitted municipal solid waste facility, under §330.4(d)(4), may not be funded.
- iv) Municipal solid waste transfer stations that qualify for a registration only under the provisions of §330.4(q) of the Municipal Solid Waste regulations allowing for registration of facilities that recover 10% or more of the waste stream for reuse or recycling, but not also under the provisions of §330.4(d) of the Municipal Solid Waste regulations, may not be funded. However, those components of a transfer facility dedicated to the reuse or recycling activities may qualify for funding under the source reduction and recycling grant category.
- v) Municipal Solid Waste transfer stations that are used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste, and which qualify for registration under §330.4(r) of the Municipal Solid Waste regulations may be funded under this category. Specifically, §330.4(t) of the regulations allows for registration of a liquid waste transfer facility that will receive 32,000 gallons a day or less.
- vi) Only the costs necessary to construct the facility and/or purchase and install necessary equipment may be funded. Costs associated with operating a facility once it is completed may not be funded.
- vii) Transfer stations that require a registration must have already received that registration from the TCEQ before a grant may be awarded.

4. Household Hazardous Waste Management. This category includes projects which provide a means for the collection, recycling or reuse, and/or proper disposal of household hazardous waste, including household chemicals and other materials. Projects may include collection events, consolidation and transportation costs associated with collection activities, permanent collection facilities, and education and public awareness programs. Funding limitations specific to this category are set forth in this Section.

- i) Projects under this category must be coordinated with the TCEQ to ensure that all applicable regulations and guidelines are followed.
 - ii) Funds provided under this Agreement may not be used for programs and activities related to the collection and management of commercial or industrial hazardous wastes.
 - iii) Funds provided under this Agreement may not be used for programs and activities solely related to the management of scrap tires, used oil, oil filters, antifreeze, lead-acid batteries, or other special wastes excluded from disposal in municipal solid waste landfills. However, collection of these materials may be included as part of a comprehensive Household Hazardous Waste collection and management program, so long as that is not the sole intent of the program.
- 5. Educational and Training Projects.** Educational components are encouraged under the other categories in order to better ensure public participation in projects; those educational components should be funded as part of those projects and not separately under this category. This category may be used for "stand-alone" educational projects dealing with a variety of solid waste management topics. This category may include funding for information-exchange activities, subject to the other limitations on travel expenses. Funding limitations specific to this category are set forth in this Section.
- i) Programs and projects funded under this category shall be primarily related to issues involved in the management of municipal solid waste. Education or training events that cover a broader range of environmental issues may be funded on a partial basis appropriate to the extent to which municipal solid waste issues are covered.
- 6. Litter and Illegal Dumping Cleanup and Community Collection Events.** Litter and illegal dumping cleanup may include both ongoing and periodic activities to clean up litter and illegal dumping of MSW, excluding cleanup of scrap tire dumping sites.
- i) Reuse or recycling options should be considered for managing the materials collected through these efforts, to the extent feasible.
 - ii) Periodic community collection events, to provide for collection of residential waste materials for which there is not a readily available collection alternative, may also be funded. Collection events may be held no more frequently than four times per year, and must only be intended to provide residents an opportunity to dispose of hard-to-collect materials, such as large and bulky items that are not picked up under the regular collection system.
 - iii) All materials cleaned up using grant funds must be properly disposed of or otherwise properly managed in accordance with all applicable laws and regulations.
- 7. Local Solid Waste Management Plans.** This category includes projects to develop and/or amend local solid waste management plans by local governments. All local solid waste management plans funded under this program must be consistent with CAPCOG's regional solid waste management plan, and prepared in accordance with 30 TAC Subchapter O, Chapter 330, TCEQ Regulations, and the Content and Format

Guidelines provided by the TCEQ.

Article 6: Liability Insurance

- (a). Contractor agrees to maintain its own commercial general liability insurance, or the equivalent in amount and coverage of self-insurance, during the term of this Contract and to name CAPCOG an additional insured on the policy Contractor agrees to provide the minimum primary insurance coverage of \$500,000 general aggregate and \$250,000 each occurrence plus \$500,000 excess coverage.
- (b). Contractor's liability insurance must contain provisions, to the extent legally permitted, that the insurer will notify CAPCOG in writing at least 10 calendar days in advance of (1) cancellation of non-renewal of the policy; (2) any reduction in the policy amounts; and (3) deletion of CAPCOG as an additional insured.
- (c). SUBCONTRACTOR agrees to furnish CAPCOG with a certificate of the Contractor's commercial liability insurance or copy of its policy, or to certify in writing that it has in force the equivalent amount and coverage of self-insurance, within 30 calendar days after the date this Contract is signed on behalf of CAPCOG.
- (d). SUBCONTRACTOR shall maintain and supervise all safety precautions and programs in connection with its performance of the work program.

Article 7: Audit/Access to Records

- (a). The SUBCONTRACTOR shall maintain and make available for review, inspection and/or audit books, records, documents, and other evidence reasonably pertinent to performance on all work under this Contract, including negotiated changes or amendments thereto, in accordance with accepted professional practice, appropriate accounting procedures and practices at the SUBCONTRACTOR'S Texas office. The SUBCONTRACTOR shall also maintain and make available at its Texas Office the financial information and data used by the SUBCONTRACTOR or its designee (including independent financial auditors) in the preparation or support of any cost submission or cost (direct and indirect), price or profit analysis for this Contract or any negotiated sub-agreement or change order and a copy of the cost summary submitted to CAPCOG. CAPCOG, TCEQ, Texas State Auditor's Office or any of CAPCOG's duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of review, inspection and/or audit. During the conduct of any such review, audit or inspection, SUBCONTRACTOR'S books, records, and other pertinent documents may, upon prior conference with the SUBCONTRACTOR, be copied by CAPCOG or any of its duly authorized representatives. All such information shall be handled by the parties in accordance with good business ethics. The SUBCONTRACTOR shall provide proper facilities within the State of Texas for such access and inspection.
- (b). Audits conducted pursuant to this provision shall be in accordance with State law, regulations and policy, and generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.

- (c). The SUBCONTRACTOR agrees to the disclosure of all information and reports resulting from access to records pursuant to Section (a) above to CAPCOG. Where the audit concerns the SUBCONTRACTOR, the auditing agency will afford the SUBCONTRACTOR an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report.
- (d). Records under Sections (a) above shall be maintained and made available during the entire period of performance of this Contract and until three (3) years from date of final CAPCOG payment for the project. In addition, those records which relate to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken shall be maintained and made available until completion of such action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- (e). Access to records is not limited to the required retention periods. The authorized representatives designated in Section (a) of this Article shall have access to records at any reasonable time for as long as the records are maintained.
- (f). This audit/access to records Article applies to financial records pertaining to all subagreements and all subagreement change orders and amendments. In addition, this right of access applies to all records pertaining to all subagreements, subagreement change orders and subagreement amendments: to the extent the records reasonably pertain to subagreement performance; if there is any indication that fraud, gross abuse or corrupt practices may be involved; or if the subagreement is terminated for default or for convenience.
- (g). CAPCOG reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records kept by the SUBCONTRACTOR on work performed under this Contract.
- (h). The SUBCONTRACTOR agrees to include Sections (a) through (g) of this Article in all subagreements and all change orders directly related to project performance.

Article 8: Independent Financial Audit

The SUBCONTRACTOR shall adhere to the Single Audit requirements of the UGMS. The SUBCONTRACTOR shall deliver to CAPCOG any applicable audit report within thirty (30) days of completion of the audit report. The SUBCONTRACTOR is responsible for including the Single Audit requirements in all subagreements and shall be responsible for insuring adherence to those requirements by all subgrantees and subcontractors.

CAPCOG reserves the right to conduct or cause to be conducted an independent audit of all funds received under this Contract which may be performed by the local government audit staff, a certified public accountant firm, or other auditors as designated by CAPCOG, at CAPCOG's expense. Such audit will be conducted in accordance with applicable professional standards and practices. SUBCONTRACTOR understands and agrees that the SUBCONTRACTOR shall be liable to CAPCOG for any costs disallowed as a result of audit.

Article 9: Amendments to Contract

Any alterations, additions, or deletions to the terms of this Contract which are required by changes in Federal Law or Regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation, provided if the SUBCONTRACTOR may not legally comply with such change, SUBCONTRACTOR may terminate its participation herein as authorized by Article 10.

CAPCOG may, from time to time, require changes in the Scope of the Services of the SUBCONTRACTOR to be performed hereunder. Such changes that are mutually agreed upon by and between CAPCOG and the SUBCONTRACTOR in writing shall be incorporated into this Contract.

Any changes in personnel whose salaries are funded under this Contract or any other Contract amendments, including increasing or decreasing the amount of total funding, altering budget category allocations, extending or shortening the term of the agreement, or making significant changes in the scope of work, schedule or deliverables, **must be approved in advance by CAPCOG**. A detailed description of the proposed change(s) shall be submitted in writing by the SUBCONTRACTOR to CAPCOG for approval. Authorization to amend the Contract will be documented in writing and copies of the authorization retained in the files of both CAPCOG and SUBCONTRACTOR.

Article 10: Termination of Contract for Convenience

- a) CAPCOG may terminate this Contract in whole or part for its convenience. CAPCOG terminates this Contract for convenience by giving SUBCONTRACTOR at least 30 calendar days notice of the termination, specifying the termination date, and describing the part or parts terminated.
- b) Upon receipt of the termination notice, SUBCONTRACTOR agrees to stop work on or before the termination date, cancel all subcontracts and orders entered into under this Contract, and settle all claims resulting from cancellation of the subcontracts and orders. If CAPCOG terminates only part of the Contract, Contractor agrees to complete the un-terminated part if CAPCOG so requests.
- c) At CAPCOG's request, following termination of the Contract for convenience, SUBCONTRACTOR agrees to transfer title and deliver to CAPCOG, at CAPCOG's expense, all work produced in performing this Contract. SUBCONTRACTOR agrees to preserve and protect the work until it is delivered to CAPCOG.
- d) SUBCONTRACTOR agrees to submit to CAPCOG a written termination claim itemizing and documenting the amounts due because of termination of the Contract. If Contractor does not submit the termination claim within 90 calendar days from the effective date of termination, SUBCONTRACTOR's termination claim is barred.

- e) If SUBCONTRACTOR's termination claim is timely submitted, complete, and correct, CAPCOG agrees to pay SUBCONTRACTOR the following amounts in full settlement of SUBCONTRACTOR's termination claim: (1) the reasonable cost of all work performed through the date of termination; and (2) the reasonable cost of settling and paying claims resulting from cancellation of subcontracts and orders. However, CAPCOG's total payment under this paragraph may not exceed the total Contract price, less amounts already paid SUBCONTRACTOR under this Contract, any lawful offsets, and the Contract price for any work not terminated.

Article 11: Suspension or Termination of Contract for Unavailability of Funds

- a) SUBCONTRACTOR acknowledges that CAPCOG is a governmental entity without taxing power and that its only source for paying SUBCONTRACTOR under this Contract is the Municipal Solid Waste Disposal and Transportation Revenue Fee administered by TCEQ under Contract with CAPCOG. If TCEQ suspends or terminates its Contract with CAPCOG, SUBCONTRACTOR agrees that CAPCOG may suspend its payment obligations under or terminate this Contract in whole or part if CAPCOG learns that funds to pay for all or part of the goods or services will not be available at the time of delivery or performance. If CAPCOG suspends or terminates only part of this Contract for unavailability of funds, SUBCONTRACTOR agrees to perform the unsuspended or unterminated part if CAPCOG so requests.
- b) CAPCOG suspends or terminates this Contract for unavailability of funds by giving SUBCONTRACTOR notice of the suspension or termination, as soon as it learns of the funding unavailability, specifying the suspension or termination date, and describing the part or parts suspended or terminated. CAPCOG agrees to promptly return to SUBCONTRACTOR at CAPCOG's expense any goods Contractor shipped to CAPCOG before receiving notice of suspension or termination.
- c) If this Contract is terminated for unavailability of funds under this Article 11, SUBCONTRACTOR is entitled to compensation for goods it furnished and services it performed before it received notice of termination. However, CAPCOG is not liable to SUBCONTRACTOR for costs it paid or incurred under this Contract after or in anticipation of its receipt of notice of termination.

Article 12: Termination for Breach of Contract

- (a). If CAPCOG or SUBCONTRACTOR breaches a material provision of this Contract, the other may notify the breaching party describing the breach and demanding corrective action. The breaching party has five business days from its receipt of the notice to correct the breach, or to begin and continue with reasonable diligence and in good faith to correct the breach. If the breach cannot be corrected within a reasonable time, despite the breaching party's reasonable diligence and good faith effort to do so, either party may terminate the Contract for breach by notifying the other party of the termination date, which may be no sooner than 10 calendar

days from the notice date, or either party may invoke the dispute resolution process of Article 18.

- (b). If this Contract is terminated for breach under Subsection (a), Contractor is entitled to compensation for services it performed and goods it provided before it received notice of termination. However, CAPCOG is not liable to Contractor for costs it paid or incurred under this Contract after or in anticipation of its receipt of notice of termination.
- (c). Termination for breach under Subsection (a) does not waive CAPCOG's claim for damages resulting from the breach, and CAPCOG among other remedies may withhold from compensation owed Contractor an amount necessary to satisfy CAPCOG's claim.

Article 13: Severability

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

Article 14: Data and Publicity

All data and other information developed under this Contract shall be furnished to CAPCOG and shall be public data and information except to the extent that it is exempted from public access by the Texas Open Records/Public Information Act, TEX. GOV'T CODE Chapter 552. Upon termination of this Contract, all data and information shall become the joint property of CAPCOG and the SUBCONTRACTOR.

Article 15: Intellectual Property

- (a). For the purpose of this Article, "intellectual property" refers to 1) any discovery or invention for which patent rights may be acquired, and 2) any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and 3) any other materials in which intellectual property rights may be obtained.
- (b). If the SUBCONTRACTOR conceives of, actually puts into practice, discovers, invents or produces any intellectual property during the course of its work under this Contract, it shall report that fact to CAPCOG.
- (c). The SUBCONTRACTOR may obtain governmental protection for rights in the intellectual property. However, CAPCOG and TCEQ hereby reserve a nonexclusive, royalty-free and irrevocable license to use, publish, or reproduce the intellectual property for sale or otherwise, and to authorize others to do so. CAPCOG and TCEQ also reserve a royalty-free nonexclusive, and irrevocable license to use, publish, or reproduce for sale or otherwise, and to authorize others to use, publish, or reproduce, for sale or otherwise (to the extent consistent with the rights of third parties) any intellectual property for which the SUBCONTRACTOR obtains rights with funds received under this Contract.

- (d). In performing work under this Contract, the SUBCONTRACTOR shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third party's intellectual property rights. It shall hold CAPCOG and the TCEQ harmless for, and to the extent permitted by the laws and Constitution of the State of Texas, defend and indemnify CAPCOG against, any claims for infringement related to its work under this Contract.

Article 16: Energy Efficiency Standards

The SUBCONTRACTOR is encouraged to follow standards and policies on energy efficiency which are contained in the Texas State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Article 17: Identification of Funding Sources

The SUBCONTRACTOR shall acknowledge the financial support of the TCEQ and CAPCOG whenever work funded, in whole or part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, other than documents prepared exclusively for internal use within CAPCOG, shall carry the following notation (or one similar) on the front cover or title page:

**FINANCED WITH FUNDS FROM
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)
THROUGH THE CAPITAL AREA COUNCIL OF GOVERNMENTS (CAPCOG)**

Article 18: Dispute Resolution

- (a). The parties desire to resolve disputes arising under this Contract without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between themselves. To this end, the parties agree not to sue one another, except to enforce compliance with this Article 18, until they have exhausted the procedures set out in these subsections.
- (b). At the written request of either party, each party shall appoint one non-lawyer representative to negotiate informally and in good faith to resolve any dispute arising under this Contract. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.
- (c). If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to refer the dispute to the Dispute Resolution Center of Austin for mediation in accordance with the Center's mediation procedures by a single mediator assigned by the Center. Each party shall pay half the cost of the Center's mediation services.

- (d). The parties agree to continue performing their duties under this Contract, which are unaffected by the dispute, during the negotiation and mediation process.

Article 19: Oral and Written Contracts

All oral or written agreements between the parties hereto relating to the subject matter of this Contract which were developed and executed prior to the execution of this Contract have been reduced to writing and are contained herein.

Article 20: Nondiscrimination and Equal Opportunity

- (a). Subsection (b) summarizes the nondiscrimination requirements applicable to SUBCONTRACTOR's performance under this Contract that are set out in detail in title 41, chapter 60, and title 28, parts 35 and 36, Code of Federal Regulations. The SUBCONTRACTOR agrees to comply with the detailed requirements.
- (b). SUBCONTRACTOR shall not exclude anyone from participating under this Contract, deny anyone benefits under this Contract, or otherwise unlawfully discriminate against anyone in carrying out this Contract because of race, color, religion, sex, age, disability, handicap, or national origin.

Article 21: Utilization of Small, Minority, and Women's Business Enterprises

- (a). A Historically Underutilized Business (HUB) is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51 percent is owned, operated, controlled and actively managed by a person or persons who are historically underutilized (socially disadvantaged) because of their identification with members of certain groups, including Black Americans, Hispanic Americans, Asian Pacific Americans, Native Americans (American Indians) and Women who suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control.
- (b). The SUBCONTRACTOR agrees that qualified Historically Underutilized Businesses (HUBs) shall have the maximum practicable opportunity to participate in the performance of this Contract.

Article 22: Force Majeure

- (a). Subject to the requirements of Subsections (b) and (c) and the limitation of Subsection (d), a party's obligations under this Contract are suspended during any period the party is unable to perform its obligations because of work stoppage or strike resulting from a labor dispute; fire, flood, wind, earthquake, or other natural disaster; epidemic, riot, sabotage, rebellion, or war; governmental intervention; or other cause beyond the party's control.
- (b). Subsection (a) does not apply unless the party invoking it notifies the other party of the force majeure event within five business days after it occurs, describing the nature of the event in

detail and estimating its likely duration. The party invoking Subsection (a) has the burden of proving that the force majeure event exists.

- (c). If the other party is reasonably satisfied that the force majeure event exists, it shall notify the invoking party that the obligations of this Contract are suspended from the effective date of the event throughout its duration. The party invoking Subsection (a) shall notify the other party within five business days after the force majeure event ends. When the force majeure event ends, the obligations of this Contract are reinstated for the remainder of the Contract's term.
- (d). If the obligations of this Contract are suspended because of a force majeure event for a cumulative period of more than 30 calendar days, either party may terminate this Contract in whole or part for convenience under Article 10.

Article 23: Conflict of Interest

- (a). SUBCONTRACTOR agrees to comply with its internal policy prohibiting conflict of interest and with Chapter 171 of the TEX. LOCAL GOVT. CODE ANN. in carrying out this Contract.
- (b). If SUBCONTRACTOR learns that one of its governing body members, officers, employees, or agents has violated or may violate its internal policy or Chapter 171, SUBCONTRACTOR agrees promptly to take corrective and appropriate disciplinary action and to notify CAPCOG in writing of the actual or potential violation and the corrective and disciplinary action taken.

Article 24: Miscellaneous

- (a). All representations and warranties of SUBCONTRACTOR, together with all continuing obligations described in this Contract, survive the ending or early termination of this Contract.
- (b). This Contract states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by both parties.
- (c). This Contract is binding on and inures to the benefit of the parties' successors in interest.
- (d). This Contract is performable in Travis County, Texas, and Texas law governs the interpretation and application of this Contract.
- (e). This Contract is executed in duplicate originals.

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 designate a task force on Records Management for Hays County in order to study situation, needs and bring recommendations to the Court.

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: Ford

SUMMARY:

In the aftermath of the informational workshop on January 19, 2010, we recommend the commencement of a Records Management Task Force to include the following individuals or department appointees:

Cecelia Adair, District Clerk
Linda Fritsche, County Clerk
Luanne Carraway, Tax Assessor Collector
Michele Tuttle, County Treasurer
Sheriff Ratliff, or designee from SO
JP designee
CC designee (klf interested and willing)

Additionally, the Court should consider a charge for the Task Force, or certainly set expectations, as well as a timeline to action and information delivery back to the Court. We will have some recommendations at the Court's meeting on Tuesday.

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 of County Jail facility repair progress and presentation to the Texas Commission on Jail Standards on February 4, 2010.

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY:

Broaddus and Associates will provide update on jail repair progress.

November 18, 2009

**Texas Commission on Jail Standards
C/o Adan Munoz, Jr. – Executive Director
P.O. Box 12985
Austin, Texas 78711-2985**

Dear Mr. Munoz:

With the full authority of the Hays County Commissioners Court, I am writing on behalf of Hays County, Texas ("the County") and the Hays County Sheriff pursuant to 37 TAC §297.10 to express the County's disagreement with the Remedial Order issued by the Texas Commission on Jail Standards ("the Commission") on or about November 5, 2009; and to request that the Commission review and reconsider that Remedial Order at its next regular meeting. In support of this request, the County would show the following:

BACKGROUND

The Hays County Law Enforcement Center ("the Jail") was the subject of a Special Inspection by the Commission on or about April 23, 2009. Several areas were determined to be noncompliant by the Commission's inspector. The Commission communicated its findings to the Hays County Sheriff ("the Sheriff") in two separate letters on or about April 23, 2009 and April 24, 2009 (See "Special Inspection Report" attached hereto as Attachment A).

In response to the Special Inspection Report, the Hays County Sheriff presented the Commission with a Remediation Plan on May 6, 2009. In addition, the Hays County Commissioners Court took action on May 5, 2009 to go out for bid on repair and reconstruction of the Jail rooftop, which had been determined to be a significant contributing element to the Jail's noncompliance issues. Sheriff's Office and Commissioners Court actions related to the Jail continued through the summer months. Each action was dedicated to the comprehensive analysis of Jail-related issues in Hays County. Each action worked toward the identification of a long-term solution of the noncompliance areas identified by the Commission (See Timeline attached as Attachment B).

In September of 2009, the Commission performed a regular inspection, which resulted in the issuance of a notice of noncompliance (See "Noncompliance Letter" attached as Attachment C) on or about September 28, 2009. Hays County's noncompliance was almost immediately placed on the Commission's regular agenda, which was set for November 5, 2009.

After a hearing on the matter on November 5, 2009, (a mere 38 days after issuance of the Commission's Noncompliance Letter) the Commission issued a Remedial Order, declaring the closure of the Jail's kitchen by November 20, 2009.

Pursuant to §297.10, the County has filed this request for reconsideration by the Commission.

COUNTY'S PERFORMANCE UNDER 37 TAC 297

Title 37 of the Texas Administrative Code §297.5 provides that "[w]hen the Commission finds that a facility is not in compliance with...minimum jail standards, or conditions necessitate administrative remedies, it shall issue a notice of noncompliance or an administrative order to the owner and sheriff/operator responsible for the facility...". This provision also lays out the procedures that follow such notice or order. Specifically, the Notice of Noncompliance shall 1) "provide a reasonable time, not to exceed 30 days, within which appropriate corrective measures shall be initiated," and 2) "provide a reasonable time, not to exceed one year within which appropriate corrective measures shall be completed." 37 TAC §297.5(b)(2-3). The record of correspondence between the Commission and the County shows that the first report occurred in late April of 2009. That report was communicated to the County under §297.3 or §297.5 on April 23, 2009 and April 24, 2009 (See Attachment A).

Counsel for Hays County has opined that the correspondence from the Commission on April 23, 2009 was not a notice of noncompliance pursuant to §297.5. Despite the fact that areas of noncompliance were identified in that letter, it is counsel's opinion that the letter was merely an inspection report issued under §297.3. A formal notice of noncompliance from the Commission provides the recipient with an admonishment of the timelines under Chapter 297, and the Special Inspection Report did no such thing (for reference, compare Attachment A to Attachment C). This is an important distinction, since an inspection report under §297.3 would not invoke the compliance schedules under §297.6, including the requirement that all noncompliance issues be resolved and corrected within one (1) year.

To be certain there was no misunderstanding regarding the Special Inspection Report's statutory basis, Hays County nonetheless complied with the requirements of §297.6 by establishing an action plan by May 6, 2009 (See Attachment D); by actively remedying several areas of noncompliance in advance of the Commission's hearing on November 5, 2009; and by advertising for and selecting a contractor to repair the kitchen area by or before March 15, 2010, a schedule that falls within the maximum of one (1) year allowable by 37 TAC §297.5(b)(3) and 37 TAC §297.6. Since the County began addressing the issues raised by the Commission within thirty (30) days of the Special Inspection Report and proposed to completely remedy these issues before one (1) year after the Special Inspection Report, we believe the Commission had little or no basis to issue a Remedial Order under §297.8, which provides that such Orders be issued upon the Commission's finding that the County "fail[ed] to initiate corrective measures within the time prescribed."

COMMISSION'S ORDER NOT REMEDIAL

The Commission purports to have issued a Remedial Order under §297.8. The essence of the term "remedial," however, indicates that the Order should be oriented toward a solution of the noncompliance issue(s). The Order should be purposed toward a remedy. The November 5th Remedial Order does not bring the County Jail's kitchen any closer to compliance. Instead, it

aggravates the County's compliance efforts by creating an emergency need for a mobile kitchen and rearranging a schedule that would culminate in the kitchen's full compliance by or before March 15, 2010.

Any shorter deadline than March 15, 2010 for completion of these remaining "corrective measures" is inadvisable. The County has maintained an aggressive schedule that has challenged its staff, its elected officials, and its contractors. In a recent letter, the Senior Project Manager of the Hays County Law Enforcement Center project, Phillip Buterbaugh, highlighted the thorough analysis that has occurred thus far (See Attachment E). In that letter, Mr. Buterbaugh expresses the need to proceed according to the schedule, stating that "[t]o proceed otherwise would risk costly and dangerous mistakes in material selection or workmanship." Hays County would like to correct each and every noncompliance issue identified by the Commission, but, absent some imminent threat to the health and safety of the inmates and County employees, it would like to do so using the balanced schedule it has already established with the assistance of its Program Manager, Broadus and Associates (See Milestone Schedule attached as Attachment F).

NO FINDING OF ENVIRONMENTAL HARM OR DANGER TO INMATES

During the week of November 9, 2009, the County requested and received two separate inspections of its food service facilities in the Jail. The first inspection was performed by an employee of Hays County's Resource Protection, Transportation, and Planning Department ("RPTP"), resulting in a total score of 87 (See Attachment G). To ensure no appearances of collusion or impropriety, the County also requested an independent inspection by an Assistant Director in the Department of Environmental Health and Animal Services for the City of San Marcos, Texas ("the City"). This inspector regularly performs food establishment inspections for the City. The City's inspection of the Jail resulted in a total score of 82. Any score of 70 or above means that the food establishment has passed the inspection and may continue operations without interruption. The County Jail passed both inspections.

In his report, the City's inspector noted some of the same issues raised by the Commission in his report (See Attachment H); but, since these structural issues are not a normal part of a food service inspection, they were not a factor in the total score of 82. For that reason, counsel for the County followed up with the both inspectors and confirmed that no imminent health and safety concern exists in the professional opinions of both food service inspectors (See Attachments I and J).

CONCLUSION

For the above-stated reasons, I would humbly request, on behalf of Hays County, Texas and the Hays County Sheriff, that the Commission grant Hays County an opportunity to appear before the Commission to review and reconsider the Remedial Order issued on or about November 5, 2009.

Sincerely,

Elizabeth "Liz" Sumter
Hays County Judge

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: Recommendations or presentations from the Real Estate RFQ review team and/or the selected respondents. Possible action may follow.

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: Ford and Conley

SUMMARY:

In the interest of time, members of the real estate review committee will make recommendations to the court from the responding entities with a possibility of a presentation by top respondents.

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 Memorandum of Understanding between Hays County and the Dahlstrom family for the lease of approximately 360 acres that will serve as a public access open-space project.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: BARTON

SPONSORED BY: BARTON

SUMMARY: The Parties to the Dahlstrom Ranch Project are attempting to Close on the purchase and sale of the Conservation Easements before 2010. This Memorandum of Understanding for lease of the Howe Pasture commits Hays County and the Dahlstrom family to certain terms and conditions regarding improvement, public access, and management of the property. The MOU contemplates the execution of a more detailed Lease that will come back for Court consideration in March or April of 2010; but this MOU is essential to achieving a basic agreement between the Dahlstrom family and Hays County simultaneous with Closing on the purchase and sale of the Conservation Easements.

**Memorandum of Understanding
Between
Hays County, Texas and Dahlstrom Family Limited Partnership
Regarding
Hays County's Lease of Property Owned by the Dahlstrom Family Limited Partnership**

• • • •

This Memorandum of Understanding ("**MOU**") represents the intent and understanding of Hays County, a political subdivision of the State of Texas ("**County**" or "**Lessee**"), and the Dahlstrom Family Limited Partnership, a Texas limited partnership, a ("**Owner**" or "**Lessor**"). The County and the Owner are collectively referred to as the "**Parties**." The "**Effective Date**" of this MOU shall be the date the last Party duly executes it by signing, below.

Exhibits

Exhibit A	Legal Description of Dahlstrom Ranch
Exhibit B	Legal Description of the Howe Pasture
Exhibit C	Map of Property depicting the Howe Pasture
Exhibit D	Preliminary Project Budget

I. RECITALS.

WHEREAS this MOU proposes the lawful use of Hays County general obligation bond funds authorized under Chapter 1251 of the Texas Government Code and the vote of the citizens of Hays County, Texas, which affirmed and authorized the County's issuance of \$30,000,000.00 (USD) in bonds for parks, natural areas, open space, and related projects, and the preservation of water quality, aquifer recharge areas, and wildlife habitat, and the levying of a tax in payment thereof ("**Parks Bond Funds**");

WHEREAS the Owner of the 2,253.66 +/- acre Dahlstrom Ranch described in **Exhibit A** and depicted on **Exhibit C** (the "**Property**") desires to offer the County the lease of one portion of the Property containing approximately 360 acres described in **Exhibit B** and depicted on **Exhibit C** ("**the Howe Pasture**");

WHEREAS the County desires to accept Owner's offer to lease the Howe Pasture on the Property;

WHEREAS the Hays County Commissioners Court ("**HCCC**") finds the fulfillment of a public purpose for Hays County's citizens in the allocation of Parks Bond Funds toward a lease of public-access open space.

II. THE PROJECT.

The "**Project**" presently includes a long term "**Lease**" that the Owner will offer to the County for public access to the Howe Pasture on the Property. At the time the Lease is executed, the Property will be subject to three conservation easements designed to protect certain identified conservation values in perpetuity (known individually as the "**NRCS Conservation Easement**", "**Non-NRCS Conservation Easement**", and "**Quarry Conservation Easement**", and collectively

as the “*Conservation Easements*”). The Conservation Easements will be held by the County, the City of Austin, Hill Country Conservancy, and the Natural Resource Conservation Service. The parties to those Conservation Easements have negotiated the Non-NRCS Conservation Easement, which includes the area of the Howe Pasture, to accommodate limited public access for the Project. The goal of the Project is to establish a natural area and open space venue for limited recreation (guided spelunking, hiking, cycling (provided cycling activities are limited to allowed Roads and Pathways), swimming, bird watching, nature tours, agricultural and ecological classes, nature interpretation, and educational programs) and research, in a manner which is consistent with and does not violate the terms of the Non-NRCS Conservation Easement, and which protects the conservation values of the Property as identified in the Conservation Easements. The Parties have developed a “*Preliminary Budget*” for the Project which is attached hereto as **Exhibit D**. As cited in **Exhibit D**, the preliminary budget may be adjusted by and at the sole discretion of the Hays County Commissioners Court.

III. PURPOSE.

This MOU is being executed for the purpose of memorializing the Parties’ commitment to perform the broad terms contained herein and to continue defining their relationship through on-going negotiations as it pertains to this Project. The Parties, therefore, commit to the terms and conditions contained herein. The Parties wish to formalize and document their relationship regarding Lessee’s dedication of a certain sum of Park Bond Funds to the Project and Lessee’s promise to perform certain terms and conditions in return for Lessor’s promise to perform certain terms and conditions including but not limited to the cost-sharing cited in section VII-C. This MOU contemplates the execution of a subsequent agreement or agreements that will further define the relationship between the Parties and that, by agreement of the Parties, could amend, modify, or completely supercede the terms of this MOU. Should the Parties fail to agree to the modification or amendment of terms contained in this MOU, then the terms contained in this MOU shall control and be incorporated into the subsequent agreement in substantial conformity with this MOU.

IV. CONTINGENCIES.

The obligations of the Parties to perform the terms and conditions expressed in this MOU are contingent upon:

- A. The Parties successfully executing the Conservation Easements on the Property described above; and
- B. The County approving, in its sole determination, the feasibility of the Project as it pertains to the scope of the Parks Bond Funds, fiscal impact, and the legal effect of pursuing the purpose cited in this MOU.

V. TERM

A. The initial term of the Lease contemplated by this MOU shall be at least seven (7) years. Lessor shall have an option to renew the lease at the end of the initial term for a period of five (5) years, and shall possess an additional two (2) options to renew for periods of five (5) years, bringing the possible term of the Lease, with the exercise of all options available to Lessee, to a total of twenty-two (22) years.

B. If the Parties are unable to reach agreement regarding newly negotiated terms of the Lease, then the original terms and conditions of the Lease shall remain in effect for the renewal period. Notwithstanding the foregoing, the Parties intend to negotiate provisions of the Lease to allow its terms to be enforceable and to permit either Party to cancel the Lease at any time if the terms of the Lease are not met.

VI. MUTUAL RIGHTS AND OBLIGATIONS.

Terms and Conditions related to the Parties are as follows:

A. Lessor and Lessee shall ensure that all activities allowed under the Lease are in compliance with the terms and conditions of the Property's Conservation Easements. The Non-NRCS Conservation Easement defines certain terms, including "Improvements", "Roads", and "Trails", and the Lease should use those same terms and definitions to create the necessary consistency between the Lease and the Conservation Easements. Any term used in the Lease which is not defined in the Conservation Easements should be defined in a way which is at least consistent with any defined terms and with the overall intent and purpose of the Conservation Easements.

B. Lessor and Lessee agree that a plan or plans for limited public access to the Howe Pasture will be developed by the Parties and will be subject to the approval of the Hill Country Conservancy and City of Austin before public access will be allowed (the "***Public Access Plan***"). Lessor is under no obligation to permit public access to the Lessee until the first Public Access Plan is approved by the Hill Country Conservancy and City of Austin. The Public Access Plan will address: (i) the location of all wildlife viewing stations, education kiosks and any other Improvements to be used by the public, including without limitation, all Roads and Pathways providing access to such Improvements; (ii) the number of people allowed to access the Howe Pasture at any one time and during any single day, and; (iii) the steps the Parties will take to ensure that such use of the Howe Pasture does not cause any materially adverse effect on the Conservation Values. The Public Access Plan may include an "***Improvement Plan***" that describes the limitations and prioritizations of improvements that may be made to serve the Project, and an "***Operations Plan***" that describes the standards by which Lessee shall manage the Project, including but not limited to the management of public access, permitted activities and improvements, and recharge and other natural features.

C. The Lease will be subject to an annual review by the Parties on or about the anniversary of the Effective Date to determine if the Lease terms require any amendment. The Parties shall have the opportunity to voluntarily renegotiate the Lease terms prior to any renewal by Lessee as described in Section V above. The Parties shall have the right to amend the Lease by mutual agreement at any time.

Interactions between the Parties shall be conducted by the Lessee's and Lessor's Designated Representatives (or designee), which shall be appointed from time to time by the Parties, and shall initially be:

Lessor's Designated Representative: Jack Dahlstrom – Phone: (512) 627-0203; Fax: (512) 295-2693.

Lessee's Designated Representative: Commissioner Jeff Barton – Phone: (512) 262-2091; Fax (512) 268-1250; Email: jeff.barton@co.hays.tx.us.

VII. LESSEE RIGHTS AND OBLIGATIONS.

A. Based upon the affirmative vote of HCCC on or about _____, 2008, Lessee shall dedicate at least \$350,000 (USD) toward capital improvements on the Project.

B. Lessee shall complete all substantially planned improvements described in Exhibit D within the initial Lease term of seven (7) years, unless otherwise agreed by the Parties.

C. Lessee shall be responsible for the ongoing management of the Project as described in the Public Access Plan and its various components, including but not limited to the management of public access (including enforcement against trespass onto the Property resulting from the Project), permitted activities, Project maintenance (including trash pick up), and recharge and other natural features. Lessee shall have a right to conduct habitat restoration within the Howe Pasture as permitted in the Non-NRCS Conservation Easement, subject to approval by Lessor, City of Austin and Hill Country Conservancy. Lessee shall conduct all management activities in a manner consistent with the terms of the Non-NRCS Conservation Easement.

D. Lessee shall be responsible for any damage to the Property that results from the permitted public access associated with the Project, and for any violation or default under the Conservation Easements resulting from uses of the Property under the lease, and for any damages or corrective action required to mitigate or cure such violation or default under the Conservation Easements. The Lessee shall carry an insurance policy in the name of Lessor or in the alternative, reimburse Lessor for insurance policy that is taken out on Lessor's behalf.

E. Lessee shall, at all times during the Lease, not provide public access outside the agreed-upon hours of public access described in the Operations Plan, which shall at least include daylight public access to the Project, except weekends (Friday through Sunday) between November 1st and February 28th of each year, unless otherwise agreed by the Parties. A schedule for public access on weekends will be developed annually, which the Parties may change at any time by written mutual agreement. . Lessee shall ensure that the limitations set forth in this Section are enforced by 1) providing management personnel to monitor the Project during hours of operation, and 2) locking all access points to the Project during the times that the Project is closed to public access.

F. Lessee may contract or subcontract for the improvement and/or operations of the Project, at the sole discretion of Lessee. Lessee must be named insured on the insurance policy held by any contractor or subcontractor hired. However, Lessor shall have the opportunity to approve Lessee's selection of a Project contractor or subcontractor in advance of commencement of work by contractor or subcontractor, and such approval shall not be unreasonably withheld. LESSEE SHALL, at all times, remain obligated to INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, AGENTS AND EMPLOYEES AGAINST ALL CLAIMS, SUITS, DEMANDS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY'S FEES, OR OTHER LIABILITY FOR PERSONAL INJURY, DEATH OR DAMAGE TO ANY PERSON OR PROPERTY WHICH IS PROXIMATELY CAUSED BY LESSEE'S ACTIONS OR

IN ACTIONS IN MAINTAINING AND/OR MANAGING THE PROJECT. NO INDEMNIFICATION PROVISION, HOWEVER, SHALL APPLY TO ANY CLAIMS, SUITS, DAMAGES, COSTS, LOSSES OR EXPENSES ARE PROXIMATELY CAUSED BY THE NEGLIGENT OR WILLFUL ACTS OF LESSOR, ITS AGENTS, EMPLOYEES OR CONTRACTORS; PROVIDED, HOWEVER, THAT FOR THE PURPOSES OF THE FOREGOING, LESSOR'S ACT OF ENTERING INTO THIS MOU OR ANY SUBSEQUENT AGREEMENT CONTEMPLATED HEREIN SHALL NOT BE DEEMED TO BE A "NEGLIGENT OR WILLFUL ACT." LESSEE'S OBLIGATION TO INDEMNIFY LESSOR SHALL NOT BE CONSTRUED AS A WAIVER OF HAYS COUNTY'S RIGHT TO ASSERT SOVEREIGN IMMUNITY AS IT PERTAINS TO ANY CLAIM OR SUIT AGAINST HAYS COUNTY.

G. In consideration of Lessee fulfilling its obligations under the Lease, Lessee shall have an Option and Right of First Refusal for the purchase of the Property, with the specifics of such Option and Right of First Refusal to be set forth in the subsequent agreement(s) to be executed between the Parties (the "***Option Agreement***"). The Option Agreement shall grant Lessee one (1) year to exercise said option and one (1) year to close on the sale of the Property after the exercise of said option shall be recorded.

H. In consideration of Lessee fulfilling its obligations under the Lease Agreement, Lessee shall have a right to reserve, based on availability, use of the Property for up to twelve (12) periods of one (1) to three (3) days, including overnight stay, for supervised groups of up to fifty (50) people for official county purposes. Groups shall be supervised and chaperoned by at least two (2) representatives designated by Lessee. Lessee will notify Lessor of the representatives chosen and shall reserve use of the Property under this Section with at least 14 days written notice before the date Lessee wishes to use the Property.

I. Lessee understands that the current Hays County property tax valuation of the Property is for agricultural purposes. The Howe Pasture shall continue to be available to Lessor for agricultural and wildlife uses, including the pasturing of livestock, in a manner consistent with the Conservation Easements and any "***Grazing Plan***" required thereunder, and consistent with the Public Access Plan. Lessee shall cooperate with Lessor to implement activities that aid the qualification of the Howe Pasture for such agricultural use.

VIII. LESSOR RIGHTS AND OBLIGATIONS.

A. Lessor shall, upon written request of Lessee, provide up to three thousand (3,000) tons of base material in any calendar year during the initial term of the Lease. Lessee has the responsibility for obtaining the base material from the Centex Materials' plant on FM 2770 and delivering it to the Property. The base material can only be used for the Project described herein.

B. Lessor shall retain the right to designate the use of the Howe Pasture for the purposes of taxation and 1-D-1 Open Space Valuation, and to perform activities permitted in the Non-NRCS CE, granted that the designation chosen by Lessor will not prohibit lessee's or the public's activities that are otherwise allowable under the Lease.

C. Each year Lessee shall track all gross income it receives for any fees charged to the public for access to the Howe Pasture (the "***Gross Income***"). Lessor shall have a right each year to receive up to forty percent (40%) of this Gross Income. Lessee guarantees that all of the remaining Gross Income shall be dedicated to paying the cost of improvements and operations of the

Project. Lessor shall have the right, with the provision of reasonable notice, to audit Lessee's financial information related to the Project. At the Parties' annual meeting, Lessee will present Lessor with an annual accounting of the Gross Income and expenses associated with the Project for the previous year, and a projected budget for the upcoming year. Lessee shall pay Lessor its share of the gross income within (30) days of the annual meeting cited in section VI, and Lessor shall dedicate those monies to 1) the Managing Grantee (as defined in the Non-NRCS Conservation Easement) to fund ongoing management of the Conservation Easement and/or 2) Lessor's expenses associated with its own management of the Conservation Easement, at Lessor's sole discretion.

D. Lessor shall retain a right to voluntarily terminate the Lease at any time after the provision of 90-days' written notice to Lessee, the payment of three-hundred-and-fifty thousand dollars (\$350,000.00 USD) as a termination fee, and the reimbursement of Lessee for the costs of improvements on the Project prior to termination minus the depreciated value of said improvements according to a depreciation schedule set forth in the subsequent agreement(s) to be executed between the Parties.

IX. EXPIRATION.

The Parties agree that time is of the essence. If, by January 2011, this MOU is not confirmed, amended, modified, or replaced by a subsequent agreement or agreements of the Parties that furthers the Purpose described herein, this MOU shall be incorporated into a Lease agreement between the parties and the terms contained in this MOU shall control and be incorporated into the subsequent agreement in substantial conformity with this MOU.

X. MISCELLANEOUS.

Compliance With Laws. Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this MOU and/or applicable to the Parties performing the terms and conditions of this MOU.

Severability. If any Section or provision of this MOU is held to be invalid or void, the other Sections and provisions of this MOU shall remain in full force and effect to the greatest extent as is possible, and all remaining Sections or provisions of this MOU shall be construed so that they are as consistent with the parties' intents as possible.

Multiple Counterparts. This MOU may be executed in several counterparts, all of which taken together shall constitute one single MOU between the parties.

Section Headings; Exhibits. The Section and Subsection headings of this MOU shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the MOU are included merely for organization and ease of review. The Exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

Waiver By Party. Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this MOU of any covenant, term, condition, agreement, right, or duty that arises under this MOU shall be considered a one-time waiver and shall not be construed to be a waiver

of any succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this MOU.

Governing Law; Venue. THIS MOU SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this MOU will be brought in Hays County, Texas.

Assignment. Neither party to this MOU may assign its duties, interests, rights, benefits and/or obligations under this MOU, in whole or in part, without the other party's prior written consent thereto.

Entire Agreement; Amendment. This MOU (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendments to this MOU must be made in writing and signed by the parties to this MOU prior to the performance of any terms or conditions contained in said amendments.

SIGNATURES ON FOLLOWING PAGES

The Parties to this Memorandum of Understanding Between Hays County, Texas and Dahlstrom Family Limited Partnership Regarding Commitment of Parks Bond Funds to the Project hereby agree, as is evidenced by their authorized signatures, below.

Lessee

Lessor

**_____
Elizabeth "Liz" Sumter
Hays County Judge
Partnership
111 E. San Antonio, Suite 300
San Marcos, TX 78666**

**_____
Gay R. Dahlstrom
Manager, Dahlstrom Family Limited

302 Main Street
Buda, Texas 78610**

**Attest: _____
Linda Fritsche, Hays County Clerk**

(Affidavit follows on the next page)

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 contract for Design/Build Services related to expansion of the RPTP facility on Yarrington Road.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: \$82,500.00 (Preconstruction Services) (Note: DBBL is \$1,452,500.00)

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: INGALSBE

SPONSORED BY: INGALSBE

SUMMARY: Staff and representatives from Broaddus and Associates have finished negotiating the contract between Hays County and Flynn Construction, Inc. for the expansion of the RPTP facility. The contract was modeled, with minor changes, after the agreement already accepted by the Court for design/build of the Government Center project.

Agenda Item Routing Form

DESCRIPTION OF Item: Authorize the County Judge to execute a contract for Design/Build Services related to expansion of the RPTP facility on Yarrington Road.

PREFERRED MEETING DATE REQUESTED: January 26, 2010

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$82,500.00 001-645-00.5741

COUNTY PURCHASING GUIDELINES FOLLOWED: ____ Yes ____

PAYMENT TERMS ACCEPTABLE: ____ Yes ____

COMMENTS:

Bill Herzog

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE: ____

COMMENTS:

COMMISSIONERS' COURT

APPROVED/DISAPPROVED AND DATE: ____

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: ____

Hays County RTP Facility Addition

EXHIBIT H

Design-Build (DB) Agreement



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

This Agreement is made as of January 26, 2010 (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, Flynn Construction, Inc., for Design and Construction of the new Hays County Resource Protection, Transportation and Planning (RPTP) Facility Addition.

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.

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.
- 3.2 "General Conditions"
- 3.2.1 "Contract General Conditions" means the additional contract provisions described in Exhibit B.
- 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 the Design Services and licensed in the State of Texas in their respective professions.
- 3.4 "Design-Build Cost Limitation", or DBCL, means the Owner's established upper cost limit, or construction budget, for the Project. DBCL 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 DBCL also includes all design and construction contingencies. The DBCL 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 DBCL.

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", "Court" means the County Commissioners 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 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/3D computer modeling) and drawings by the architect and the sub-contractor as appropriate and within the applicable laws and regulations of the State of Texas.

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



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION

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 Cost 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 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 Cost 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 3D computer modeling (SketchUp) requirement. The Design Services shall incorporate SketchUp 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. Design Services shall be performed using SketchUp and integrated processes based upon industry best practices for design visualization, 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 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 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 Cost Limitation (DBCL) 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:

- o Architectural Services
- o Life Safety Code Analysis Services
- o Interior Design Services
- o Landscape Architectural Services
- o Civil Engineering Services
- o Structural Engineering Services
- o Mechanical Engineering Services
- o Fire Protection Engineering Services
- o Electrical Engineering Services
- o Security Engineering services
- o Commissioning Services
- o Telecommunications & data/voice network design services
- o Construction Cost Estimating
- o Constructability Analysis
- o Value Engineering Coordination
- o Life Cycle Analysis
- o Storm Water Pollution Prevention Plan Design Services
- o Construction Administration
- o 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 Cost 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 No.: P2010-P02 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~~



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION

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 Cost 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 Cost Limitation.

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

4.4.4 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 Cost 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 Cost 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 Court's written approval of the Design Development documents and the mutually established Design-Build Cost 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 RPTP Facility Addition for retention by Hays County (Optional).

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 Cost 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 Computer-aided Design and Drafting ("CADD") system copies of the Construction Documents in the format and media specified by the Owner plus one (1) set of reproducible sepia and one blue line set, duly sealed.

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 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 Cost 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 Cost Limitation. Should any Construction Cost Estimate fall significantly below the Design-Build Cost Limitation, the Owner shall inform the Design-Build Contractor of desired changes to the Project scope or the Design-Build Cost Limitation.

4.8 REVIEW 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.

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 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.

Formatted: Font color: Red



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION

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. 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 Omni Class classification tables for appropriate data types. The Owner's Representative's web based Project Management System, "Owner InSite," shall be used to record and maintain documents.

4.9.5 The Design-Build Contractor shall administer all regular progress 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, 2171 Yarrington Road, as soon as practicable, on a weekly basis (usually on a day and time and place to be set by the Owner's Representative for each Thursday). The last meeting held on the last Thursday of each month (or the first Thursday meeting 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. 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 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 as-built drawings during the course of the Work and shall review final as-built documents, and electronic schedule data for completeness and compliance with Contract requirements. 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 schedule spreadsheets and construction documents in the system and manner required by the Owner. At a minimum, project record documents shall be provided electronically 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," a web based application, as instructed by the Project Manager.

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



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION

4.8.16 Owner's approval of any drawings, specifications, submittals or other documents shall not release or relieve Design-Build, 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:

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

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

4.10.3.3 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.

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

4.10.3.5 Providing services for planning tenant or rental spaces.

4.10.3.6 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.

4.10.3.7 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.

4.10.3.8 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.

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

4.10.3.10 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. 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 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 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 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 DBCL 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,



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION

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 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 Contractors 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's 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 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,



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

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 Cost 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.

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: drawings, specifications and other documents or items prepared for the Project ("Construction Documents"), in written reproducible form and electronic form (dwg, dwf, 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 drawings and documents, including but not limited to: 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 (dwg, dwf, pdf) 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, 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 Construction Documents that the third party is responsible for any liability arising from the reuse or modification.

9.2 The Design-Build Contractor and Project Architect shall provide the Owner with the electronic form of the drawings, specifications and other documents prepared by the Design-Build Contractor and Project Architect throughout the course of the project. If the Contract is terminated by the Owner, at any stage of the Agreement, the Design-Build Contractor and Project Architect 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. 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 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 for the performance of Construction Services. The Construction



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION

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 Price 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 forms. 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;

11.11.4 If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

complete the services in accordance with this Agreement; or

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: 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 and 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 EIGHT: 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 Design-Build Contractor's 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 EIGHT: 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.



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION

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-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



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

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 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 DBCL, 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 five percent (5%) of the Design-Build Cost 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 Cost 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 B, 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-Builder obtain a 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 coverage shall be provided by the Design-Build Contractor:

17.4.1 Design Phase Services; Design-Build Contractor shall provide coverage 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 the coverage 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.



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

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.

**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 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 (3) 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 (3) 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**

20.1 REFER TO GENERAL CONDITIONS ARTICLE 7.7.15 FOR INDEMNIFICATION.

20.2 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.

20.3 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



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

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 performance of this Agreement.

21.9 Certification of No Asbestos Containing Materials or Work:

21.9.1 The Design-Build 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.

21.9.2 The Design-Build Contractor shall provide at Substantial Completion, a notarized certification to the Owner and the Architect that no asbestos containing materials or work was provided, installed, furnished or added to the project.

21.9.3 The Design-Build Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

21.9.4 The Design-Build 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 21.9.3 above. All materials used on this project shall be certified as non Asbestos Containing Building Materials (ACBM).

21.9.4.1 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this project.

21.9.4.2 The Design-Build Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

21.9.4.3 The Design-Build Contractor shall provide a notarized certification that no ACBM's were used.

**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 (4) 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 (3) 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
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

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



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

**Article 23
COMPENSATION**

23.1 The Design-Build Cost Limitation (DBCL) for the project is \$1,452,500. 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 Cost Limitation.

23.2 FOR PART I PRECONSTRUCTION PHASE (BASIC) SERVICES, Owner shall pay the Design-Build Contractor a Preconstruction Services Fee as follows:

Part I Preconstruction Services Fees	
Pre-Design Services Phase:	\$5,500
Schematic Design Phase:	\$10,500
Design Development Phase:	\$20,500
Subtotal of Fees at conclusion of GMP Commitment	\$36,500
Construction Document Phase including subcontract buyout:	\$46,000
Part I Preconstruction Services Sub-total:	\$82,500

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:

Part II Construction Services	
Design-Build Contractor Construction and Contract Administration Phase Fee:	\$92,500
Design-Build Contractor General Conditions:	\$117,695
Cost of Work	\$1,154,805
Part II Construction and Contract Administration Services Subtotal:	\$1,365,000

23.4 SUMMARY OF COMPENSATION

Part I Preconstruction Services	\$82,500
Part II Construction and Contract Administration Services	\$1,365,000
Design-Build Contractor's Contingency	\$5,000
Design-Build Cost Limitation	\$1,452,500

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 RPTP Facility Addition within three hundred sixty-five (365) Calendar Days of the Owner's Notice to Proceed for the Work. This Substantial Completion Date for RPTP Facility Addition is 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.



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
RESOURCE PROTECTION, TRANSPORTATION AND PLANNING FACILITY ADDITION**

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 party

If to Owner: Judge Liz Sumter Hays County Courthouse 111 E San Antonio Street San Marcos, TX 78666	If to Design-Build Contractor: Flynn Construction, Inc. Attn: Mr. Patrick Flynn 4638 S. Lamar Blvd. Austin, TX 78745
With copy to: Codi Newsom, Project Manager Broadus & Associates 1301 S. Capitol of Texas Hwy, Suite A-302 Austin, Texas 78746	With copy to: Codi Newsom, Project Manager Broadus & Associates 1301 S. Capitol of Texas Hwy, Suite A-302 Austin, Texas 78746

23.7 EXHIBITS. The following exhibits are incorporated by reference as part of this Agreement and the Contract:

Exhibit A	Personnel Titles and Roles (to be provided by Contractor at RFP)
Exhibit B	General Conditions
Exhibit C	Supplementary General Conditions
Exhibit D	Guaranteed Maximum Price Submission form (to be provided by Owner's representative at Design Development)
Exhibit E	Subcontractors List (to be provided by Contractor at buyout)
Exhibit F	Project Overall Schedule (to be provided by Contractor at Notice to Proceed)
Exhibit G	Payment and Performance Bond

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

XXX
XXXX

Hays County RPTP Facility Addition

EXHIBIT B

General Conditions

TABLE OF CONTENTS:

Article 1 -	General Contract Definitions	3
Article 2 -	General Laws Governing Construction.....	4
Article 3 -	Compliance with and Enforcement of Prevailing Wage Laws.....	5
Article 4 -	Drawings and Specifications	6
Article 5 -	Construction Bonds.....	<u>776</u>
Article 6 -	Insurance Requirements	<u>87</u>
Article 7 -	General Responsibilities of County and Contractor	<u>998</u>
Article 8 -	Additional Contractor Responsibilities when the County Awards Separate Contracts	11
Article 9 -	The Contractor's Responsibility for Jobsite Safety	<u>1241</u>
Article 10 -	Warranty of Construction; Materials and Workmanship; Licensing and Testing	<u>1342</u>
Article 11 -	Shop Drawings and Submittals	<u>1544</u>
Article 12 -	Inspection of Construction.....	<u>1544</u>
Article 13 -	Contract Payments	<u>1646</u>
Article 14 -	Closing Inspections	<u>1847</u>
Article 15 -	Early Occupancy	<u>1948</u>
Article 16 -	Contract Final Acceptance and Payment	<u>1948</u>
Article 17 -	Contract Warranty and Guarantee	<u>2048</u>
Article 18 -	Good Faith Effort Subcontracting Program WMBE	<u>2049</u>
Article 19 -	Concealed Site Conditions	<u>2049</u>
Article 20 -	Changes	<u>2149</u>
Article 21 -	Administration of Change Order Requests.....	<u>2220</u>
Article 22 -	Pricing Change Order Work.....	<u>2324</u>
Article 23 -	Time Allotted for Performance; Construction Schedules.....	<u>2324</u> <u>22</u>
Article 24 -	Modification of the Contract Time.....	<u>2422</u>
Article 25 -	Suspension and Termination of the Contract Prior to Completion.....	<u>2524</u>
Article 26 -	Disputes	<u>2726</u>
Article 27 -	Miscellaneous.....	<u>2726</u>

EXHIBIT B – GENERAL CONDITIONS

Article 1 - General Contract Definitions

Unless the context clearly requires another meaning, the following terms shall have the meaning assigned herein:

1.1. 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 3271a, 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.

1.2. 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.

1.3. 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.

1.4. 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.

1.5. 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.

1.6. 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.

1.7. 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.

1.8. Contract or Design-Build Contract Agreement means all of the Contract Documents between the County and the Contractor.

1.9. Contract Date is the date the Design-Build Contract Agreement is effective between the County and Contractor.

1.10. 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.

1.11. 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".

1.12. Contract Sum is the total compensation payable to the

Contractor for completion of the Work in accordance with the Contract Documents.

1.13. 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.

1.14. Date of Commencement is the date designated in the Notice to Proceed that Contractor shall commence the Work.

1.15. Day means a calendar day, unless some other definition for "day" is specifically stipulated for a specific purpose.

1.16. Drawings mean the work product of the Architect/Engineer that depicts the location, quantity, and details of elements of the Work.

1.17. 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.

1.18. 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.

1.19. County means Hays County and the County's Designated Representatives.

1.20. 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.

1.21. Project means the Work as described by the Contract Documents.

1.22. 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.

1.23. RFP means Request for Proposal of Design Build services.

1.24. 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.

1.25. 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.

1.26. 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.

1.27. Site means the geographical area at the location where the Work is to be performed.

EXHIBIT B – GENERAL CONDITIONS

1.28. 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.

1.29. 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.

1.30. 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.

1.31. 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.

1.32. 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.

1.33. Unit Price Work means Work to be paid for on the basis of unit prices.

1.34. Unilateral Change Order means a Change Order issued by the County without the agreement of the Contractor.

1.35. 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.

1.36. 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.

1.37. 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.

1.38. 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.

Article 2 - General Laws Governing Construction

2.1. 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 wage laws. 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 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.

2.1.1. 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.

2.1.2. 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.

2.2. 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.

2.3. 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.

2.4. Venue for Suits. The venue for any suit arising from this Project shall be in a court of competent jurisdiction in Hays County, Texas.

2.5. 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.

2.5.1. 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.

2.6. 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.

2.6.1. Whether or not County has specified the use of a particular design, device, 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,

EXHIBIT B – GENERAL CONDITIONS

device, material, or process covered by letters, patent, or copyright by suitable legal agreement with patentee, copyright holder, or their duly authorized representative.

2.6.2. 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.

2.7. 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, 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.

2.8. 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 the 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.

2.9. 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.

2.10. Taxpayer 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".

Article 3 - Compliance with and Enforcement of Prevailing Wage Laws

3.1. Duty to Pay Prevailing Wage Rates. All hourly, non-exempt 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 Exhibit K to the Agreement). Failure to comply with the wage rates cited in Exhibit K shall subject the Contractor to the penalties prescribed in Section 2258.023 of the Texas Government Code, which dictates

that Contractor shall pay Owner sixty dollars (\$60 USD) for each worker employed for each calendar day or partial calendar day that the worker is paid less than the wage rates specified in Exhibit K.

3.1. ~~————~~ 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. 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.

3.1.1. ~~————~~ 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.

3.1.2. ~~————~~ 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.

3.1.3. ~~————~~ 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.

3.2. 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.

3.3. Complaints of Violations of Prevailing Wage Rates.

3.3.1. County's Determination of Good Cause. Within thirty-one (31) calendar 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

EXHIBIT B – GENERAL CONDITIONS

~~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.~~

~~3.3.2. Arbitration Required if Violation not Resolved. After the County makes its initial determination, the affected Contractor or Subcontractor and worker have fourteen (14) calendar 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 15th 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 ten (10) calendar days after the expiration of the fifteen (15) calendar days referred to above, to agree on an arbitrator; if by the 11th 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.~~

~~3.3.3. 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.~~

~~3.4. 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 sixty dollars (\$60.00) per day of violation per worker shall be retained by the County to offset its administrative costs, pursuant to Texas Government Code §2268.022. 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.~~

~~3.5. 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 of the procedures set forth in §3.4.~~

Article 4 - Drawings and Specifications

4.1. 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.

4.2. 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.

4.3. 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.

4.4. 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.

4.5. 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.

4.6. 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.

4.6.1. 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.

4.6.2. 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.

4.6.3. Prior to requesting Substantial Completion Inspection by the County, the Contractor shall furnish a complete set of the "mark-up" blueline "As-Constructed" set maintained at the site and one photocopy of same. Concurrently with furnishing these record blueline 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.

4.6.4. Once determined acceptable, the Contractor shall provide photographic mylar prints of professionally drafted "As-Constructed" drawings, two sets of blueline 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.

EXHIBIT B – GENERAL CONDITIONS

Article 5 - Construction Bonds

5.1. 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.

5.1.1. The performance bond is solely for the protection of Hays County, in the full amount of the Contract, and conditioned on the faithful performance of the Work in accordance with the Contract Documents.

5.1.2. A payment bond is payable to 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.

5.1.3. 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.

~~5.1.4. 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.~~

5.1.5. Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.

5.1.6. 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 ten percent (10%) 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 ten percent (10%) 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.

5.1.7. 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).

5.1.8. 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.

5.1.9. 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.

5.1.10. 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.

5.2. Claims on Payment Bonds. Claims on payment bonds

must be sent directly to the Contractor and his surety in accordance with § 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.

5.3. 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.

5.4. 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.

Article 6 - Insurance Requirements

6.1. 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.

6.2. 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.

6.3. 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, except for Professional Errors and Omissions Insurance and Builders Risk Insurance Coverage. At least five (5) 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.

6.4. Contractor shall purchase and maintain the insurance (with a minimum "Best" rating of "A-IX") 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-

EXHIBIT B – GENERAL CONDITIONS

states" endorsement.

(b) Employer's Liability insurance with limits of \$500,000 per accident for Bodily Injury by accident; \$500,000 per employee for Bodily Injury by disease; and \$500,000 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 \$1,000,000.

(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 ~~\$40,000,000~~ \$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:

- o Bodily injury: \$1,000,000 each occurrence;

\$1,000,000 aggregate.

- o Property damage: \$1,000,000 each occurrence; \$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.

6.5. 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 the County and its respective directors, officers, agents, and employees and all other interests as may be reasonably required by the 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.

6.6. 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, the Contractor waives all rights of recovery against the County and its affiliates because of deductible clauses in, or inadequacy of, any such policies.

6.7. The existence of the insurance required by Subparagraph 6.4 shall not relieve the 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.

6.8. Each insurance policy shall remain in effect until Final Payment and acceptance and at all times thereafter when the 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 the 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 the Contractor shall furnish (at Final Payment and each year thereafter) the County and each additional insured with evidence of such continued coverage.

6.9. If the Contractor fails to purchase and maintain the insurance required by Subparagraph 6.4, the County shall, if the County receives advance notice of nonrenewal, cancellation, refusal to renew or intent to materially change terms, give written notice to the Contractor of the County's intent to exercise its rights under this Subparagraph and exercise the County's right, but not the obligation to, purchase such insurance on behalf of the Contractor, and have the Contractor pay the cost thereof to the County upon demand and furnish to the County any information needed to obtain such insurance. If the County receives thirty (30) Days advance notice, the County shall give the Contractor seven (7) Days notice and opportunity to cure

EXHIBIT B – GENERAL CONDITIONS

Article 7 - General Responsibilities of County and Contractor

7.1. 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.

7.2. 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.

7.2.1. County's Designated Representative. Prior to the start of construction, the 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.

7.2.2. 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 13 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.

7.3. 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.

7.4. 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 21.

7.5. The foregoing listing is in addition to the specific duties and authority of County found in other Articles of the Contract.

7.6. 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 and 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.

7.7. 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 Work complies accurately with the Contract Documents.

7.7.1. The Contractor shall provide project administration in accordance with provisions of Division 1 Specifications and as outlined in the Pre-Construction Conference.

7.7.2. 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.

7.7.3. Contractor's Superintendent and Project Manager. 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 responsibility for daily supervision, coordination, scheduling, compliance to design and field reporting. The Contractor shall employ a competent project manager who 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 and project manager shall be binding on Contractor. All oral communications affecting Contract Time, Contract Sum and contract interpretation will be confirmed in writing to County.

7.7.4. 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.

7.7.5. 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.

7.7.6. 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

EXHIBIT B – GENERAL CONDITIONS

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.

7.7.7. 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.

7.7.8. 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 20. 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.

7.7.9. 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.

7.7.10. 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.

7.7.11. 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.

7.7.12. 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.

7.7.13. 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.

7.7.14. 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.

7.7.15. 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 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.

7.7.15.1. 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.

7.7.15.2. 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.

7.7.16. 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.

7.7.17. The Contractor will operate and maintain operations areas and associated storage areas at the site of the Work in accordance with the following:

7.7.17.1. All Contractor operations, including storage of materials and employee parking upon the site of work, shall be confined to areas designated by the County.

EXHIBIT B – GENERAL CONDITIONS

7.7.17.2. 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.

7.7.17.3. 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.

7.7.17.4. The County may restrict the Contractor's entry to the site to specifically assigned entrances and routes.

7.7.18. 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.

Article 8 - Additional Contractor Responsibilities when the County Awards Separate Contracts

8.1. 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.

8.1.1. 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.

8.1.2. 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.

8.1.3. 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.

8.2. 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.

8.2.1. 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.

8.2.2. 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..

Article 9 - The Contractor's Responsibility for Jobsite Safety

9.1. 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.

9.2. 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.

9.3. 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

EXHIBIT B – GENERAL CONDITIONS

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.

9.4. 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.

9.5. 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.

9.6. 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.

9.7. Trenching safety precautions, applicable only if the project requires excavation which exceeds a depth of five feet, shall comply with the following:

9.7.1. 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.

9.7.2. 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.

Article 10 - Warranty of Construction; Materials and Workmanship; Licensing and Testing

10.1. 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.

10.1.1. 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.

10.1.2. The Contractor shall remedy at the Contractor's expense any failure to conform to the contract requirements or any defect.

10.1.3. 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 –

10.1.3.1.1 the Contractor's failure to conform to contract requirements; or

10.1.3.1.2 any defect of equipment, material, workmanship, or design furnished.

10.1.4. 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.

10.1.5. The County shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

10.1.6. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the County shall have the right to replace, remove, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

10.1.7. 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 –

10.1.7.1. obtain all warranties that would be given in normal commercial practice;

10.1.7.2. require all warranties to be executed, in writing, for the benefit of the County, if directed by the County; and

10.1.7.3. enforce all warranties for the benefit of the County, if directed by the County.

10.1.8. In the event the Contractor's warranty under paragraph

EXHIBIT B – GENERAL CONDITIONS

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.

10.1.9. 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.

10.1.10. 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.

10.2. 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:

10.2.1. Observations by County;

10.2.2. Recommendation to pay any progress or final payment;

10.2.3. The issuance of a certificate of Substantial Completion or any payment by County to Contractor under the Contract Documents;

10.2.4. Use or occupancy of the Work or any part thereof by County;

10.2.5. Any acceptance by County or any failure to do so;

10.2.6. Any review of a Shop Drawing or sample submittal; or

10.2.7. Any inspection, test or approval by other entities not in contract with Contractor.

10.3. 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 12; otherwise, the County shall bear such costs and an appropriate change order shall be issued.

10.4. 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:

10.4.1. Manufacturer's certificate of compliance.

10.4.2. Mill certificate.

10.4.3. Testing laboratory certification.

10.4.4. 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.

10.5. 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:

10.5.1. Concrete - Primary mix design, slump tests and cylinder compression tests.

10.5.2. Steel - Tensile tests.

10.5.3. Welds - Field inspection and X-ray equipment.

10.5.4. Soils - Subsoil investigation, physical analysis and compaction tests.

10.5.5. Pavement - Physical analysis and compaction tests.

10.5.6. Roofing - Samples cut from in-place roof.

10.5.7. Windows, curtain walls, skylights.

10.6. 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.

10.7. Not included in tests provided by the County are:

10.7.1. 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.

10.7.2. Tests on mechanical systems required to insure their proper installation and operation, which shall be paid for by Contractor.

10.8. 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:

10.8.1. Contractor may select the laboratory for further testing, but selection must be approved by the County.

10.8.2. Quality and nature of tests will be determined by the County.

10.8.3. All tests shall be taken in the presence of the County.

10.8.4. 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.

10.8.5. 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.

10.8.6. All subsequent tests on original or replaced materials conducted as a result of prior failure will be paid by the Contractor.

10.9. 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 Documents. Upon direction by the County for additional special testing, the Contractor shall promptly arrange for such special testing, inspection or approval procedure. The

EXHIBIT B – GENERAL CONDITIONS

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.

10.10. 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.

10.11. 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.

10.12. Material and Workmanship

10.12.1. 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.

Article 11 - Shop Drawings and Submittals

11.1. 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 there from will be the Contractor's responsibility.

11.1.1. 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.

11.1.2. Such submittal schedules shall include, among other things, shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, etc.

11.1.3. 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 or actual 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.

11.1.4. 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.

11.1.5. 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.

11.1.6. 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.

11.2. 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.

11.3. 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.

11.4. 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 20 and 21 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.

11.5. The County may establish routine review procedures and schedules for submittals at the preconstruction conference.

11.6. 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.

Article 12 - Inspection of Construction

12.1. The word "Work" includes, but is not limited to,

EXHIBIT B – GENERAL CONDITIONS

materials, workmanship, and manufacture and fabrication of components.

12.2. 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 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.

12.3. Inspections and tests by the County are for the sole benefit of the County and do not:

12.3.1. relieve the Contractor of responsibility for providing adequate quality control measures;

12.3.2. relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

12.3.3. constitute or imply acceptance; or

12.3.4. affect the continuing rights of the County after acceptance of the completed work under paragraph 12.9 below.

12.4. 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.

12.5. 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.

12.6. 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.

12.7. 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.

12.8. 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.

12.9. 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.

12.10. 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.

12.11. 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.

12.12. 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.

12.13. 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.

Article 13 - Contract Payments

13.1. 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.

13.2. 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

EXHIBIT B – GENERAL CONDITIONS

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.

13.3. Contractor's Periodic Invoice. As soon as practicable, but in no event later than seven (7) 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 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.

13.4. County's Duty to Pay. The County shall have no duty to pay the Contractor except on receipt by the County of a complete and certified Periodic Invoice.

13.4.1. County must approve bulk materials in accordance with contract requirements before payment for the materials. Payment for stored materials shall be limited to eighty-five percent (85%) of the invoice price or eighty-five percent (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.

13.5. 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.

13.5.1. 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.

13.6. 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:

13.6.1. Defective work not remedied;

13.6.2. Damage to work of a separate Contractor;

13.6.3. Failure to maintain scheduled progress or reasonable evidence that the work will not be completed within the contract time;

13.6.4. Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law); or

13.6.5. 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.

13.6.6. Persistent failure to carry out the work in accordance with the Contract Documents.

13.6.7. Reasonable evidence that the work cannot be completed for the remainder of the contract sum.

13.6.8. Assessment of fines for violations of Prevailing Wage Rate laws.

13.6.9. Failure to comply with the terms and conditions of the Contract.

13.7. 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.

13.8. Progress payments to the Contractor shall not release the Contractor or his surety from any obligations under this Contract.

13.9. 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.

13.10. A corporate officer or a duly authorized representative of the Contractor must sign pay estimate certificates.

13.11. 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.

13.12. 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.

13.13. 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:

13.13.1. 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.

13.13.2. 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.

13.13.3. 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.

13.13.4. 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.

13.13.5. Warehouse records, receipts and invoices shall be made available to County's representatives, upon request, to verify the quantities and their disposition.

13.13.6. 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.

13.13.7. 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.

Article 14 - Closing Inspections

14.1. 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 is not sufficiently advanced or that conditions are not as represented on the Contractor's list.

14.1.1. 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.

14.1.2. 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.

14.2. 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 thirty (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).

14.3. 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 seven (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.

14.4. 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.

14.5. 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.

14.6. Additional Inspections.

14.6.1. 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.

14.6.2. 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.

14.6.3. 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.

14.7. Phased Completion. The Special Conditions may

EXHIBIT B – GENERAL CONDITIONS

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 14 (Closing Inspections) and Article 15 (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.

Article 15 - Early Occupancy

15.1. 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.

15.2. 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 Time which can only be modified by an agreed Change Order.

15.3. 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.

15.3.1. 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.

15.4. 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.

Article 16 - Contract Final Acceptance and Payment

16.1. 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.

16.2. 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.

16.3. 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.

16.4. 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.

16.5. 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.

Article 17 - Contract Warranty and Guarantee

17.1. 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

EXHIBIT B – GENERAL CONDITIONS

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.

17.2. Warranty Period. Except as otherwise specified, the Contractor shall repair all defects in materials, equipment or workmanship appearing within one (1) 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 there from 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 thirty (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.

17.3. 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. 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.

17.4. Certification of No Asbestos Containing Materials or Work.

17.4.1. 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.

17.4.2. 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.

17.4.3. 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.

17.4.4. 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).

17.4.5. The Contractor shall provide a notarized certification that no ACBM's were used in the project.

Article 18 - Good Faith Effort Subcontracting Program W/MBE

18.1. Not Used

Article 19 - Concealed Site Conditions

19.1. 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.

19.2. 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.

19.3. 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.

Article 20 - Changes

20.1. 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:

20.1.1. square footage of the Project;

20.1.2. assumed occupancy of the various areas of the Project; and

20.1.3. the quality of the Project.

20.2. 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.

20.2.1. 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

EXHIBIT B – GENERAL CONDITIONS

the Project or the Plans and Specifications not reasonably foreseeable by a contractor of the Contractor's experience and expertise.

20.2.2. 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.

20.3. 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:

20.3.1. in the specifications (including drawings and designs);

20.3.2. in the method or manner of performance of the work;

20.3.3. in the facilities, equipment, materials, services, or site to be furnished by the County; or

20.3.4. directing acceleration in the performance of the work.

20.4. Any other written or oral order (which, as used in this paragraph, 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:

20.4.1. the date, circumstances, and source of the order; and

20.4.2. that the Contractor regards the order as a change order.

20.5. 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.

20.6. 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 20.4 above, shall be allowed for any costs incurred more than five (5) days before the Contractor gives written notice as required.

20.7. The Contractor must submit any proposal under this clause within twenty-one (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.

20.8. No adjustment under this clause shall be allowed if asserted after final payment under this contract.

20.9. The County's Contingency Allowance is controlled solely by the County. This contingency is not included in the Project Cost Limitation.

20.10. 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.

20.11. 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.

20.12. 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.

20.13. Agreed and Unilateral Change Orders. A Change Order may be either an Agreed Change Order or a Unilateral Change Order.

20.13.1. 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.

20.13.2. 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 thirty (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.

Article 21 - Administration of Change Order Requests

21.1. A single Change Order may be issued, adjusting both Contract Time and Contract Sum, where both arise from the same claim or request.

21.2. 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.

21.3. 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

EXHIBIT B – GENERAL CONDITIONS

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.

21.4. 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.

21.5. 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.

21.6. 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 20.13.2.

21.7. 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 fifteen (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 thirty (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.

21.8. 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 thirty (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 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.

21.9. Claims for adjustment of the Contract Sum based on the 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.

21.10. 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.

Article 22 - Pricing Change Order Work

22.1. 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 fifteen percent (15%) of the direct cost. However, General Conditions associated with the Change shall be separately itemized and justified.

22.2. 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.

22.3. 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.

22.4. Labor Costs

22.4.1. 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.

22.4.2. 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).

22.5. 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.

Article 23 - Time Allotted for Performance; Construction Schedules

23.1. 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

23.2. 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.

23.2.1. 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.

23.2.2. 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.

23.2.3. 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.

23.2.4. 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.

23.2.5. 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.

23.2.6. 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 achieving timely completion of the project.

Article 24 - Modification of the Contract Time

24.1. 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.

24.1.1. 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 (7) 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.

24.1.2. 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.

24.1.3. 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.

24.1.4. 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. In the case of conflict

EXHIBIT B – GENERAL CONDITIONS

between Article 24.1.4 and Article 25.2.2.1, Article 25.2.2.1 shall prevail.

24.1.5. 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.

24.1.6. 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.

24.1.7. 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.

24.1.8. 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.

24.2. 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 thirty (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 thirty (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.

24.2.1. All Changes to the Contract Time made as a result of such claims shall be by Change Order, as provided under Article 20, Changes.

24.2.2. 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.

24.2.3. 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.

24.2.4. 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 fifteen (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 thirty (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.

24.3. 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 Substantial 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.

24.4. Collection of Liquidated Damages

24.4.1. 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.

24.4.2. If the County terminates the Contractor's right to

EXHIBIT B – GENERAL CONDITIONS

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.

24.4.3. 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.

Article 25 - Suspension and Termination of the Contract Prior to Completion

25.1. Suspension of Work

25.1.1. 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.

25.1.2. 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.

25.1.3. No claim under this clause shall be allowed (1) for any costs incurred more than twenty (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.

25.2. Default

25.2.1. If the Contractor refuses or fails (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, require a meeting with the Contractor and his surety within five (5) business days of notice, in order to determine a cure, and, if the cure is not consummated with ten (10) days afterward, may 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.

25.2.2. The Contractor's right to proceed shall not be terminated because of delays nor the Contractor charged with damages under this clause, if :

25.2.2.1. (In the case of conflict between Article 24.1.4 and Article 25.2.2.1, Article 25.2.2.1 shall prevail)...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

25.2.2.2. the Contractor, within five (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.

25.2.2.3. 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.

25.2.2.4. 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.

25.2.3. 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.

25.2.4. 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.

25.2.5. 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

EXHIBIT B – GENERAL CONDITIONS

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.

25.3. 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.

25.3.1. 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.

25.3.2. 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.

25.3.3. If the parties are unable to agree on the amount of a termination settlement, the County shall pay the Contractor the following amounts:

25.3.3.1. For contract work performed before the effective date of termination, the total (without duplication of any items) of:

25.3.3.1.1 the cost of work completed up to the date of termination;

25.3.3.1.2 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

25.3.3.1.3 a sum, as profit on paragraph 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.

25.3.3.2. The reasonable costs of settlement of the work terminated, including:

25.3.3.2.1 accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

25.3.3.2.2 the termination and settlement of subcontracts (excluding the amounts of such settlements); and

25.3.3.2.3 storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

25.4. 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 thirty (30) days after receipt of a valid invoice which must include all documentation required by the contract.

25.5. Settlement on Termination. When the Contract is terminated for any reason, the Contractor shall, at any time prior to one hundred-eighty (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.

Article 26 - Disputes

26.1. 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.

26.2. 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 ninetieth (90th) day from the date of receipt of such 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.

26.3. 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

EXHIBIT B – GENERAL CONDITIONS

this contract.

Article 27 - Miscellaneous

27.1. 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.

27.2. 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.

27.3. 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.~~

27.4. 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.

27.5. 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.

27.6. 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.

27.7. 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.

27.8. 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.

27.9. 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.

27.10. 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.

27.11. 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.

27.12. 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.

27.13. 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.

27.14. 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.

27.15. 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.

27.16. 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.

27.17. 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 (7) days of receipt of written notice thereof from the County, the County, in its sole 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

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 assign personnel from the county sheriff's department to the ALERRT program, with funding by ALERRT.

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

PREFERRED MEETING DATE REQUESTED: 01/26/10

AMOUNT REQUIRED: \$0.00. Funds are reimbursed by ALERRT

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Mike Davenport, Sheriff's Dept.

SPONSORED BY: Commissioner Barton

SUMMARY:

The Sheriff's Office would like to change the position that is currently funded by ALERRT from a Deputy position to a Director of Training-ALERRT Position. The Sheriff's Office has received a letter of commitment from the ALERRT program stating that they will absorb the increase in salary that will be required for this change to be made. The shift could mean that other county staff members or positions will be shuffled. The SO has been consulting with HR and plans to have details by time of the Court meeting. HR and representatives from the sheriff's office will be in Court to answer questions. On its face, this change would delete Deputy slot #36 funded by 707 (ALERRT), and add Director of Training -ALERRT slot 1 that will be funded by 707 (ALERRT).

January 20, 2010

Captain Davenport,

Since Deputy Matt Wasko has been promoted to Sergeant and will be leaving ALERRT for his new assignment at the Sheriff's Office we look forward to having David Burns return to the ALERRT program. We understand that David Burns' salary will be \$70,551 per year with benefits of 7.65% for FICA, 10.15% for retirement and \$8,915 in insurance costs.

Don Montague

Don Montague, MSCJ
Executive Director
Advanced Law Enforcement Rapid Response Training
Texas State University - San Marcos
601 University Drive
San Marcos, TX 78666
montague@alertr.com
512.245.1552 - office
512.738.2151 - cell

LIVE - Hays County - LIVE Journal Edit Listing

Department Number		Journal Type	Sub Ledger	G/L Date	Source	
AUD - Auditk 2010-00001050		BA	GL	1/26/2010	FY2010-14CC	
G/L Date	G/L Account Number	Account Description	Description	Source	Debit	Credit
1/26/2010	001-618-99-003.4301	Intergovernmental Revenues	Amend budget to accept sub-awards from TxState Univ for ALERRT	FY2010-14CC		33,155.00
1/26/2010	001-618-99-003.5021	Staff Salaries	Amend budget to accept sub-awards from TxState Univ for ALERRT	FY2010-14CC	20,006.00	
1/26/2010	001-618-99-003.5101	FICA and Retirement	Amend budget to accept sub-awards from TxState Univ for ALERRT	FY2010-14CC	3,562.00	
1/26/2010	001-618-99-003.5489	Telephone and Data Lines	Amend budget to accept sub-awards from TxState Univ for ALERRT	FY2010-14CC	9,587.00	
Number of Entries: 4					\$33,155.00	33,155.00



CONTRACTED SERVICES AGREEMENT

Texas State University – San Marcos is a member of the Texas State University System

Instructions: 1) Do not use this form for anyone who has been employed by Texas State within the past twelve months. Use a PCR form instead and contact Human Resources or Faculty Records. This is to comply with state law. 2) All contracts require an SAP vendor number. To obtain an SAP vendor number, complete a Vendor Maintenance Request Form #FS-01. 3) Cumulative payments to a contractor expected to exceed \$2,500.00 require a contract. 4) Cumulative payments to a contractor expected to exceed \$5,000.00 must be processed through the SAP Requisition System, and the purchase order number must be entered below. 5) Texas State's University Attorney must review a vendor's contract used in place of this form.

CONTRACT BETWEEN TEXAS STATE UNIVERSITY-SAN MARCOS

(Hereinafter referred to as University)

and

Hays County, Texas

137 N. Guadalupe St., San Marcos, TX 78666

I. The Contractor shall diligently render the following performance of the work described:
Provide training and support for the ALERRT program.

II. Contingent upon the Contractor's full and satisfactory performance of work described in Section I of this contract, the University shall:

_____ A. Pay to the Contractor as invoiced monthly for services rendered once all grant subaward funds are exhausted, not to exceed a total fee of \$12,754.09.

_____ B. Pay the Contractor in accordance with the following payment schedule:

_____ C. In addition to the fee described in Section II _____, reimburse the contractor for travel from _____ to _____. Maximum reimbursement for travel under provisions of this contract shall not exceed \$_____ (Travel reimbursement is limited to Restricted Fund accounts).

III. All work rendered by the Contractor under provisions of this contract shall commence January 21, 2010 and terminate September 30, 2010.

IV. Miscellaneous Provisions and Conditions:

A. The University may terminate this contract at any time by giving written notice to the Contractor.

B. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any verbal representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing, signed by the parties or their representatives and attached hereto.

C. This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties hereunder are performable in Hays County, Texas unless specified herein. The parties will use the procedures in Texas Government Code 2260 to resolve any disputes regarding this contract.

D. This agreement constitutes the only agreement of the parties and supersedes any prior understanding or written or verbal agreements between the parties respecting the subject matter.

V. Total payments for work rendered under provisions of this contract shall not exceed \$12,754.09.

APPROVAL SIGNATURES:

Contractor Signature

PRINT NAMES:

Hays County, Texas

Contractor Printed Name

(512) 393-2283

Contractor Contact Phone

Authorized Official

Account Manager

Authorized Official Printed Name

Don Montague, ALERRT

Account Manager Printed Name and Dept

Approval of Vice President Finance and Support Services

Grant Office Approval Signature

Printed Name and Title

Dr. Scott Erwin
Director, Sponsored Programs
Texas State University-San Marcos
601 University
San Marcos, Texas 78666
512-245-2102 FAX (512) 245-1822

Grant Office Printed Name

TEXAS STATE ACCOUNT MANAGER / DESIGNEE COMPLETES BELOW:

SAP VENDOR #: 3518

PURCHASE ORDER #: _____

Was the claimant employed at Texas State within the past twelve months? ☒ NO ☐ YES If yes, enter termination date: _____

Print Account Manager or Designee Name and Department

Don Montague, ALERRT

Account Manager or Designee Telephone Number

(512) 245-1552

Cost Center / Internal Order /WBS # 1318131601

Fund 2000021000

Texas State University-San Marcos is an Equal Opportunity Employer

Submit original to:

Texas State University Tax Specialist

601 University Drive, JCK 820

San Marcos, Texas 78666-4616

Phone: 512-245-8708 Fax: 512-245-8434

Research Subaward Agreement

Institution/Organization ("Prime Recipient")

Name: Texas State University-San Marcos

Prime Award No.: 2009-D1-BX-K034

Awarding Agency:

Department of Justice, Office of Justice Programs, Bureau of Justice Assistance

Institution/Organization ("Subrecipient")

Name: Hays County, Texas

Subaward No.: 8000001190.2

CFDA #: 16.753

Amount Funded This Action:

\$16,869.30

Est. Total (if incrementally funded)

Subaward Period of Performance:

Budget Period: From:

To:

September 1, 2009

August 31, 2010

Estimated Project Period (if incrementally funded):

From:

To:

Project Title:

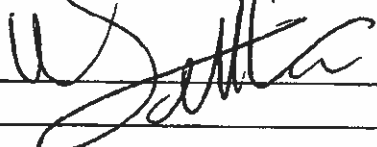
Advance Law Enforcement Rapid Response Training (ALERT)

Reporting Requirements (Check here if applicable: ☒ See Attachment 4)☐ ARRA Funds (Attachment 4A)

Terms & Conditions

- 1) Prime Recipient hereby awards a cost reimbursable subaward, as described above, to Subrecipient. The statement of work and budget for this subaward are (check one): ☐ As specified in Subrecipient's proposal dated _____; or ☒ as shown in Attachment 5. In its performance of the subaward work, Subrecipient shall be an independent entity and not an employee or agent of Prime Recipient.
- 2) Prime Recipient Shall reimburse Subrecipient not more often than monthly for allowable costs. All invoices shall be submitted using Subrecipient's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), subaward number, and certification as to truth and accuracy of invoice. *Invoices that do not reference Prime Recipient's Subaward Number shall be returned to Subrecipient.* Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Administrative Contact as shown in Attachments 3A & 3B.
- 3) A final statement of cumulative costs incurred, including cost sharing, marked "FINAL" must be submitted to Prime Recipient's Administrative Contact, as shown in Attachments 3A and 3B, NOT LATER THAN sixty (60) days after subaward end date. The final statement of costs shall constitute Subrecipient's final financial report.
- 4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Subrecipient.
- 5) Matters concerning the technical performance of this subaward should be directed to the appropriate party's Principal Investigator, as shown in Attachments 3A and 3B. Technical reports are required as shown above, "Reporting Requirements".
- 6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact, as shown in Attachments 3A & 3B. Any such changes made to this subaward agreement require the written approval of each party's Authorized Official as shown in Attachments 3A & 3B.
- 7) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or director's, to the extent allowed by law.
- 8) Either party may terminate this subaward with thirty days written notice to the appropriate party's Administrative Contact as shown in Attachments 3A & 3B. Prime Recipient shall pay Subrecipient for termination costs as allowable under OMB Circular A-21 or A-122 or 45 CFR Part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals" as applicable.
- 9) No-cost extensions require the approval of the Prime Recipient. Any requests for a no-cost extension should be addressed to and received by the Administrative Contact, as shown in Attachments 3A & 3B, not less than thirty (30) days prior to the desired effective date of the requested change.
- 10) The Subaward is subject to the terms and conditions of the Prime Award and other special terms and conditions, as identified in Attachment 2.
- 11) By signing below Subrecipient makes the certifications and assurances shown in Attachments 1 and 2. Subrecipient also assures that it will comply with applicable statutory and regulatory requirements specified in the Research Terms & Conditions Appendix C found at <http://www.nsf.gov/bfa/dias/policy/rtc/appc.pdf>.

By an Authorized Official of Prime Recipient



Date

1/21/10

By an Authorized Official of Subrecipient

Date

Attachment 1 Research Subaward Agreement Certifications and Assurances

By signing the Subaward Agreement, the authorized official of Subrecipient certifies, to the best of his/her knowledge and belief that:

Certification Regarding Lobbying

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", to the Prime Recipient.

3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Debarment, Suspension, and Other Responsibility Matters

Subrecipient certifies by signing this Subaward Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

OMB Circular A-133 Assurance

Subrecipient assures Prime Recipient that it complies with A-133 and that it will notify Prime Recipient of completion of required audits and of any adverse findings which impact this subaward.

Attachment 2
Terms and Conditions of the Prime Award and Other Special Terms and Conditions

This Agreement is made as a result of the Bureau of Justice Assistance's Cooperative Agreement No. 2009-D1-BX-K034, "Advanced Law Enforcement Rapid Response Training", that was awarded to University. This project is supported under FY09 (BJA- Congressionally Recommended) Pub. L. No. 111-8, 123 Stat. 524, 580. Subrecipient agrees to abide by these provisions, including the appropriate administrative and cost guidelines. Where approval is required from Bureau of Justice Assistance, such approval shall be sought from University.

Terms and Conditions

1. The Subrecipient agrees to comply with the financial and administrative requirements set forth in the effective edition of the "OJP Financial Guide".
2. The Subrecipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if the Subrecipient is required to submit one pursuant to 28 CFR 42.302), that is approved by the Office of Civil Rights, is a violation of its Certified Assurances and may result in the suspension of the drawdown of funds.
3. The Subrecipient agrees to comply with the organizational audit requirements of OMB Circular A-133, Audit of States, Local Governments, and Non-Profit Organizations, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from OMB Circular A-133 audits (and any other audits of OJP grant funds) are not satisfactorily and promptly addressed, as further described in the current edition of the OJP Financial Guide, Chapter 19.
4. The Subrecipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of OJP.
5. The Subrecipient understands and agrees that no portion of these federal grant funds shall be used towards any part of the annual cash compensation of any employee of the grantee whose total annual cash compensation exceeds 110% of the maximum salary payable to a member of the Federal government's Senior Executive Service at an agency with a Certified SES Performance Appraisal System for that year. This prohibition may be waived on an individual basis at the discretion of the Assistant Attorney General for OJP.

Compliance Assurances and Certifications. Subrecipient certifies, by signing this document that the following assurances and certifications that apply to the University's prime grant are met. Such assurances and certifications required by the Subrecipient shall include but are not necessarily limited to:

Civil Rights. Compliance with Title VI of the Civil Rights Act of 1964.

Handicapped Individuals. Compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

Sex Discrimination. Compliance with Section 901 of Title D (of the Education Amendments of 1972 as amended).

Age Discrimination. Compliance with the Age Discrimination Act of 1975 as amended.

Patents, Licenses, and inventions. Compliance with the Standard Patent Rights clauses as specified in 37 CFR, Part 501, FAR 57.227-11, or U.S.C. 203, whichever is appropriate and applicable.

Non-Delinquency on Federal Debt. AWARDEE specifically certifies that neither it nor any person to be paid from funds under this Agreement is delinquent in repaying any Federal debit as defined by OMB Circular A-129.

Drug-Free Workplace. Compliance with the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.

Misconduct in Science. Compliance with 42 CFR Part 50, Subpart A, and Final Rule as published at 54 CFR 32446, August 8, 1989.

Conflict of Interest. Compliance with the DOE requirement to maintain a written standard of conduct and comply with 42 CFR Part 50, Subpart F.

Attachment 3A
Research Subaward Agreement

Subaward Number:
8000001190.1

Prime Recipient Contacts

Institution/Organization ("Prime Recipient")

Name: Texas State University-San Marcos

Address: 601 University Drive

City: San Marcos

State: Texas

ZipCode: 78666

Administrative Contact

Name: Don Montague

Address: Texas State University-San Marcos

Department of Criminal Justice

601 University Drive - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Principal Investigator

Name: Don Montague

Address: Texas State University-San Marcos

Department of Criminal Justice

601 University Drive - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Financial Contact

Name: Michele Castro

Address: Texas State University-San Marcos

Office of Sponsored Programs

601 University Drive - JCK 420

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-2102

Fax: 512-245-1822

Email: mc72@txstate.edu

Authorized Official

Name: W. Scott Erwin, Sr.

Address: Texas State University-San Marcos

Office of Sponsored Programs

601 University Drive - JCK 420

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-2102

Fax: 512-245-1822

Email: we10@txstate.edu

Attachment 3B
Research Subaward Agreement

Subaward Number:

8000001190.2

Subrecipient Contacts

Institution/Organization ("Subrecipient")

Name: Hays County, Texas

Address: 137 N. Guadalupe Street

City: San Marcos

State: Texas

ZipCode + 4: 78666

EIN No.:

Institution Type: County Government

Reg. in CCR? ☐ Yes ☐ No

Performance Site Same Address as Above?

☐ Yes ☐ No If No, complete Sect. C of Attachment 4A

DUNS No.:

Congressional District:

Congressional District:

Texas 25th

Administrative Contact

Name: Tommy Ratliff, Sheriff

Address: 1307 Uhland Road

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-7808

Fax: 512-393-7395

Email: sheriff@co.hays.tx.us

Principal Investigator

Name: Don Montague

Address: Executive Director, ALERRT

601 University Dr. - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Financial Contact

Name: Vickie Wilhelm

Address: 111 E. San Antonio Street

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-2275

Fax: 512-393-2279

Email: vickie_wilhelm@co.hays.tx.us

Authorized Official

Name: Elizabeth "Liz" Sumter

Address: Hays County Judge

111 E. San Antonio Street

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-2205

Fax: 512-393-2282

Email: lizsumter@co.hays.tx.us

Attachment 4
Reporting Requirements

Reports shall be submitted to administrative contact in Attachment 3 at such time and in such format as described below.

The reports shall be required monthly in invoice format.

**Attachment 5
Statement of Work and Budget**

Scope of Work

Sergeant Burns will provide training and support for the ALERRT program.

Budget Amount:

Salary/Benefits for Sergeant David Burns	\$16,869.30
Total Budget	\$16,869.30

Research Subaward Agreement

June 2009 FDP

Institution/Organization ("Prime Recipient")
 Name: Texas State University-San Marcos
 Prime Award No.: DJ-08-A10-16386-08
 Awarding Agency:
 State of Texas, Office of the Governor, Criminal Justice Division

Institution/Organization ("Subrecipient")
 Name: Hays County, Texas
 Subaward No.: 8000001154.2
 Amount Funded This Action: \$32,000.00
 CFDA #:
 Est. Total (if incrementally funded)

Subaward Period of Performance:
 Budget Period: From: October 1, 2009 To: September 30, 2010

Estimated Project Period (if incrementally funded):
 From: To:

Project Title:
 Advance Law Enforcement Rapid Response Training (ALERTT)

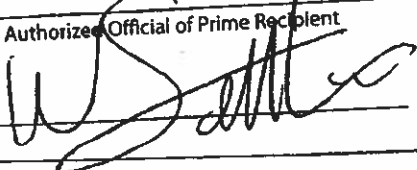
☐ ARRA Funds (Attachment 4A)

Reporting Requirements (Check here if applicable: ☒ See Attachment 4)

Terms & Conditions

- 1) Prime Recipient hereby awards a cost reimbursable subaward, as described above, to Subrecipient. The statement of work and budget for this subaward are (check one): ☐ As specified in Subrecipient's proposal dated
 ; or ☒ as shown in Attachment 5. In its performance of the subaward work, Subrecipient shall be an independent entity and not an employee or agent of Prime Recipient.
- 2) Prime Recipient shall reimburse Subrecipient not more often than monthly for allowable costs. All invoices shall be submitted using Subrecipient's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), subaward number, and certification as to truth and accuracy of invoice. Invoices that do not reference Prime Recipient's Subaward Number shall be returned to Subrecipient. Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Administrative Contact as shown in Attachments 3A & 3B.
- 3) A final statement of cumulative costs incurred, including cost sharing, marked "FINAL" must be submitted to Prime Recipient's Administrative Contact, as shown in Attachments 3A and 3B, NOT LATER THAN sixty (60) days after subaward end date. The final statement of costs shall constitute Subrecipient's final financial report.
- 4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Subrecipient.
- 5) Matters concerning the technical performance of this subaward should be directed to the appropriate party's Principal Investigator, as shown in Attachments 3A and 3B. Technical reports are required as shown above, "Reporting Requirements".
- 6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact, as shown in Attachments 3A & 3B. Any such changes made to this subaward agreement require the written approval of each party's Authorized Official as shown in Attachments 3A & 3B.
- 7) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or director's, to the extent allowed by law.
- 8) Either party may terminate this subaward with thirty days written notice to the appropriate party's Administrative Contact as shown in Attachments 3A & 3B. Prime Recipient shall pay Subrecipient for termination costs as allowable under OMB Circular A-21 or A-122 or 45 CFR Part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals" as applicable.
- 9) No-cost extensions require the approval of the Prime Recipient. Any requests for a no-cost extension should be addressed to and received by the Administrative Contact, as shown in Attachments 3A & 3B, not less than thirty (30) days prior to the desired effective date of the requested change.
- 10) The Subaward is subject to the terms and conditions of the Prime Award and other special terms and conditions, as identified in Attachment 2.
- 11) By signing below Subrecipient makes the certifications and assurances shown in Attachments 1 and 2. Subrecipient also assures that it will comply with applicable statutory and regulatory requirements specified in the Research Terms & Conditions Appendix C found at <http://www.nsf.gov/bfa/dias/policy/rtc/appc.pdf>.

By an Authorized Official of Prime Recipient



Date

1/21/10

By an Authorized Official of Subrecipient

Date

Attachment 1 Research Subaward Agreement Certifications and Assurances

By signing the Subaward Agreement, the authorized official of Subrecipient certifies, to the best of his/her knowledge and belief that:

Certification Regarding Lobbying

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", to the Prime Recipient.

3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Debarment, Suspension, and Other Responsibility Matters

Subrecipient certifies by signing this Subaward Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

OMB Circular A-133 Assurance

Subrecipient assures Prime Recipient that it complies with A-133 and that it will notify Prime Recipient of completion of required audits and of any adverse findings which impact this subaward.

Attachment 2
Terms and Conditions of the Prime Award and Other Special Terms and Conditions

This Agreement is made as a result of the Governor's Criminal Justice Division (CJD) Grant No.DJ-08-A-10-16386-08, "Advanced Law Enforcement Rapid Response Training", that was awarded to University. This project is subject to and conditioned upon acceptance of the Governor's Criminal Justice Division's rules in Title 1, Part 1, Chapter 3, Texas Administrative Code. Subrecipient agrees to abide by these provisions, including the appropriate administrative and cost guidelines. Where approval is required from CJD, such approval shall be sought from University.

Terms and Conditions

1. The restrictions on the expenditure of federal funds in appropriations acts are applicable to this subaward to the extent those restrictions are pertinent.
2. The Subrecipient agrees to comply with the financial and administrative requirements set forth in the effective edition of the "OJP Financial Guide".
3. The Subrecipient agrees to comply with the Uniform Grant Management Standards (UGMS) which can be found at <http://www.governor.state.tx.us>.
4. The Subrecipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if the Subrecipient is required to submit one pursuant to 28 CFR 42.302), that is approved by the Office of Civil Rights, is a violation of its Certified Assurances and may result in the suspension of the drawdown of funds.
5. The Subrecipient agrees to comply with the requirements of 28 CFR Part 46 regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate.
6. The Subrecipient agrees to comply with all confidentiality requirements of 42 USC Section 3789g and 28 CFR Part 22 that are applicable to the collection, use and revelation of data or information.

Compliance Assurances and Certifications. Subrecipient certifies, by signing this document that the following assurances and certifications that apply to the University's prime grant are met. Such assurances and certifications required by the Subrecipient shall include but are not necessarily limited to:

Civil Rights. Compliance with Title VI of the Civil Rights Act of 1964.

Handicapped Individuals. Compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

Sex Discrimination. Compliance with Section 901 of Title D (of the Education Amendments of 1972 as amended.

Age Discrimination. Compliance with the Age Discrimination Act of 1975 as amended.

Patents, Licenses, and inventions. Compliance with the Standard Patent Rights clauses as specified in 37 CFR, Part 501, FAR 57.227-11, or U.S.C. 203, whichever is appropriate and applicable.

Non-Delinquency on Federal Debt. AWARDEE specifically certifies that neither it nor any person to be paid from funds under this Agreement is delinquent in repaying any Federal debt as defined by OMB Circular A-129.

Drug-Free Workplace. Compliance with the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.

Misconduct in Science. Compliance with 42 CFR Part 50, Subpart A, and Final Rule as published at 54 CFR 32446, August 8, 1989.

Conflict of Interest. Compliance with the DOE requirement to maintain a written standard of conduct and comply with 42 CFR Part 50, Subpart F.

Attachment 3A
Research Subaward Agreement

Subaward Number:
8000001154.2

Prime Recipient Contacts

Institution/Organization ("Prime Recipient")

Name: Texas State University-San Marcos

Address: 601 University Drive

City: San Marcos

State: Texas

ZipCode: 78666

Administrative Contact

Name: Don Montague

Address: Texas State University-San Marcos

Department of Criminal Justice

601 University Drive - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Principal Investigator

Name: Don Montague

Address: Texas State University-San Marcos

Department of Criminal Justice

601 University Drive - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Financial Contact

Name: Michele Castro

Address: Texas State University-San Marcos

Office of Sponsored Programs

601 University Drive - JCK 420

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-2102

Fax: 512-245-1822

Email: mc72@txstate.edu

Authorized Official

Name: W. Scott Erwin, Sr.

Address: Texas State University-San Marcos

Office of Sponsored Programs

601 University Drive - JCK 420

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-2102

Fax: 512-245-1822

Email: we10@txstate.edu

**Attachment 3B
Research Subaward Agreement**

Subaward Number:

8000001154.2

Subrecipient Contacts

Institution/Organization ("Subrecipient")

Name: Hays County, Texas

Address: 137 N. Guadalupe Street

City: San Marcos

State: Texas

ZipCode + 4: 78666

EIN No.:

Institution Type: County Government

Reg. in CCR? ☐ Yes ☐ No

Performance Site Same Address as Above?

DUNS No.:

Congressional District:

Congressional District:

☐ Yes ☐ No If No, complete Sect. C of Attachment 4A

Texas 25th

Administrative Contact

Name: Tommy Ratliff, Sheriff

Address: 1307 Uhland Road

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-7808

Fax: 512-393-7395

Email: sheriff@co.hays.tx.us

Principal Investigator

Name: Don Montague

Address: Executive Director, ALERRT

601 University Dr. - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Financial Contact

Name: Vickie Wilhelm

Address: 111 E. San Antonio Street

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-2275

Fax: 512-393-2279

Email: vickie_wilhelm@co.hays.tx.us

Authorized Official

Name: Elizabeth "Liz" Sumter

Address: Hays County Judge

111 E. San Antonio Street

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-2205

Fax: 512-393-2282

Email: lizsumter@co.hays.tx.us

Attachment 4
Reporting Requirements

Reports shall be submitted to administrative contact in Attachment 3 at such time and in such format as described below.

The reports shall be required monthly in invoice format.

**Attachment 5
Statement of Work and Budget**

Scope of Work

Sergeant Burns will provide training and support for the ALERRT program.

Budget Amount:

Salary/Benefits for Sergeant David Burns	\$32,000
Total Budget	\$32,000

Research Subaward Agreement

Institution/Organization ("Prime Recipient")

Name: Texas State University-San Marcos

Prime Award No.: W912L1-07-2-3061

Awarding Agency:

The Adjutant General for Texas

Institution/Organization ("Subrecipient")

Name: Hays County, Texas

Subaward No.: 8000001194.1

CFDA #:

Amount Funded This Action:

Est. Total (if incrementally funded)

\$30,400.00

Subaward Period of Performance:

Budget Period: From: To:

September 30, 2009

September 30, 2010

Estimated Project Period (if incrementally funded):

From: To:

Project Title:

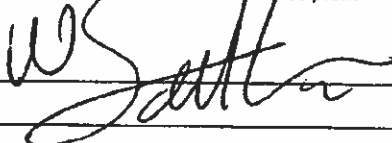
ARNG Advance Law Enforcement Rapid Response Training (ALERRT)

Reporting Requirements (Check here if applicable: ☒ See Attachment 4)☐ ARRA Funds (Attachment 4A)

Terms & Conditions

- 1) Prime Recipient hereby awards a cost reimbursable subaward, as described above, to Subrecipient. The statement of work and budget for this subaward are (check one): ☐ As specified in Subrecipient's proposal dated _____; or ☒ as shown in Attachment 5. In its performance of the subaward work, Subrecipient shall be an independent entity and not an employee or agent of Prime Recipient.
- 2) Prime Recipient Shall reimburse Subrecipient not more often than monthly for allowable costs. All invoices shall be submitted using Subrecipient's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), subaward number, and certification as to truth and accuracy of invoice. *Invoices that do not reference Prime Recipient's Subaward Number shall be returned to Subrecipient.* Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Administrative Contact as shown in Attachments 3A & 3B.
- 3) A final statement of cumulative costs incurred, including cost sharing, marked "FINAL" must be submitted to Prime Recipient's Administrative Contact, as shown in Attachments 3A and 3B, NOT LATER THAN sixty (60) days after subaward end date. The final statement of costs shall constitute Subrecipient's final financial report.
- 4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Subrecipient.
- 5) Matters concerning the technical performance of this subaward should be directed to the appropriate party's Principal Investigator, as shown in Attachments 3A and 3B. Technical reports are required as shown above, "Reporting Requirements".
- 6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact, as shown in Attachments 3A & 3B. Any such changes made to this subaward agreement require the written approval of each party's Authorized Official as shown in Attachments 3A & 3B.
- 7) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or director's, to the extent allowed by law.
- 8) Either party may terminate this subaward with thirty days written notice to the appropriate party's Administrative Contact as shown in Attachments 3A & 3B. Prime Recipient shall pay Subrecipient for termination costs as allowable under OMB Circular A-21 or A-122 or 45 CFR Part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals" as applicable.
- 9) No-cost extensions require the approval of the Prime Recipient. Any requests for a no-cost extension should be addressed to and received by the Administrative Contact, as shown in Attachments 3A & 3B, not less than thirty (30) days prior to the desired effective date of the requested change.
- 10) The Subaward is subject to the terms and conditions of the Prime Award and other special terms and conditions, as identified in Attachment 2.
- 11) By signing below Subrecipient makes the certifications and assurances shown in Attachments 1 and 2. Subrecipient also assures that it will comply with applicable statutory and regulatory requirements specified in the Research Terms & Conditions Appendix C found at <http://www.nsf.gov/bfa/dias/policy/rtc/appc.pdf>.

By an Authorized Official of Prime Recipient



Date

1-21-10

By an Authorized Official of Subrecipient

Date

Attachment 1 Research Subaward Agreement Certifications and Assurances

By signing the Subaward Agreement, the authorized official of Subrecipient certifies, to the best of his/her knowledge and belief that:

Certification Regarding Lobbying

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", to the Prime Recipient.

3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Debarment, Suspension, and Other Responsibility Matters

Subrecipient certifies by signing this Subaward Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

OMB Circular A-133 Assurance

Subrecipient assures Prime Recipient that it complies with A-133 and that it will notify Prime Recipient of completion of required audits and of any adverse findings which impact this subaward.

Attachment 2
Terms and Conditions of the Prime Award and Other Special Terms and Conditions

This Agreement is made as a result of the Adjutant General of Texas Contract No. W912L1-07-2-3061, "Advanced Law Enforcement Rapid Response Training (ALERRT)", that was awarded to University. This project is subject to and conditioned upon acceptance of the Texas Government Code, Chapter 791. Subrecipient agrees to abide by these provisions, including the appropriate administrative and cost guidelines. Where approval is required from the Adjutant General of Texas, such approval shall be sought from University.

Terms and Conditions

1. The restrictions on the expenditure of federal funds in appropriations acts are applicable to this subaward to the extent those restrictions are pertinent.
2. The Subrecipient agrees to comply with the Uniform Grant Management Standards (UGMS) which can be found at <http://www.governor.state.tx.us>.
3. The Subrecipient agrees to comply with the requirements of 28 CFR Part 46 regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate.
4. The Subrecipient agrees to comply with all confidentiality requirements of 42 USC Section 3789g and 28 CFR Part 22 that are applicable to the collection, use and revelation of data or information.

Compliance Assurances and Certifications. Subrecipient certifies, by signing this document that the following assurances and certifications that apply to the University's prime grant are met. Such assurances and certifications required by the Subrecipient shall include but are not necessarily limited to:

Civil Rights. Compliance with Title VI of the Civil Rights Act of 1964.

Handicapped Individuals. Compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

Sex Discrimination. Compliance with Section 901 of Title D (of the Education Amendments of 1972 as amended).

Age Discrimination. Compliance with the Age Discrimination Act of 1975 as amended.

Patents, Licenses, and inventions. Compliance with the Standard Patent Rights clauses as specified in 37 CFR, Part 501, FAR 57.227-11, or U.S.C. 203, whichever is appropriate and applicable.

Non-Delinquency on Federal Debt. AWARDEE specifically certifies that neither it nor any person to be paid from funds under this Agreement is delinquent in repaying any Federal debit

as defined by OMB Circular A-129.

Drug-Free Workplace. Compliance with the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.

Misconduct in Science. Compliance with 42 CFR Part 50, Subpart A, and Final Rule as published at 54 CFR 32446, August 8, 1989.

Conflict of Interest. Compliance with the DOE requirement to maintain a written standard of conduct and comply with 42 CFR Part 50, Subpart F.

Attachment 3A
Research Subaward Agreement

Subaward Number:

8000001194.1

Prime Recipient Contacts

Institution/Organization ("Prime Recipient")

Name: Texas State University-San Marcos

Address: 601 University Drive

City: San Marcos

State: Texas

ZipCode: 78666

Administrative Contact

Name: Don Montague

Address: Texas State University-San Marcos

Department of Criminal Justice

601 University Drive - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Principal Investigator

Name: Don Montague

Address: Texas State University-San Marcos

Department of Criminal Justice

601 University Drive - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Financial Contact

Name: Michele Castro

Address: Texas State University-San Marcos

Office of Sponsored Programs

601 University Drive - JCK 420

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-2102

Fax: 512-245-1822

Email: mc72@txstate.edu

Authorized Official

Name: W. Scott Erwin, Sr.

Address: Texas State University-San Marcos

Office of Sponsored Programs

601 University Drive - JCK 420

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-2102

Fax: 512-245-1822

Email: we10@txstate.edu

Attachment 3B
Research Subaward Agreement

Subaward Number:

8000001194.1

Subrecipient Contacts

Institution/Organization ("Subrecipient")

Name: Hays County, Texas

Address: 137 N. Guadalupe Street

City: San Marcos

State: Texas

ZipCode + 4: 78666

EIN No.:

Institution Type: County Government

Reg. in CCR? ☐ Yes ☐ No

Performance Site Same Address as Above?

☐ Yes ☐ No If No, complete Sect. C of Attachment 4A

DUNS No.:

Congressional District:

Congressional District:

Texas 25th

Administrative Contact

Name: Tommy Ratliff, Sheriff

Address: 1307 Uhland Road

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-7808

Fax: 512-393-7395

Email: sheriff@co.hays.tx.us

Principal Investigator

Name: Don Montague

Address: Executive Director, ALERRT

601 University Dr. - Smith House

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-245-1552

Fax: 512-245-9717

Email: wm17@txstate.edu

Financial Contact

Name: Vickie Wilhelm

Address: 111 E. San Antonio Street

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-2275

Fax: 512-393-2279

Email: vickie_wilhelm@co.hays.tx.us

Authorized Official

Name: Elizabeth "Liz" Sumter

Address: Hays County Judge

111 E. San Antonio Street

City: San Marcos

State: Texas

ZipCode: 78666

Telephone: 512-393-2205

Fax: 512-393-2282

Email: lizsumter@co.hays.tx.us

Attachment 4 Reporting Requirements

Reports shall be submitted to administrative contact in Attachment 3 at such time and in such format as described below.

The reports shall be required monthly in invoice format.

**Attachment 5
Statement of Work and Budget**

Scope of Work

Sergeant Burns will provide training and support for the ALERRT program.

Budget Amount:

Salary/Benefits for Sergeant David Burns	\$30,400.00
Total Budget	\$30,400.00

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Discussion and Possible Action to approve a change order to the contract for the roof replacement at the Law Enforcement Center.

TYPE OF ITEM: Action

PREFERRED MEETING DATE REQUESTED: February 26, 2010

AMOUNT REQUIRED: \$68,120

LINE ITEM NUMBER OF FUNDS REQUIRED: TBD

REQUESTED BY: Ingalsbe

SPONSORED BY: Ingalsbe

SUMMARY:

The original bid for the Law Enforcement Center roof replacement included unit prices for several items. Skylights were bid at \$2,100 each. The skylights were not included in the contract, pending verification of the need to replace them. The need has been confirmed by Sheriff's Office maintenance staff and the project manager (Broaddus & Associates). The bid documents showed eight (8) skylights, but there are twelve (12), resulting in an increase of \$25,200.

During removal of the original roof, it was discovered that there is insufficient slope to the roof drains. Additional rigid underlayment must be built up in "crickets" to provide sufficient drainage. Combined material and labor costs for this work are \$36,780.

The stucco walls at the monitor window above the entry area are cracked and leaking. Covering these with roofing membrane will stop the leaks. These wall areas would be covered under the roof warranty. Combined labor and material costs for this item are \$6,140.

Total change order would be \$68,120.

Dear Commissioner Ingalsbe,

Attached please find draft request for an agenda item for next week's Commissioners' Court meeting, for discussion and possible action on a change order proposed for the Law Enforcement Center roof replacement project. As summarized in the draft, there are three items that I recommend adding to the contract with Texas Fifth Wall Roofing Systems.

- Skylights: Replacing the skylights was included as a unit price (\$2,100 each) in the bid from Fifth Wall. They were not included in the contract, pending verification that they really did need replacing. They do, and there are 12 of them, instead of the 8 shown on the RFP documents. (Long story short: The jail drawings do not show Block D.)
Cost: \$25,200.

- Crickets: As I mentioned at our briefing on Jan. 8, the RFP documents and the original drawings for the jail show the roof structure sloping to drain. Unfortunately, it doesn't slope enough. To make up for this, the roofers are having to make and install "crickets," which is roofing terminology for additional sloping. It will require 23,400 square feet of additional rigid insulation board. Material + labor is \$1.57 per square foot, resulting in:
Cost: \$36,780.

- Raised window area above the entry (lobby) area: The monitor window above the entry area has a sloping roof, which is already included in the contract. It has two side wall and a front wall -- which is where the windows are -- covered in stucco, which is cracked and leaking. These walls are not visible from the ground. I recommend covering them in roofing membrane, which will stop the leaks. These walls would then become part of the roof and would be covered under the roof warranty.
Cost: \$6,140.

Original Contract: \$424,000

Previous Change Order: \$ 75,450

Subtotal \$499,450

New Change Order: \$ 68,120

New Contract Total \$567,570

Please call with any questions.

With best regards, Phillip Buterbaugh, AIA
BROADDUS & ASSOCIATES

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 further departmental reorganization for the Development Services Division of the Resource Protection, Transportation, and Planning (RPTP) Department and the proposed related job description.

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Jerry Borcharding, Director, RPTP
Lisa Wright, Deputy Director, Development Service

SPONSORED BY: Karen Ford, Precinct 4 Commissioner

SUMMARY:

Background: On December 22, 2009, the Commissioners Court approved a reorganization of the Resource Protection, Transportation, and Planning (RPTP) Department which provided for the creation of the Development Services Division (formerly known as Environmental Health), which includes planning, septic inspections, subdivision review, floodplain review and enforcement, environmental health enforcement, geographic information systems, and 911 addressing. Various positions within the Division were modified and grouped in such a manner so as to result in greater efficiency and accountability.

Further review of the overall departmental structure of RPTP has shown that there are possibly other responsibilities which may logically fall under the category of work performed in the Development Services Division and should be relocated thereto. Today's discussion will focus on the establishment of a Natural Resources branch within the Division, under which environmental compliance positions and other future environmental program positions may fall.

Attachments: Proposed organizational chart and job description for Natural Resource Program Manager.

HAYS COUNTY JOB DESCRIPTION

Job Code:
Grade: TBD
FLSA: Exempt
Safety Sensitive

Prepared by:
Date Prepared: January 2010
Date Revised:

NATURAL RESOURCES PROGRAMS MANAGER Development Services Division (Resource Protection, Transportation, and Planning)

Essential functions, as defined under the Americans with Disabilities Act, include the responsibilities, knowledge, skills, and other characteristics listed below. This list of responsibilities is ILLUSTRATIVE ONLY, and is not a comprehensive listing of all functions and tasks performed by positions in this class. To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. Other duties may be assigned. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Summary

Under limited supervision, oversees and performs a wide variety of environmental functions protecting the natural resources and public safety in Hays County related to storm water/drainage issues, environmental conservation, and water quality.

Responsibilities

- Assist the Deputy Director in developing procedures that result in more effective operation of the division as it relates to natural resource conservation and protection and assist the Deputy Director in the preparation of the annual budget to administer such programs.
- Assist in the hiring, dismissal, and evaluation of program staff; assist with interpretation and application of appropriate regulations; assure that employees are exposed to all of the information they need to perform all facets of their duties; guide and develop employees in the accomplishment of their duties and professional growth; train staff at all levels in environmental issues and responsibilities. Interpret and enforce County development regulations and procedures relating to natural resource conservation and protection; review subdivision plats, drainage submittals, road construction specifications, and other information to determine compliance with local and state development regulations; assist in the review of floodplain submittals; make recommendations to improve proposed developments and assist applicants in complying with rules and regulations. Interpret federal, state, and local regulations; propose solutions or alternatives to development problems; participate in environmental education; promote and raise awareness, at all levels of the County of the impact of emerging environmental issues, whether legislative or best practice, on ethical and social responsibility.
- Oversee field inspections and interact with citizens, property and business owners, and contractors to resolve questions and/or problems.
- Develop, coordinate, and implement County-wide environmental policies, procedures, and programs; -monitors existing County programs to ensure compliance with federal, state, and local regulations.
- Take the lead in policy development analysis, including advising the Deputy Director and Commissioner's Court on major changes needed in procedures, policies, or regulations; provide technical advice and assistance to Commissioners Court, other departments, County citizens, and key stakeholders.
- Coordinate environmental programs and policies with legal staff to develop and implement strategies to obtain County objectives; facilitate closure of litigated cases.
- Attend or conduct public meetings or hearings that require a high level of representation to address issues or to present sensitive material; undertake active conflict resolution with members of the public; serve as liaison for interdepartmental and interagency issues and projects.
- Provide applicable technical information to GIS Program Manager for inclusion in GIS database.
- Any other duties as assigned that will assist in the successful completion of Division objectives and goals.

Knowledge Required

- Knowledge of Hays County Environmental Health Department regulations, policies, and procedures.

- Knowledge of Hays County Subdivision & Development Regulations.
- Knowledge of federal, state, and local environmental standards.
- Knowledge of general GIS techniques, equipment, and methods.
- Thorough knowledge of conservation management.
- Ability to coordinate programs with state agencies,
- Ability to formulate long ranges goals and develop organizational and operational plans for their accomplishment.
- Ability to conduct effective public meetings.

Required Skill

- Skill in reading, understanding, and interpreting federal, state, and local environmental laws.
- Skill in performing subdivision and site plan review for environmental/drainage/floodplain issues.
- Skill in supervising employees.
- Skill in overseeing and performing storm water site inspections.
- Skill in reviewing engineering plans.
- Skill in reading various types of maps and plats, such as flood plain maps, property ownership maps, and topographic maps
- Skill in operating various equipment, such as personal computers, digital scanners, calculators, and digital cameras.
- Skill in establishing and maintaining effective working relationships with supervisors, co-workers, vendors, outside agencies, and the public.

Education and/or Experience

- Graduation from an accredited four-year college or university with major course work in a field related to Environmental Science, Life Science, Biology, Chemistry, Engineering, Landscape Architecture, Public Administration, Business Administration, or Planning, plus six (6) years of experience in a related field, two(2) years of which was in a lead or supervisory capacity. Masters degree may substitute for experience up to two (2) years.

Other Qualifications, Certificates, Licenses, Registrations

- As required in related area.
- Texas driver's license.

Supervision

Supervises all environmental/conservation staff. These responsibilities include assisting with recruiting, interviewing, selecting, and training Division personnel; and preparing work schedules. Guides and develops employees in the accomplishment of their duties and professional growth.

Guidelines

The Environmental Conservation Programs Manager uses judgment in interpreting and adapting guidelines such as Hays County policies, state and federal regulations, established precedents, and work directions. This employee uses these guidelines for application to specific cases and problems. The Environmental Conservation Programs Manager must analyze the results and recommend changes. This position must have a strong work ethic. The Environmental Conservation Programs Manager must follow directions, meet deadlines, have good attendance, be punctual, keep promises, be reliable, and have a proper attitude.

Emotional Demands

The Environmental Conservation Programs Manager uses judgment in interpreting and adapting guidelines. This employee uses these guidelines for application to specific cases and problems.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform essential functions.

While performing the duties of this job, the employee is regularly required to:

- Use his/her hands to finger, handle, or feel.
- Reach with hands and arms.

- Talk and hear.
- Frequently required to stand and walk.
- Occasionally lift and/or move up to 40 pounds.
- Specific vision abilities required by this job include close vision and the ability to adjust focus.
- Work in the field, including during inclement weather.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee regularly works in a normal office setting. The employee sometimes travels to various inspection sites, and is occasionally exposed to health or physical hazards at those sites, such as open pits and uneven terrain.

Acknowledgement

I agree that I am able to satisfactorily perform the essential duties listed above with or without an accommodation. I understand the satisfactory performance of the essential duties in this job description is a condition of my employment. I agree to follow the instructions of my supervisor within the constraints of the law and will perform additional duties to the best of my ability when instructed to do so.

I acknowledge the receipt of the current Hays County Personnel Policy Manual, which outlines my privileges and obligations as an employee. I acknowledge that the provisions of the Personnel Policy are terms and conditions of my employment and I agree to abide by them. I accept responsibility for reading and familiarizing myself with the information in the manual. It is understood that any changes to this policy will be communicated to me in writing. I agree to return the manual to my supervisor if I leave the employ of Hays County.

I further understand that my employment is terminable at will so that both Hays County and its employees remain free to choose to end the employment relationship at any time for any reason or no reason.

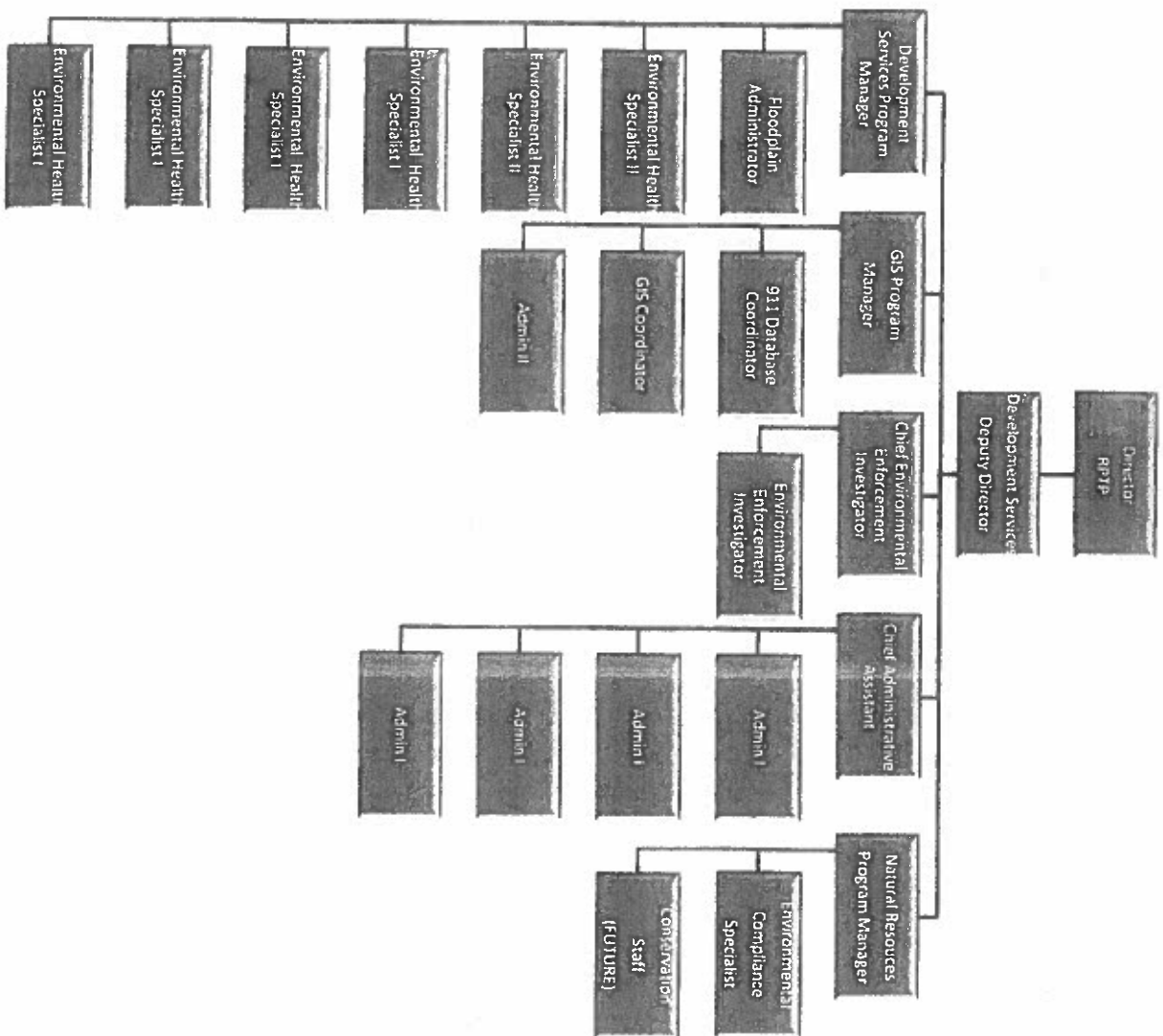
I fully understand that I may be granted compensation time in lieu of payment of overtime to the extent provided by law. I also understand that my supervisor can instruct me to take compensation time.

Employee Signature

Date

List any and all accommodations that are needed to satisfactorily perform the essential functions of this position:

Development Services – Proposed Organizational Chart



Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

Phone (512) 393-2205

AGENDA ITEM: Discussion and possible action to pass a Resolution by Commissioners Court of Hays County, Texas approving and authorizing publication of notice of intention to issue one or more series of certificates of obligations; complying with the requirements contained in securities and exchange commission rule 15c2-12; and resolving other matters in connection therewith.

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

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: \$

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: JUDGE SUMTER

SUMMARY: See attach

RESOLUTION NO.

A RESOLUTION BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE ONE OR MORE SERIES OF CERTIFICATES OF OBLIGATION; COMPLYING WITH THE REQUIREMENTS CONTAINED IN SECURITIES AND EXCHANGE COMMISSION RULE 15c2-12; AND RESOLVING OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Commissioners Court (the *Court*) of Hays County, Texas (the *County*), has determined that it is advisable and necessary to issue certificates of obligation (the *Certificates*) in an amount not to exceed \$72,000,000 as provided pursuant to the provisions of the Certificate of Obligation Act of 1971, as amended, Texas Local Government Code, Section 271.041 through Section 271.065, for the purpose of paying contractual obligations of the County to be incurred for making permanent public improvements and for other public purposes, to-wit: (1) constructing, acquiring, renovating and improving a new Hays County Government Center to be located at South Stagecoach Trail in San Marcos, Texas, as well as any necessary parking, drainage, sidewalks, street, County road, landscaping, utility, and lighting improvements incidental thereto and acquiring property rights (including easements and rights-of-way) necessary therefor, (2) the purchase of materials, supplies, equipment, machinery, land, rights-of-way for authorized needs and purposes relating to the aforementioned capital improvements, and (3) payment for professional services relating to the construction, design, project management, and financing of the aforementioned project. The Certificates will be payable from the levy of an annual ad valorem tax, within the limitations prescribed by law, upon all taxable property within the County and from a lien on and pledge of certain of the net revenues derived from the operation of the County's Solid Waste Management System. The Certificates are to be issued, and this notice is given, under and pursuant to the provisions of the Certificate of Obligation Act of 1971, as amended, Texas Local Government Code Section 271.041 through Section 271.065 and Section 363.135, as amended, Texas Health and Safety Code; and

WHEREAS, prior to the issuance of the Certificates, the Court is required to publish notice of its intention to issue the Certificates in a newspaper of general circulation in the County, such notice stating (i) the time and place the Commissioners Court tentatively proposes to pass the order authorizing the issuance of the Certificates, (ii) the maximum amount proposed to be issued, (iii) the purposes for which the Certificates are to be issued, and (iv) the manner in which the Commissioners Court proposes to pay the Certificates; and

WHEREAS, prior to the offering, sale, and issuance of the Certificates the appropriate officials of the County must review and approve the distribution of a "deemed final" official statement (the *Official Statement*) in order to comply with the requirements contained in 17 C.F.R. §240.15c2-12 (the *Securities and Exchange Rule*); and

WHEREAS, based upon their review of the Official Statement, the appropriate officials of the County must find to the best of their knowledge and belief, after reasonable investigation, that the representations of facts pertaining to the County contained in the Official Statement are

true and correct and that, except as disclosed in the Official Statement, there are no facts pertaining to the County that would adversely affect the issuance of the Certificates or the County's ability to pay the debt service requirements on the Certificates when due; and

WHEREAS, the Court will comply with the requirements contained in the Securities and Exchange Rule concerning the creation of a contractual obligation between the County and the proposed purchasers of the Certificates (the *Purchaser*) to provide the Purchaser with the Official Statement in a time and manner that will enable the Purchaser to comply with the continuing disclosure requirements and the distribution requirements contained in the Securities and Exchange Rule; and

WHEREAS, the Court hereby finds and determines that such documents pertaining to the sale of the Certificates should be approved, and the County should proceed with the giving of notice of intention to issue the Certificates in the time, form, and manner provided by law;

WHEREAS, the Court authorizes the County Judge, County Auditor, County Clerk, and the District Attorney, as appropriate, to review, approve, and execute any document or certificate in order to allow the County to comply with the requirements contained in the Securities and Exchange Rule; and

WHEREAS, the Court hereby finds and determines that these actions are in the best interests of the citizens of the County; now, therefore

BE IT RESOLVED BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS THAT:

SECTION 1: The County Clerk is hereby authorized and directed to cause notice to be published of the Commissioners Court's intention to issue Certificates in an amount not to exceed \$72,000,000 for the purpose of paying contractual obligations of the County to be incurred for making permanent public improvements and for other public purposes, to-wit: (1) constructing, acquiring, renovating and improving a new Hays County Government Center to be located at South Stagecoach Trail in San Marcos, Texas, as well as any necessary parking, drainage, sidewalks, street, County road, landscaping, utility, and lighting improvements incidental thereto and acquiring property rights (including easements and rights-of-way) necessary therefor, (2) the purchase of materials, supplies, equipment, machinery, land, rights-of-way for authorized needs and purposes relating to the aforementioned capital improvements, and (3) payment for professional services relating to the construction, design, project management, and financing of the aforementioned project. The Certificates will be payable from the levy of an annual ad valorem tax, within the limitations prescribed by law, upon all taxable property within the County [and are additionally secured by a lien on and pledge of certain of the net revenues derived from the operation of the County's Solid Waste Management System]. The notice hereby approved and authorized to be published shall read substantially in the form and content of Exhibit A attached hereto, which notice is incorporated herein by reference as a part of this Resolution for all purposes.

SECTION 2: The County Clerk shall cause the aforesaid notice to be published in a newspaper of general circulation in the County, once a week for two consecutive weeks, the date

of the first publication to be at least thirty (30) days prior to the date stated therein for passage of the order authorizing the issuance of the Certificates.

SECTION 3: The County Judge, County Auditor, County Clerk, and the District Attorney, as appropriate, are authorized to review and approve the Official Statement pertaining to the offering, sale, and issuance of the Certificates and to execute any document or certificate in order to comply with the requirements contained in the Securities and Exchange Rule.

SECTION 4: The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Court.

SECTION 5: All orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 6: This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 7: If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and this Commissioners Court hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 8: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 9: This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

[The remainder of this page intentionally left blank.]

PASSED AND ADOPTED on the 26th day of January, 2010.

HAYS COUNTY, TEXAS

County Judge

ATTEST:

County Clerk and Ex-Officio
Clerk of the Commissioners Court

(SEAL OF COMMISSIONERS COURT)

Exhibit A

NOTICE OF INTENTION TO ISSUE
HAYS COUNTY, TEXAS
CERTIFICATES OF OBLIGATION

TAKE NOTICE that the Commissioners Court (the *Court*) of Hays County, Texas (the *County*), shall convene at 9:00 o'clock A.M. on the 16th day of March, 2010, at its regular meeting place in the Hays County Courthouse, and, during such meeting, the Court will consider the passage of an order authorizing the issuance of one or more series of certificates of obligation in an amount not to exceed \$72,000,000 for the purpose of paying contractual obligations of the County to be incurred for making permanent public improvements and for other public purposes, to-wit: (1) constructing, acquiring, renovating and improving a new Hays County Government Center to be located at South Stagecoach Trail in San Marcos, Texas, as well as any necessary parking, drainage, sidewalks, street, County road, landscaping, utility, and lighting improvements incidental thereto and acquiring property rights (including easements and rights-of-way) necessary therefor, (2) the purchase of materials, supplies, equipment, machinery, land, rights-of-way for authorized needs and purposes relating to the aforementioned capital improvements, and (3) payment for professional services relating to the construction, design, project management, and financing of the aforementioned project. The Certificates will be payable from the levy of an annual ad valorem tax, within the limitations prescribed by law, upon all taxable property within the County and from a lien on and pledge of certain of the net revenues derived from the operation of the County's Solid Waste Management System.

The Certificates are to be issued, and this notice is given, under and pursuant to the provisions of the Certificate of Obligation Act of 1971, as amended, Texas Local Government Code Section 271.041 through Section 271.065 and Section 363.135, as amended, Texas Health and Safety Code.

County Clerk and Ex-Officio Clerk of the
Commissioners Court
Hays County, Texas

NOTICE OF INTENTION TO ISSUE
HAYS COUNTY, TEXAS
CERTIFICATES OF OBLIGATION

TAKE NOTICE that the Commissioners Court (the *Court*) of Hays County, Texas (the *County*), shall convene at 9:00 o'clock A.M. on the 16th day of March, 2010, at its regular meeting place in the Hays County Courthouse, and, during such meeting, the Court will consider the passage of an order authorizing the issuance of one or more series of certificates of obligation in an amount not to exceed \$72,000,000 for the purpose of paying contractual obligations of the County to be incurred for making permanent public improvements and for other public purposes, to-wit: (1) constructing, acquiring, renovating and improving a new Hays County Government Center to be located at South Stagecoach Trail in San Marcos, Texas, as well as any necessary parking, drainage, sidewalks, street, County road, landscaping, utility, and lighting improvements incidental thereto and acquiring property rights (including easements and rights-of-way) necessary therefor, (2) the purchase of materials, supplies, equipment, machinery, land, rights-of-way for authorized needs and purposes relating to the aforementioned capital improvements, and (3) payment for professional services relating to the construction, design, project management, and financing of the aforementioned project. The Certificates will be payable from the levy of an annual ad valorem tax, within the limitations prescribed by law, upon all taxable property within the County and from a lien on and pledge of certain of the net revenues derived from the operation of the County's Solid Waste Management System.

The Certificates are to be issued, and this notice is given, under and pursuant to the provisions of the Certificate of Obligation Act of 1971, as amended, Texas Local Government Code Section 271.041 through Section 271.065 and Section 363.135, as amended, Texas Health and Safety Code.

/s/ Linda Fritsche
County Clerk and Ex-Officio Clerk of the
Commissioners Court
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: Discussion about future debt, its impacts and possible strategies to deal with its budget impacts. Possible action may follow.

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

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY:

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

Phone (512) 393-2205

AGENDA ITEM: Presentation regarding collective bargaining by Lowell Denton from Denton, Navarro, Rocha, and Burnell, PC, Attorneys at Law. Possible action may follow.

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

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: \$

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY: Workshop to begin at 1:30pm

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Executive Session pursuant to 551.071 of the Texas Government Code, regarding THK, L.L.C vs. Hays County and pending litigation related thereto.

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

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY:

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Executive Session pursuant to 551.071 of the Texas Government Code: consultation with counsel regarding collective bargaining.

Possible action may follow in open Court.

TYPE OF ITEM: Executive

PREFERRED MEETING DATE REQUESTED: January 26, 2010

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: SUMTER

SPONSORED BY: SUMTER

SUMMARY: Summary to be provided in Executive Session.

