

**Commissioners Court -April 19, 2011
NOTICE OF A MEETING OF THE
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS**



This Notice is posted pursuant to the Texas Open Meetings Act. (VERNON'S TEXAS CODES ANN. GOV. CODE CH.551). The Hays County Commissioners Court will hold a meeting at **9:00 A.M.** on the **19th day of April, 2011**, in the Hays County Courthouse, Room 301, San Marcos, Texas. An Open Meeting will be held concerning the following subjects:

**CALL TO ORDER
INVOCATION**

PLEDGE OF ALLEGIANCE - Pledge of Allegiance to the American Flag & Pledge of Allegiance to the Texas Flag
ROLL CALL

PRESENTATIONS & PROCLAMATIONS

1	4-5	Adopt a Proclamation declaring April 23 – 30, 2011 as National Infant Immunization Week. INGALSBE/HARGRAVES
2	6-7	Adopt a Proclamation declaring May 2011 as Older Americans Month. COBB

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.

3	8	Approve payments of county invoices. HERZOG
4	9-15	Approve Commissioner Court Minutes of April 7 and April 12, 2011. COBB/GONZALEZ
5	16-20	Approve Out of State Travel for Judy Seim, Compliance/Collections Administrator to attend the National Governmental Collections Conference, to be held in Las Vegas, Nevada September 19-21, 2011. COBB
6	21-30	Approve Out of State Training Travel Request for John Henry Cavanaugh, Sheriff's Office Correction Infirmary Supervisor, to attend the Updates in Correctional Health Care Conference in Phoenix, Arizona on May 21-24, 2011. INGALSBE/VILLALPANDO
7	31-34	Approve the FY 2010 Public Health Emergency Preparedness (PHEP) Carryover project and amend the budget accordingly. INGALSBE/HARGRAVES
8	35-37	Approve redirection of funds in the FY 2011 Public Health Emergency Preparedness (PHEP) contract and amend the budget accordingly. Also approve the 10% "in-kind match" on the FY2011 PHEP contract be moved to its own cost center per the requirement of the Financial Management Division of the Texas Department of State Health Services (DSHS) and amend the budget accordingly. INGALSBE/HARGRAVES
9	38-41	Amend Budget of Justice of Peace Pct 3 for Continuing Education from Jury expense. CONLEY/CABLE

ACTION ITEMS

SUBDIVISIONS

10	42-43	11-1-1 Bostwick Subdivision (2 lots). Discussion and possible action to consider approval of preliminary plan. JONES/BOTKIN
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MISCELLANEOUS

11	44-48	Discussion and possible action to grant development authorizations to Melissa Maceo, owner of Lot 1 in the Darlings Hill Subdivision; provide guidance to staff regarding future development authorizations in Darlings Hill Subdivision. CONLEY/GARZA
12	49-53	Discussion and possible action to add a Court Coordinator for the 428 th District Court and amend the budget accordingly. COBB/HENRY
13	54	Discussion and possible action to award the Hays County Government Center Furniture Bid to BKM Total Office; and to authorize the building committee and program manager to negotiate a contract. INGALSBE
14	55-157	Discussion and possible action to authorize the County Judge to execute a Construction Manager at Risk Agreement between DL Bandy and Hays County for construction services related to immediate needs at the Hays County Law Enforcement Center. CONLEY
15	158	Discussion and possible action to consider granting a variance from Hays County Development Regulations, Chapter 715, Subchapter 4.01, to allow permitting of an On-Site Sewage Facility Development Permit to Johnny Campbell, owner of a 4.99 acre portion of lot 11 in Silver Spur Ranchettes. WHISENANT/BOTKIN
16	159-188	Discussion and possible action to approve a Professional Services Agreement with R.G. Miller Engineers, Inc. for study and recommendation for repairs/improvements to River Oaks Dam, aka Bell Springs Dam. This action will authorize the County Judge to sign/execute the PSA. WHISENANT/BORCHERDING
17	189-218	Discussion and possible resolution of the Commissioners Court accepting a petition for the creation of a "Coalition of Central Texas Utilities Development Corporation"; approving the Articles of Incorporation, Bylaws, and Directors of said corporation; and authorizing the County Judge to execute an Interlocal Cooperation Agreement between Hays County, the City of Leander, and the City of Bee Cave related to LCRA's intent to sell its water and wastewater systems. WHISENANT
18	219	Discussion and possible action approve the appointment of Gary Griffin as Reserve Deputy Constable in Precinct 3 to replace Reserve Deputy Constable Travis Brown who has gone to work for Constable David Peterson in Precinct 1. CONLEY/AYERS
19	220-221	Discussion and possible action to approve the Lieutenant's position and its funding for the Hays County Government Center, effective May 1, 2011 and amend the budget accordingly. INGALSBE/CUTLER

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.

20	222	Executive Session pursuant to Sections 551.071 and 551.076 of the Texas Government Code: Consultation with counsel and deliberation regarding Security Devices and Personnel at the Hays County Government Center. Possible action may follow in open court. INGALSBE/CUTLER
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STANDING AGENDA ITEMS

The Commissioners Court utilizes Standing Agenda Items to address issues that are frequently or periodically discussed in court. This section allows the Court to open the item when a need for discussion arises.

21	Discussion and possible action related to the burn ban. COBB/CHAMBERS
22	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
23	Discussion of issues related to the road bond projects, including updates from Mike Weaver, Prime Strategies and Jeff Curren, HDR. Possible action may follow. COBB
24	Presentations by Department Heads to update and inform the Commissioners Court of department structure, performance, and goals. COBB/BAEN
25	Discussion and possible action to approve hiring, transfer and/or promotion of vacant position(s). The intent of the standing agenda item is to recognize deadline restraints and remove barriers or bottlenecks for hiring managers when presenting to Commissioners Court key positions they feel are needed to be filled. COBB/BAEN
26	Discussion of material relating to the Hays County Water and Wastewater Authority and/or the LCRA divestiture. WHISENANT

ADJOURNMENT

Posted by 5:00 o'clock P.M. on the 15TH day of April, 2011

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: Adopt a Proclamation declaring April 23 – 30, 2011 as National Infant Immunization Week.

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: None

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Priscilla Hargraves

SPONSORED BY: Ingalsbe

SUMMARY: Please refer to Proclamation



PROCLAMATION DECLARING April 23-30, 2011 AS
NATIONAL INFANT IMMUNIZATION WEEK

STATE OF TEXAS §

COUNTY OF HAYS §

Whereas: Vaccines are among the world's most successful and cost-effective public health tools available for preventing disease and death...

Whereas: National immunization levels are at or near record highs for most vaccines and several vaccine-preventable diseases have been reduced by 99 percent or more since the introduction of vaccines...

Whereas: Children need a series of vaccinations, starting at birth, to be fully protected against 14 potentially serious diseases...

Whereas: Immunizations are among the best ways parents can protect their children against serious diseases...

Whereas: National Infant Immunization Week (NIIW) focuses local and national attention on the importance of timely immunization for infants and toddlers 2 years old and younger...

Whereas: In the 17 years since its inception, National Infant Immunization Week (NIIW) has served as a call to parents, caregivers, and health care professionals to participate in educational, recognition, and media events to increase the awareness of the importance of immunizing children before their second birthday...

Whereas: This year, during NIIW, the United States will again join with the Pan American Health Organization (PAHO) in support of Vaccination Week in the Americas to promote immunization in all countries of the Americas through U.S.-Mexican border activities.

Whereas: The United States and PAHO will be joined by more than 100 other countries that will be celebrating European Immunization Week, Vaccination Week in the Eastern Mediterranean and African Vaccination Week...

Whereas: The week of April 23-30, 2011 has been declared National Infant Immunization Week to help ensure that children have all their vaccinations by the age of two.

NOW, THEREFORE, BE IT PROCLAIMED that the Hays County Commissioner's Court does hereby proclaim April 23-30, 2011 as:

INFANT IMMUNIZATION WEEK

And calls upon communities to celebrate with activities that promote health and acknowledge the benefits of public health to everyone in our communities.

ADOPTED THIS THE 19th DAY OF APRIL 2011

Bert Cobb
Hays County Judge

Debbie Gonzales Ingalsbe
Commissioner, Pct. 1

Mark Jones
Commissioner, Pct. 2

Will Conley
Commissioner, Pct. 3

Ray Whisenant
Commissioner, Pct. 4

ATTEST:

Liz Gonzales, Hays County Clerk

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

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

Phone (512) 393-2205

AGENDA ITEM: Adopt a proclamation declaring May 2011 as Older Americans Month.

CHECK ONE:	CONSENT	ACTION	EXECUTIVE SESSION
	WORKSHOP	X PROCLAMATION	PRESENTATION

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: COBB

SPONSORED BY: COBB

SUMMARY:



**PROCLAMATION
OLDER AMERICANS MONTH
MAY 2011**

WHEREAS, Hays County is home to more than 15,000 citizens age 60 and over; and

WHEREAS, older adults in Hays County are the roots from which our community grows, who bestow gifts of wisdom and insight upon younger generations, and strengthen the bonds between neighbors to create a better place to live; and

WHEREAS, our society can be enhanced by older adults aging peacefully in their communities; and

WHEREAS, the older adults in Hays County should be commended for their role in creating and bolstering the fiber of our community and nation; and

WHEREAS, our region can provide recognition and respect by enriching the quality of life for older Americans by:

- Increasing their opportunities to remain in their communities as active and engaged citizens
- Providing services, technologies, and support systems that allow seniors to foster and maintain connections within the community
- Emphasizing the value of elders by publically recognizing their contributions to the diversity, strength, and unity of our community

NOW THEREFORE, the Hays County Commissioners Court does hereby proclaim May 2011 to be Older Americans Month. We urge every citizen to take time this month to honor our older adults and the professionals, family members, and volunteers who care for them. Our recognition of older Americans and their involvement in our lives can help us achieve stronger and more meaningful connections with each other and enrich our community's quality of life.

ADOPTED THIS THE 19th DAY OF APRIL, 2011

**Bert Cobb
Hays County Judge**

**Debbie Gonzales Ingalsbe
Commissioner, Pct. 1**

**Mark Jones
Commissioner, Pct. 2**

**Will Conley
Commissioner, Pct. 3**

**Ray Whisenant
Commissioner, Pct. 4**

ATTEST:

**Liz Q. Gonzalez
Hays County Clerk**

Agenda Item Request Form

Hays County Commissioners' Court

2:00 p.m. Every Wednesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Approve payment of county invoices.

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

PREFERRED MEETING DATE REQUESTED: 4/19/11

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 COMMISSIONER COURT MINUTES OF APRIL 7TH & 12TH, 2011

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

PREFERRED MEETING DATE REQUESTED: APRIL 19, 2011

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: GONZALEZ

SPONSORED BY: COBB

SUMMARY:



APRIL 7, 2011

VOLUME U PAGE 555

STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 7TH DAY OF APRIL A.D., 2011, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

ALBERT H. COBB JR
DEBBIE GONZALES INGALSBE
MARK JONES
WILL CONLEY
LIZ Q. GONZALEZ

COUNTY JUDGE
COMMISSIONER, PCT. 1
COMMISSIONER, PCT. 2
COMMISSIONER, PCT. 3
COUNTY CLERK

WITH COMMISSIONER PCT. 4 RAY O. WHISENANT, JR. ABSENT; AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

DISCUSSION REGARDING HAYS COUNTY'S EFFORTS TO INITIATE A UNIFIED DISPATCH FOR COUNTYWIDE EMERGENCY COMMUNICATIONS. A COMMITTEE HAS BEEN ASSEMBLED TO DISCUSS THIS OPTION, AN UPDATE WILL BE PROVIDED.

Commissioner Conley spoke of need for moving the Communications Department into the future. Erica Carpenter, PSAP Manager/9-1-1 Dispatch at the Hays County Sheriff's Office gave an overview of the needs for 9-1-1 dispatch. A new Agency is created to dispatch all Fire and EMS calls in Hays County. A secondary PSAP (Public Safety Answering Point) is created with this agency. This agency has to establish its own governing body. All Law Enforcement Agencies keep their 9-1-1 Call Takers. All 9-1-1 calls in Hays County automatically route to the specific PSAP according to jurisdiction. The 9-1-1 Call Taker will ask if the call needs Police, fire or EMS. If the call is for Police, the 9-1-1 Call Taker will process that call and input it into CAD (Computer Aided Dispatch). If the call is for Fire or EMS, the 9-1-1 Call Taker will route the call to the Secondary PSAP. The Secondary PSAP 9-1-1 Call Taker will process the call and input it into CAD. All Fire and EMS 9-1-1 calls will be standardized. Fire and EMS Dispatching will be separated from Law Enforcement Dispatching. Provides more concentration to Fire and EMS Agency and Law Enforcement Agency needs. Law Enforcement Agencies will not lose their PSAP and can standardize call taking per agency. 9-1-1 Call Takers and Dispatchers can cross-train providing more skilled employees for interoperability. All Law Enforcement and fire/EMS Agencies can share information through connected databases. Through the same CAD system. Through interfaces with CAD systems and records management systems. Some of the benefits of consolidation are: Shared resources could possibly reduce costs for all citizens; Improve quality of service and continuity for all citizens; More career opportunities; Standardized SOP's and training across all departments; Increased staff on-site for all shifts to cover major incidents; Properly designed Communication Center. Commissioner Conley spoke of approaching all the entities involved to try and get this going as soon as possible. There was representation from all agencies involved and fully support moving forward with this issue.

Court was adjourned.

I, Liz Q. Gonzalez, 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 April 7, 2011.



Liz Q Gonzalez, COUNTY CLERK AND EXOFFICIO
CLERK OF THE COMMISSIONERS' COURT OF
HAYS COUNTY, TEXAS



STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 12TH DAY OF APRIL A.D., 2011, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

ALBERT H. COBB JR.	COUNTY JUDGE
DEBBIE GONZALES INGALSBE	COMMISSIONER, PCT. 1
MARK JONES	COMMISSIONER, PCT. 2
WILL CONLEY	COMMISSIONER, PCT. 3
RAY O. WHISENANT JR.	COMMISSIONER, PCT. 4
LIZ Q. GONZALEZ	COUNTY CLERK

AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

Brent Batson from the Church of the Springs gave the invocation and Judge Cobb led the court in the Pledge of Allegiance to the flags. Judge Cobb called the meeting to order.

NEW EMPLOYEES

New Hires were introduced by Abel Velasquez of the Human Resources Department.

CLERK'S NOTE: AUDIO/VIDEO COMPUTER DIED AND WAS BROUGHT UP ON RESOLUTION #27978

PUBLIC COMMENTS

Sam Brannon resident of San Marcos made a public comment.

27967 APPROVE PAYMENTS OF COUNTY INVOICES

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Whisenant to approve payments of county invoices in the amount of \$3,316,429.19 as submitted by the County Auditor. All voting "Aye". MOTION PASSED

27968 APPROVE COMMISSIONER COURT MINUTES OF MARCH 29, APRIL 4, 5, 2011

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Whisenant to approve Commissioners Court Minutes of Marcy 29, April 4, 5, 2011 as presented by the County Clerk. All voting "Aye". MOTION PASSED

27969 AMEND BUDGET OF CONSTABLE PCT 4 FOR CONTINUING EDUCATION FROM LAW ENFORCEMENT EQUIPMENT SAVINGS

Constable 4 requires additional \$250 to pay balance of training cost: has paid for spotlights budgeted in eqpt from supplies, as less than eqpt threshold amount, and requests to transfer savings to needed continuing ed cost 001-638-00.5551 continuing education from 001-638-00.5717 Law Enforcement Equipment. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Whisenant to amend Budget of Constable Pct 4 for continuing education from Law Enforcement equipment savings. All voting "Aye". MOTION PASSED

27970 APPROVE AND CONFIRM THE APPOINTMENT OF TRAVIS BROWN AS DEPUTY CONSTABLE FOR CONSTABLE PRECINCT 1, DAVID PETERSON EFFECTIVE APRIL 12, 2011

According to Chapter 86 Subchapter B 86.011 the Commissioner's Court shall approve and confirm the appointment of a deputy constable. Travis James Brown was sworn in by Justice of the Peace Pct. 1 Place 1, Joanne Prado. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Whisenant to approve and confirm the appointment of Travis Brown as Deputy Constable for Constable Precinct 1, David Peterson effective April 12, 2011. All voting "Aye". MOTION PASSED

27971 AMEND SHERIFF DRUG FORFEITURE FUND BUDGET TO PURCHASE EQUIPMENT

The Sherriff's drug forfeiture funds may be used at his discretion. To follow county policy the Sherriff's office has requested to move funds into the appropriate general ledger account to purchase five televisions at \$787.00 each total cost for all is \$3,935.00. These will replace broken PowerPoint projectors that are in training rooms. Purchasing new television will be more effective than replacing or fixing the broken projectors. 053-618-00.5719. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Whisenant to amend Sheriff Drug Forfeiture Fund budget to purchase equipment. All voting "Aye". MOTION PASSED



APRIL 12, 2011

VOLUME U PG 557

27972 HOLD A PUBLIC HEARING TO ESTABLISH TRAFFIC REGULATIONS ON VALLEY VIEW ROAD IN BURNETT RANCH ESTATES SUBDIVISION

Judge Cobb opened the public hearing. Constable Pct. 3 Darrell Ayres made a public comment. Public hearing was closed. Transportation Director Jerry Borchering gave staff recommendation. This is to establish a "No Parking" zone of approximately 700 feet from the park gate on the south side of Valley View Road going towards the Blanco River low-water crossing (only three signs needed). A motion was made by Commissioner Conley, seconded by Commissioner Jones to hold a public hearing and to establish traffic regulations on Valley View Road in Burnett Ranch Estates subdivision. All voting "Aye". MOTION PASSED

27973 HOLD A PUBLIC HEARING TO ESTABLISH TRAFFIC REGULATIONS IN BRUSHY CREEK SUBDIVISION

Judge Cobb opened the public hearing. Public hearing was closed. Transportation Director Jerry Borchering gave staff recommendation. This is to establish a stop sign on Meyers Road at S. Turnersville Rd. a stop sign on Lanes Lane at S. Turnersville Rd, a stop sign on Calderon Street at Meyers Road, a stop on Calderon Street at Lanes Lane, and a speed limit of 25 MPH. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to hold public hearing and to establish traffic regulations in Brushy Creek subdivision. All voting "Aye". MOTION PASSED

27974 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN HAYS COUNTY AND AZS ENTERPRISES, INC., FOR THE FUNDING OF CONSTRUCTION AND ENGINEERING COSTS ASSOCIATED WITH THE EXTENSION OF THE LEFT TURN LANE AT THE INTERSECTION OF NUTTY BROWN ROAD AND RM 1826 TO ACCOMMODATE LEFT TURN MOVEMENTS INTO THE CONVENIENCE STORE BEING CONSTRUCTED BY AZS ENTERPRISES, INC.

The RM 1826 at Nutty Brown Road was identified as a key project in Precinct 4 as part of the 2008 Priority Road Bond Program. At the 60 % project development stage, it was brought to the County's attention that AZS Enterprises, Inc. was in the process of developing the property across RM 1826 from Nutty Brown Road as a convenience store and gas station. Coordination meetings were held with developers, engineer, and the County's design engineer. TxDot, County Commissioner's and City of Dripping Springs. All parties were in agreement that the left turn bay for Nutty Brown Road should be extended to accommodate the convenience store and improve safety. AZS Enterprises, Inc. has agreed to provide the County with \$90,000 to cover the added engineering and construction costs for the extension of the turn lane to accommodate the convenience store. The GEC believes this amount is sufficient to cover the additional work. Per Commissioners Court's request on March 29th Special Counsel Mark Kennedy has provided edits that would commit developer for overage related to the extension of the turn lane. A motion was made by Commissioner Whisenant, seconded by Commissioner Conley to authorize the County Judge to execute a development agreement between Hays County and AZS Enterprises, Inc., for the funding of construction and engineering costs associated with the extension of the left turn lane at the intersection of Nutty Brown Road and RM 1826 to accommodate left turn movements into the convenience store being constructed by AZS Enterprises, Inc along with the fact that if the costs are less \$90,000 we would reimburse for the cost of construction. All voting "Aye". MOTION PASSED

27975 ACCEPT THE ANNUAL REPORT FROM THE HAYS COUNTY EMERGENCY SERVICES DISTRICT #3

Chief David Smith gave an overview of the ESD No. 3 Annual Report. Hays County ESD #3 was originally a Rural Fire District formed on August 22, 1983. The RFD was converted to an ESD on August 28, 1997. In 1998 they contracted with South Hays Fire Department. This ESD covers 116 square miles of area surrounding San Marcos. There are currently 86 volunteers – 27 Career Certified Firefighters, 37 Volunteer Certified Firefighters, 42 EMT's or Paramedics, 16 SMART Divers (San Marcos Area Recovery Team), 2 paid staff – Chief and Administrative Assistant. There are 3 full service fire stations – San Antonio Street, Ranch Road 12, and Hilliard Road. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to accept the annual report from the Hays County Emergency Services District #3. All voting "Aye". MOTION PASSED

27976 APPOINT SANDRA TENORIO TO THE REDISTRICTING COMMITTEE

John Leonard has stepped down from the Redistricting Committee due to health reasons. Sandra Tenorio has been an active member in our county. She has been involved in many local organizations and is currently serving on the Buda Council. Mary Gonzales San Marcos resident made a public comment. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to appoint Sandra Tenorio to the Redistricting Committee. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED



27977 AUTHORIZE THE COUNTY JUDGE TO EXECUTE RESOLUTION REGARDING AN EXCESSIVE FORCE POLICY RELATED TO NONVIOLENT CIVIL RIGHTS DEMONSTRATIONS AS REQUIRED UNDER TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM REQUIREMENTS

Hays County has served as the applicant and administrator for grant funding received from the Texas Department of Rural Affairs, Texas Community Development Block Grant Program for the Cedar Oak Mesa Water Supply Corporation, Water System Improvement projects. Requirements associated with this Program include a Resolution by the County regarding an Excessive Force Policy that prohibits the use of excessive force during nonviolent civil rights demonstrations, including physically barring entrance to a facility of location which is the subject of such demonstrations. Failure to have this Resolution in place would result in the need to repay the grants received and further restrict County eligibility for future funding opportunities under this program. A motion was made by Commissioner Whisenant, seconded by Commissioner Ingalsbe to adopt the Excessive Force Policy, as presented by the Grants Office, for the purposes of qualifying for particular federal grant monies; and to recognize the existence and congruence of a Use of Force Policy already in effect at the Hays County Sheriff's Office. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED

27978 ACTION IN REGARD TO THE PARTICIPATION OF THE HAYS COUNTY WATER & WASTEWATER AUTHORITY IN THE CURRENT CUSTOMER COALITION EFFORT TO PREPARE AN INDICATIVE BID FOR PURCHASE OF LCRA WATER & WASTEWATER HOLDINGS - TABLED

Sam Brannon San Marcos and Lenee Lovejoy San Marcos residents made a public comment. A motion was made by Commissioner Whisenant, seconded by Commissioner Jones to table this item until next week when we will have documentation. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED

27979 ACTION TO AMEND THE HISTORICAL JAIL RESTORATION BUDGET FOR THE OLD HAYS COUNTY JAIL FUNDRAISING CAMPAIGN

The Historical Commission will be hosting a fundraising event to kick off the Old Jail "fundraiser" campaign. All staff for the Historical Commission are volunteers, therefore, we would like to use funds budgeted in miscellaneous capital improvements to contract with an event coordinator. No additional funds are needed. Amount requesting \$2,750.00 (144-676-00.5448-contract services). Mary Gonzales San Marcos resident made a public comment. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to amend the Historical Jail Restoration budget for the Old Hays County Jail fundraising campaign. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED

27980 AUTHORIZE AN INSTITUTIONAL OSSF PERMIT LOCATED AT FOULKROD BUSINESS PARK #2, 5295 DACY LANE, BUDA, TX, IN PRECINCT 2

Foulkrod Business Park # 2 is proposing an OSSF to serve an office warehouse park at 5295 Dacy Lane, Buda in Precinct 2. The 3.0137 acre property is owned by Mr. James Foulkrod. The proposed system is low pressure dosing (subsurface) that was designed by Jim Conner. In addition, the On Site Sewage Facility is designed for maximum wastewater flow of 250 gpd. The water is supplied by Goforth WSC. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to authorize an institutional OSSF Permit located at Foulkrod Business Park #2, 5295 Dacy Lane, Buda, TX, in Precinct 2. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED

27981 AUTHORIZE COMMERCIAL ON-SITE SEWAGE FACILITY PERMIT FOR MARY GREGOIRE (SOUTHWEST HILLS VET CLINIC) LOCATED AT 13345 NUTTY BROWN ROAD, IN PRECINCT 4

Mary Gregoire representing Brother Francis LP is proposing an OSSF to replace the existing on site-sewage facility that services an existing Veterinary Clinic. The facility consists of an existing vet clinic and horse stall building and a new 840 sq ft kennel building. The tract of land is 13.7 acres. The proposed on-site sewage facility consists of an aerobic treatment unit followed by surface dispersal. The spray will be dispersed between the hours of midnight and 5 a.m. The system was designed by Joe Wells, Jr. P.E. The On Site Sewage Facility is designed for a maximum wastewater flow of 295 GPD. The water supply is an on-site water well. A motion was made by Commissioner Whisenant, seconded by Commissioner Jones to authorize Commercial On-site Sewage Facility permit for Mary Gregoire (Southwest Hills Vet Clinic) located at 13345 Nutty Brown Road, in Precinct 4. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED



APRIL 12, 2011

VOLUME U PG 559

27982 AUTHORIZE THE COUNTY JUDGE TO SIGN A LETTER OF SUPPORT FOR THE HDR ENGINEERING, INC. RESEARCH GRANT PROPOSAL TO THE TEXAS WATER DEVELOPMENT BOARD FOR A SUBDIVISION-SCALE RAINWATER HARVESTING SYSTEM STUDY

Jeff Hauff Grants Director gave an overview of this item. Peter Newell with HDR gave an overview of this item. Lenee Lovejoy San Marcos resident made a public comment. Texas Water Development Board has issued a call for proposals to assess the feasibility of subdivision-scale rainwater harvesting systems, including design, cost, regulatory requirements and other considerations involved with such systems. Grant funds will be made available by the TWDB to conduct the study. HDR Engineering, Inc. is interested in submitting a proposal to undertake the study and has requested that Hays County support the project through a letter of support and in-kind services provided by County personnel and the proposed County Water Working Group. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to authorize the County Judge to sign a letter of support for the HDR Engineering, Inc. research grant proposal to the Texas Water Development Board for a Subdivision-scale Rainwater Harvesting System study. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED

27983 AUTHORIZE COMMISSIONER WILL CONLEY TO REPRESENT HAYS COUNTY IN DISCUSSIONS WITH THE OFFICIALS FROM THE DEPARTMENT OF INTERIOR AND OTHERS IN WASHINGTON D.C.; AND TO AUTHORIZE PAYMENT OF TRAVEL AND ACCOMMODATIONS OUT OF COUNTYWIDE CONTINGENCIES

Commissioner Conley will be meeting with representatives from the Department of the Interior and other officials in Washington D.C. to discuss streamlining the permitting processes related to the Regional Habitat Conservation Plan, Hays County road projects and other projects that require permitting by the federal government. Since that is not a precinct specific issue, payment out of the county budget is appropriate to authorize payment of \$2,186.85 for travel and accommodations out of county wide contingencies 001-645-00.5399. Mary Gonzales and Lenee Lovejoy San Marcos residents made a public comment. A motion was made by Commissioner Whisenant, seconded by Commissioner Ingalsbe to authorize Commissioner Will Conley to represent Hays County in discussions with the officials from the Department of Interior and others in Washington D.C.; and to authorize payment of travel and accommodations out of countywide contingencies. All voting "Aye". MOTION PASSED

Clerk's Note: COMMISSIONER CONLEY LEFT COURT TO TRAVEL TO WASHINGTON D.C.

27984 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A COLLECTIVE BARGAINING AGREEMENT BETWEEN HAYS COUNTY AND HAYS COUNTY LAW ENFORCEMENT ASSOCIATION (HCLEA). EXECUTIVE SESSION MAY BE CONVENED PURSUANT TO 551.071 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL REGARDING COLLECTIVE BARGAINING

Court convened into closed executive session at 9:52 a.m. and reconvened into open meeting at 10:17 a.m. In attendance were: Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant, Judge Cobb, Dee Baen Human Resources Director, and Mark Kennedy Special Counsel. County representatives have been negotiating an agreement with HCLEA under Chapter 174 of the Local Government Code and have now reached a final agreement with the bargaining agent. It is expected that the law enforcement Bargaining Unit will have ratified the final draft proposal. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Whisenant to authorize the County Judge to execute a Collective Bargaining Agreement between Hays County and Hays County Law Enforcement Association (HCLEA) as negotiated by the bargaining team and to be effective April 1, 2011. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED

Clerk's Note Agenda Item #19 RE: EXECUTIVE SESSION PURSUANT TO SECTION 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING RIGHT OF WAY ACQUISITION ON CR 266 AKA OLD BASTROP HWY IN PRECINCT 1 – was pulled

ACTION RELATED TO THE BURN BAN

At this time the Court will continue the Burn Ban. The County Judge spoke of Hays County Volunteer Fire Departments helping out in East Texas.

Clerk's Note Agenda Item # 21 RE: DISCUSSION OF ISSUES RELATED TO PROPOSED CAPITAL CONSTRUCTION PROJECTS IN HAYS COUNTY, INCLUDING BUT NOT LIMITED TO THE GOVERNMENT CENTER; PRECINCT OFFICES; RESOURCES PROTECTION TRANSPORTATION AND PLANNING DEPARTMENT; AND SPACE NEEDS PROJECTIONS FOR THE HAYS COUNTY JAIL AND RELATED CRIMINAL JUSTICE ANALYSIS. POSSIBLE ACTION MAY FOLLOW – was pulled



Clerk's Note Agenda Item #22 RE: DISCUSSION OF ISSUES RELATED TO THE ROAD BOND PROJECTS, INCLUDING UPDATES FROM MIKE WEAVER, PRIME STRATEGIES AND JEFF CURREN, HDR. POSSIBLE ACTION MAY FOLLOW – was pulled

Clerk's Note Agenda Item # 23 RE: PRESENTATIONS BY DEPARTMENT HEADS TO UPDATE AND INFORM THE COMMISSIONERS COURT OF DEPARTMENT STRUCTURE, PERFORMANCE, AND GOALS– was pulled

27985 ACTION TO APPROVE HIRING, TRANSFER AND/OR PROMOTION OF VACANT POSITION(S)

Sherri Eldridge HR Director in the Sheriff's Office and Captain Mark Cumberland spoke of need to fill some existing positions and explained that these are not new hires. A motion was made by Commissioner Whisenant, seconded by Commissioner Jones to hire 2 full time and one full time positions in the Sheriff's Office and that these are to fill existing positions and are within in the budget. Commissioner Conley not present for vote. Commissioner Ingalsbe, Commissioner Jones, Commissioner Whisenant and Judge Cobb voting "Aye". MOTION PASSED

Clerk's Note Agenda Item # 25 RE: DISCUSSION OF MATERIAL RELATING TO THE HAYS COUNTY WATER AND WASTEWATER AUTHORITY AND/OR THE LCRA DIVESTITURE-was pulled

Sam Brannon San Marcos resident made a public comment regarding agenda item #22 & #25.

A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to adjourn court.

I, LIZ Q. GONZALEZ, 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 April 12, 2011.



LIZ Q. GONZALEZ, 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: Approve out of state travel for Judy Seim, Compliance/Collections Administrator to attend the National Governmental Collections Conference, to be held in Las Vegas, Nevada September 19-21, 2011

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

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

PREFERRED MEETING DATE REQUESTED: 4/19/2011

AMOUNT REQUIRED: 986.04 (Budgeted)

LINE ITEM NUMBER OF FUNDS REQUIRED: 5551

REQUESTED BY: Judy Seim

SPONSORED BY: Judge Cobb

SUMMARY: The National Governmental Collections Conference is a two day event with multiple sessions focusing on improving Court Collections and Compliance, Increasing Governmental Revenues and examining collections technologies. The purpose of the conference is to identify issues and discuss strategies positively impacting governmental collections via education, training, techniques and technology. Update on Texas OCA policies along with information pertaining to Federal Intercept Laws. Funds for the conference would be utilized from current continuing education fund which have already be budgeted.

Agenda Item Routing Form

DESCRIPTION OF Item: Approve out of state travel for Judy Seim, Compliance/Collections Administrator to attend the National Governmental Collections Conference, to be held in Las Vegas, Nevada September 19-21, 2011

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT: \$986.04 (Budgeted)

LINE ITEM NUMBER: 001-648-00.5551

COUNTY PURCHASING GUIDELINES FOLLOWED: N/A

PAYMENT TERMS ACCEPTABLE: N/A

COMMENTS:

Bill Herzog

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

NGCA IS AN ASSOCIATION PROVIDING EDUCATION, TRAINING, TOOLS & SERVICES SPECIFICALLY FOR GOVERNMENT COLLECTIONS

WE FOCUS ON THE COLLECTION OF COURT COST, FINE, TRAFFIC CITATIONS, JUVENILE FEES, FELONIES, PROBATION FEES, ORDINANCE FEES, WARRANT FEES & ADDITIONAL FEES RELATED TO GOVERNMENT

2011 National Court Collections Conference

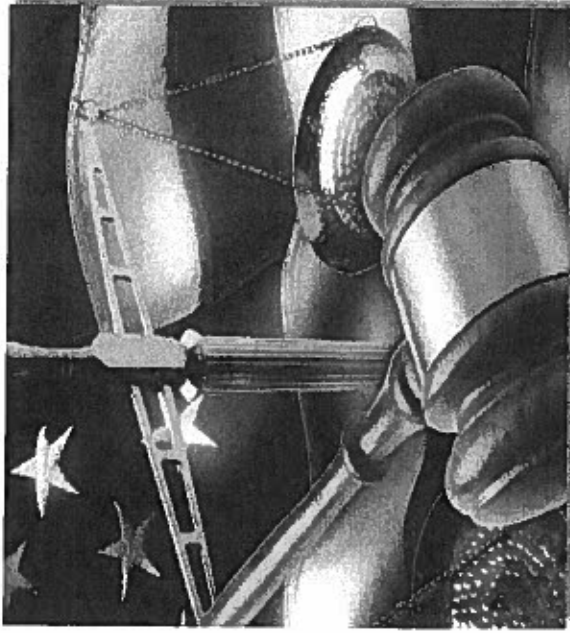
September 19th - September 21st- Las Vegas, NV @ Golden Nugget Hotel



NATIONAL
GOVERNMENTAL
COLLECTORS
ASSOCIATION

P.O. Box 3012 Conroe,
Texas 77305

832-296-4602



- **Breaking News Update on Court Intercept Bill – ABA endorses Federal Court Intercept Bill**
provided by José Dimas | Government Relations Associate, Government Relations Office
- **New product information for Court Collections – Lexis Nexis (Accurint)**
 - Jail Booking Search & Report
 - Case Deconfliction & Case Connect
 - Virtual Identity
- **New Training Tool – Lexis Nexis –(Accurint)**

"The Heartbeat of Governmental Collections Education & Training"

From the Founders of the Governmental Collectors Association of Texas (GCAT) supporting Judicial collections & governmental collections. The first & original association specifically founded by Governmental Collection Professionals

The National Governmental Collectors Association is a non-profit education based organization founded by governmental collections professionals for the purpose of promoting and supporting the interest of governmental professionals nationwide. Governmental collection includes but is not limited to courts, utilities, taxes, child support, student loans, transportation, and emergency services.

With more than \$1 trillion in revenues generated by local governments there is without question the need to create and organization designed specifically to recognize, support, and serve governmental collections through out the entire nation. This new organization sets forth the goal of enhancing the collection of revenue for governmental entities by promoting innovation, information, and education within its membership. Members will have access to a variety of information as well as to cutting edge collections technologies and techniques through newsletters, message boards, comprehensive training workshops, and educational seminars, all created expressly for governmental collectors.

The organization will give members the opportunity to maintain an informal communications network beyond that of the conference, seminar, and workshop events which allows them to share information and assist each other with common industry problems and issues.

Ultimately the **National Governmental Collectors Association** seeks to provide a national resource center with the common focus of setting standards and goals for implementing and achieving excellence.

Agenda Item Request Form

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

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

AGENDA ITEM: Approve Out of State Training Travel Request for John Henry Cavanaugh, Sheriff's Office Correction Infirmiry Supervisor, to attend the Updates in Correctional Health Care Conference in Phoenix, Arizona on May 21-24, 2011.

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: \$1800.00

LINE ITEM NUMBER OF FUNDS REQUIRED: 001-618-00-5551

REQUESTED BY: Lt Julie Villalpando/Hays County Sheriff's Office

SPONSORED BY: Commissioner Ingalsbe

SUMMARY: An Updates in Correctional Health Care Conference is scheduled in Phoenix, Arizona on May 21-24, 2011. The Hays County Sheriff's Office would like Correction Infirmiry Supervisor, John Henry Cavanaugh, to attend. Updates 2011 is designated to shed light on many of the emerging issues that affect work and will propose strategies for managing them. Topics such as new treatment modalities, updated practice recommendation, evolving standards of care, ever changing laws and regulations and innovative cost containment will be discussed during the conference. John Henry will benefit greatly in attending. Lt Julie Villalpando has more information, as needed.

Agenda Item Routing Form

DESCRIPTION OF Item: Approve Out of State Training Travel Request for John Henry Cavanaugh, Sheriff's Office Correction Infirmary Supervisor, to attend the Updates in Correctional Health Care Conference in Phoenix, Arizona on May 21-24, 2011.

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT: \$1800.00

LINE ITEM NUMBER: 001-618-00-5551

COUNTY PURCHASING GUIDELINES FOLLOWED: N/A

PAYMENT TERMS ACCEPTABLE: N/A

COMMENTS:

Bill Herzog

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

Updates in Correctional Health Care

PRELIMINARY PROGRAM

MAY 21-24, 2011 • PHOENIX, ARIZONA

Presented By



National Commission on
Correctional Health Care

Updates in Correctional Health Care

What's Inside...

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Visit us online!

Go to www.ncchc.org for the latest conference information. Click on Education & Conferences for details about the program and online registration. While you're at the site, check out the Buyers Guide to learn about many of the companies that will be exhibiting in Phoenix.

Important Dates

Last day to receive early bird registration discount **April 8**
Last day to cancel and receive partial refund **April 15**
Last day to receive discount hotel rate **April 25**
Last day to preregister **May 9**



National Commission on Correctional Health Care
1145 W. Diversey Parkway
Chicago, IL 60614
Phone: (773) 880-1460 • Fax: (773) 880-2424
e-mail: info@ncchc.org • www.ncchc.org

Emerging Issues

New treatment modalities, updated practice recommendations, evolving standards of care, shifts in patient presentation, trends, ever-changing laws and regulations, innovative cost containment—there's a lot going on in the complex work of correctional health care and it can be a challenge to keep up.

Updates 2011 is designed to shed light on many of the emerging issues that affect our work and to propose strategies for managing them. A broad array of well-crafted presentations will share information, insights and solutions for these and other timely correctional health topics.

Looking for even more? Deepen your educational experience by attending the preconference seminar. These feature not only NCCHC's "Standard," but also special programming on correctional nursing, chronic disease management and legal issues.

We invite you to join 1,000 of your colleagues in a vibrant forum to take part in a high-impact event where you can advance your knowledge and skills while earning continuing education credit, networking with colleagues and having a great time in Phoenix!

Session Sampler

The conference offers two full days of educational programming. The 50-plus sessions will address the following topics and much more:

- A Critical Thinking Program for Front-Line Nursing Staff
- Eight Best Practices for Achieving and Maintaining National Standards
- Establishing Integrated Systems of Care From Intake Through Release
- Forecasting Pharmacy Expenditures in Corrections
- Healthy Inmates 2020: Looking Forward
- Infusing Multicultural Awareness Into Correctional Mental Health
- Medicaid Payment for Inmate Hospitalizations: Today and in 2014
- Health Care Reform and Its Impact on Corrections
- Harm Reduction in Correctional Settings: Evidence for Action
- Shared Specialty Care: A New Model

Scale to New Heights

Updates offers numerous opportunities to learn and grow professionally:

- Discover evidence-based tools, techniques and solutions
- Learn how other organizations have implemented successful programs
- Choose from over 50 content-rich educational presentations
- Deepen your knowledge by taking part in preconference seminars
- Earn continuing education credit in your discipline
- Gain insights from leading experts in correctional and public health care
- Network with colleagues, from top decision makers to in-the-trenches staff
- Visit the bookstore for essential publications, CCHP products, Academy apparel and more
- View problem-solving products and services in the Exhibit Hall
- Experience the cultural and natural wonders of Phoenix

Conference Tip #1

Prepare your schedule in advance, and always have a backup session to attend.

Ready, Set, Connect

One of the greatest pleasures of a professional conference is networking with other attendees, and ours are among the best and brightest. This meeting offers countless opportunities for personal interaction. The many exhibit hall breaks and lunches are the perfect time to chat with colleagues to learn how they are handling the problems that you face every day. Be sure to pack your business cards!

Conference Tip #2

Always attend the networking breaks, a guaranteed way to make new friends!

Visit our website for the latest information about the conference

www.ncchc.org

Buyers Guide, Up Close and Personal

From medical supplies to pharmaceuticals to information technology and more, health care delivery depends on countless goods and services. The conference exhibit hall is your hands-on buyers guide, where you can learn about the latest products and services designed to help you in your work. Be sure to attend the exhibit hall opening reception on Sunday evening to network with attendees and to meet with knowledgeable representatives from dozens of exhibiting companies. For information at your fingertips 24/7, visit the NCCHC Buyers Guide at www.ncchc.org.

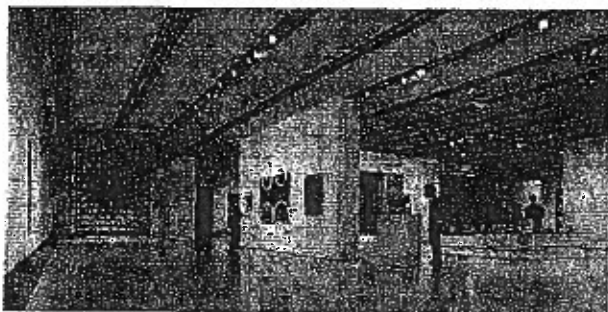
Conference Tip #3

Bring business cards for those people you'd like to keep in touch with.

Phoenix Fun

Things are different in the desert. The sky is bigger. The stars are brighter. The sunsets stop you in your tracks. Projected against this rich backdrop is a panorama of urban sophistication that is Phoenix, America's fifth largest city and its sunniest metropolis.

What to do in your down time? Sports fans can see the Diamondbacks at Chase Field or the Phoenix Suns or Mercury at U.S. Airways Arena, both bordered by great places to eat. There are also plenty of golf courses that beckon players year round. Art lovers will love downtown, with the Herberger Theatre (featuring performances from off-Broadway to Ballet Arizona), Orpheum Theatre and Symphony Hall. Take the Metro Light Rail to the Phoenix Art Museum and Heard Museum, both just a few stops north of downtown. Or enjoy a splurge at shopping centers as stylish and eclectic as the fashions they house.



Conference Objectives

- List major health care issues that commonly affect incarcerated individuals, including HIV, hepatitis, hypertension, diabetes, mental illness and substance abuse
- Describe current legal, ethical and administrative issues and ways to prevent potential problems that arise in correctional settings
- Employ new practices for the treatment of major health care issues in order to better manage common medical and nursing problems found in correctional settings
- Express increased understanding of common correctional health care issues by exchanging ideas with colleagues about new developments in specialty areas

Continuing Education Credit

CCHPs: Certified Correctional Health Professionals may earn up to 30 contact hours of Category I continuing education for recertification.

Nurses: The National Commission on Correctional Health Care is an approved provider of continuing nursing education by the Illinois Nurses Association, an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation. NCCHC designates this educational activity for 30 contact hours (INA-CE Approval Number 0211-4026-1101).

Physicians: The National Commission on Correctional Health Care is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. NCCHC designates this educational activity for a maximum of 30 AMA PRA Category 1 Credits™. Physicians should only claim credit commensurate with the extent of their participation in the activity.

Psychologists: The National Commission on Correctional Health Care is approved by the American Psychological Association to sponsor continuing education for psychologists. NCCHC maintains responsibility for the program and its content. This educational activity has been approved for up to 30 hours of credit.

Social Workers: NCCHC has applied for 30 credits by the National Association of Social Workers.

* Please note that the maximum hours of credit in each category include credits offered at preconference seminars.



CCHP: The Next Step in Your Professional Advancement

On Sunday, May 22, the CCHP, CCHP-A and CCHP-RN exams will be administered to qualified applicants. Don't miss this opportunity to earn this important professional credential. Complete your application for certification by April 15 to be eligible to take the exam in Phoenix. For more information or an application, visit www.ncchc.org/CCHP or e-mail cchp@ncchc.org.

Date/Time	Event/Presentation Title	Guest/Presenter	Content Area	SL
SATURDAY, MAY 21				
8 am – 5 pm	Registration and Bookstore Open			
9 am – 5 pm	Am. Psych. Assoc. of NCCPS and All Prison Standards	B. Jaye Anno, PhD, CCHP-A; Marc Stern, MD, CCHP		
9 am – 5 pm	Am. Psych. Assoc. of NCCPS and All Prison Standards	Joseph Penn, MD, CCHP; Ohlana Torrealday, PhD		
9 am – 5 pm	CCHP-RN Certification Review Course	Catherine Knox, RN, CCHP-RN; Susan Laffan, RN, CCHP-A, CCHP-RN		
SUNDAY, MAY 22				
7:15 am – 6 pm	Registration and Bookstore Open			
8 am – 11:30 am	Advanced Nursing Assessment for Age and Health Assessments	Todd Wilcox, MD, MBA, CCHP-A		
	Assessment and Treatment of Suicide Risk and Self-Harm in Prisoners	Dean Aufderheide, PhD		
1 pm – 3 pm	CCHP-CCHP-A and CCHP-RN Exams (closed session)			
1 pm – 4:30 pm	Chronic Disease Management	Todd Wilcox, MD, MBA, CCHP-A		
	Legal and Ethical Aspects of Correctional Health Services	Deana Johnson, JD		
4:30 pm – 6 pm	Exhibit Hall Open and Reception			
MONDAY, MAY 23				
7 am – 5:15 pm	Registration and Bookstore Open			
7 am – 8 am	Roundtable Discussions and Breakfast	Poster Presenters		B
9 am – 1 pm	Exhibit Hall Open			
8:15 am – 9:15 am	Concurrent Session I			
	103 Management of the Correctional Day's Patient	Dave Khurana, MD, CCHP	Medical/Diagnosis	I
	102 Failure to Rescue and Nursing Vigilance	Sue Smith, RN, MSN	Nursing/Emergency Response	B
	103 Minority Veterans in the Criminal Justice System	Rob Wiborg, MBA; Steven Holland, PsyD	PTSD/Traumatic Brain Injury	I
	104 Predicting Pharmacy Expenditures in Corrections	Alexander Tunnell, PharmD, MBA	Pharmacy/Cost	I
	105 Early Identification of the Most Frequent Psychotropic Complications	Manuel Montes de Oca, MD	Mental Health/Psychotropics	A
9:15 am – 10:30 am	Exhibit Hall Break			
10:45 am – 11:45 am	Concurrent Session II			
	106 Seizure, Barkin, Opuntia, Takan, Yonakin: Understanding Epilepsy Seizures, Tremors and Withdrawal	Todd Wilcox, MD, CCHP-A	Medical/Seizure	A
	107 Artificial Intelligence in Corrections and Nursing Staff	Gene Lincoln, BSN, CCHP; Tre O'Brien, BSN, CCHP	Nursing/Risk Management	B
	108 Gender, Trauma and Behavior: Understanding the Youth Offender	Alicia White, MSW, LCSW	Mental Health/Juvenile	B
	109 Health Care Reform and Its Impact on Corrections	Patricia Blair, PhD, JD, MSN	Legal	I
	110 Harm Reduction in Correctional Settings: Evidence for Action	Hans Wolff, MD, MPH; Barbara Broers, MD, MSc	Substance Abuse/Infectious Disease	I
11:45 am – 1 pm	Exhibit Hall Lunch			
1:15 pm – 2:15 pm	Concurrent Session III			
	111 Living with and About Cardiovascular Disease: Prevalence, Risk Factors and Management	David Lawhorn, MD	Medical/Cardiovascular	I
	112 Medical Payment of Inmate Hospitalizations: Today and in 2014	Donna Strugar-Fritsch, MPA, BSN, CCHP-RN	Legal/Financial	I
	113 Sweet School on Correctional Diabetes: Mental Health Meets Medicine	Donald Kern, MD, MPH, CCHP	Mental Health/Medical	I
	114 Reducing Jail Beddays through Medical Discharge Planning	Nazim Hamid, PhD; John May, MD, CCHP	Discharge Planning	I
	115 Quality of Care Measurement in the California Prison System: The RAND Study	Sonal Kulkarni, MD, MPH	Quality Improvement	B
Skill Level (SL) B=Basic I=Intermediate A=Advanced				

Date/Time	Event/Presentation Title	Chair/Presenter	Content Area	SL
MONDAY, MAY 23 (CONTINUED)				
2:30 pm – 4 pm	Concurrent Session IV			
	116 Evidence for the Efficacy of Behavioral Interventions in Reducing Self-Harm	Sharen Barboza, PhD; John Wilson, PhD	Mental Health/Self-Harm	I
	117 Bright Best Practices for Achieving and Maintaining National Standards	Scott Chavez, PhD, CCHP-A	Standards	I
	118 Infusing Multicultural Awareness Into Correctional Mental Health	Mark Fleming, PhD; Mark Christian Lasko, MA	Mental Health/Multicultural	B
	119 Understanding for Counselors Not for Counselors: Terminations and the Legal Implications	Deana Johnson, JD	Legal/Medical	A
	120 Healthy Futures 2020: Looking Forward	Susan Tiona, MD	Medical/Nursing	I
4:15 pm – 5:15 pm	Concurrent Session V			
	121 Reliability and Validity: A Study on Chronic Health Conditions	Stanley Bohinski, DO, CCHP	Medical/Chronics Disease	I
	122 Conducting the Psychological Autopsy in Correctional Settings	Dean Aulderheldt, PhD	Mental Health	I
	123 Social Media Monitoring: Prevention and Treatment of Eating Disorders in the Jail Camp	Pamela Myers, AAS	Oral Health	B
	124 Patient Safety	Rebecca Pinney, CCHP-RN	Administration	B
	125 Shared Specialty Care: A New Model	Kelly O'Brien MD, CCHP; Terry Howard, RN, BSN; Michelle Puplava, BS	Specialty Care/Management	I
TUESDAY, MAY 24				
7:45 am – 5:45 pm	Registration and Bookstore Open			
8 am – 9 am	Concurrent Session VI			
	126 Process Improvement and the Pharmacists' Critical Role in Reaching Treatment Goals	Ty Bingham, PharmD	Pharmacy/Substance Improvement	B
	127 Recruiting, Retaining and Developing Competent Nurses	Mary Musa, MS, RN, CCHP-A	Nursing/Staffing	I
	128 Self-Harm Behavior and the Female Offender: Minimizing the Risks	Marla Masotta, PsyD; Joel Andrade, PhD	Mental Health/Women	I
	129 JPDOR: An Innovative Outcome-Oriented Jail Diversion Program	Christine Nagendank, MD, CCHP	Mental Health/Diversion	I
	130 NCJCS Standards: What's New for Juvenile Facilities	Scott Chavez, PhD, CCHP-A	Professional Development	B
9 am – 12:15 pm	Exhibit Hall Open			
9 am – 10 am	Exhibit Hall Break			
10:15 am – 11:15 am	Concurrent Session VII			
	131 Toxic Gamemopathy: Caused by Alcohol, Cocaine and Methamphetamine	Anna Hanson, MS, BSN	Medical/Substance Abuse	I
	132 CSI Corrections: Episode 2: Communication Roadblocks	Ben Newman; Lorry Schoenly, PhD, RN, CCHP-RN; Michelle Foster, ARM; Todd Wilcox, MD, CCHP-A	Risk Management	I
	133 Why Is My Patient Acting So Strange? The Detective Work of Nursing Assessment	Susan Laffan, RN, CCHP-RN	Nursing Assessment/Mental Health	B
	134 But Why? Work at My Facility? An Introduction to Correctional Electronic Health Records	Joseph Paris, MD, PhD, CCHP-A	Health Records/Technology	I
	135 Have Your Communication Skills Matched Professionals Understand	Jeri McGinnis, BSN, MBA, CCHP-RN; Deanna Gephart, BSN	Administration/Professional Development	I
11:15 am – 12:15 pm	Exhibit Hall Break			
12:15 pm – 1:30 pm	Educational Luncheon			

Skill Level (SL)

B=Basic

I=Intermediate

A=Advanced

Date/Time	Event/Presentation Title	Chair/Presenter	Content Area	SL
TUESDAY, MAY 24 (CONTINUED)				
1:45 pm – 2:45 pm	Concurrent Session VII			
	136 A Passion for Compassion: A Unique Approach to Cancer Care Polling Data	Janice Garth, BSN; Fran Tompkins, RN, BSN	Medical Oncology	B
	137 Research and Learning in the Correctional Environment: The New Academic/Practical Paradigm	Dianne Rechline, MD, CCHP-A; David Thomas, MD, JD; Paul Roberts, DO	Professional Development	I
	138 Opiate Addiction: An Old Problem With New Frequency and New Treatment	John May, MD, CCHP; Dana Tatum, PhD	Substance Abuse Treatment	I
	139 Dental Screening in Prisons	Michael Adu-Tutu, DDS, MBA, CCHP-A	Nursing Oral Health	A
	140 STD Treatment: The 2010 CDC Guidelines	Sharon Ader, MD, MPH; Jamie Miller, MPH	STDs	I
3 pm – 4 pm	Concurrent Session IX			
	141 Pharmacist-Managed Chronic Kidney Disease: Challenges	Dave Singh Khurana, MD; Melante Roberts, PharmD	Chronic Disease Management	I
	142 Ensuring Medication Coverage at Point of Discharge: Planning and Continuity of Care	Rick Stewart, CCHP	Medication Discharge Planning	I
	143 Leadership and Professionalism Team Building	Kristin Haro, AAS, CCHP; Jennifer Glorioso, BSN, CCHP	Professional Development	B
	144 Restricted Travel & Restricted Training: Using Video Conferencing to Provide TB Training	Ellen Murray, RN, BSN; Sue Lane, RN, CCHP	Infectious Diseases Staff Training	B
	145 Establishing Integrated Systems of Care: From Intake through Release	Ellen Karakur, BSN, MA	Quality Improvement	B
4:15 pm – 5:15 pm	Concurrent Session X			
	146 Geriatric Strategies for Improving End-of-Life Care	Susan Loeb, PhD, RN; Janice Penrod, PhD, RN; Carol Smith, DSN, CRNP	End of Life	I
	148 Developing a Comprehensive Health Care Reentry Program	Julie Buehler, RRT, MPA; Michelle Schmidt, MSW, LCSW	Discharge Planning	B
	149 Telemedicine in Corrections: Present and Future	Yasser Soliman, MD	Telemedicine	B
	150 Correctional Health Care Certifications: Navigating the Future	Paula Hancock, Med, CCHP	Professional Development	I
5:15 pm	Conference Adjourns			
5:15 pm – 5:45 pm	Continuing Education Certificate Processing			

New! Poster Presentations

Education: Posters will be on display in the registration area for easy viewing at your convenience. The presenters will share information on case studies and research findings on a variety of topics.

Substance Abuse Assessment and Treatment With Jail Inmates

Charles Miller, MB, MS, CCHP

Utilization Management: Your Best Cost Containment Tool

Charles Miller, MB, MS, CCHP

Aging Behind Bars: Managing Geriatric Populations in Correctional Facilities and Communities

Charles Miller, MB, MS, CCHP

In-House Toxicity Within a Correctional Setting

Charles Miller, MB, MS, CCHP

Management of Anticoagulation Within a Correctional Setting

Charles Miller, MB, MS, CCHP

Medical Assessment at Intake: An Essential Step in Medical Care and Patient Safety

Charles Miller, MB, MS, CCHP

Incarceration in the United States and Implications for Health Care

Charles Miller, MB, MS, CCHP

U.S. Public Health Service Clinicians and Corrections: What's the Connection?

Amie Ruffalo

Community Involvement in the Health Education of Female Offenders to Promote Health and Prevention of Disease

Connie Smith, MSN, CCHP

Skill Level (SL)

B=Basic

I=Intermediate

A=Advanced

Updates in Correctional Health Care • May 21-24, 2011

STEP 1 - Name/Address

Complete a separate form for each registration. Registration will not be accepted without a full name. Print or type clearly.

Name John Henry Cavanaugh Degree _____ ☒ Male ☐ Female
 Professional Affiliation Hays County Sheriff's Office Professional Title Infirmity Supervisor
 Address ☐ Home ☒ Work 1307 Unland Rd
 City San Marcos State/Province Tx Zip/Postal Code 78666 Country USA
 Phone 512 393 7809 E-Mail Sandra.galvan@co.hays.tx.us

Is this your first NCCHC Conference? ☒ Yes ☐ No

STEP 2 - Academy Membership

Members of the Academy of Correctional Health Professionals receive a members-only discount on the conference registration. To take advantage of this discount, simply indicate below that you would like to join the Academy and include the \$75 membership dues in your conference registration fees. If you are already a member, proceed to step 3. CCHPs already are Academy members and cannot use this form to renew certification or membership.

☐ I would like to join the Academy of Correctional Health Professionals at the annual rate of \$75.

\$ _____

STEP 3 - Registration

Regular Registration _____
 Academy Member Registration (Member ID # _____)
 One Day Registration ☐ Monday ☐ Tuesday
 Guest Registration (Guest Name _____)

Thru April 8

☒ \$345
☐ \$320
☐ \$175
☐ \$ 60

After April 8

☐ \$395
☐ \$320
☐ \$175
☐ \$ 60

\$ 345-
 \$ _____
 \$ _____
 \$ _____

STEP 4 - Preconference Seminars

Saturday, May 21, 9 am-5 pm

In-depth Review of NCCHC's Jail and Prison Standards
 In-depth Review of NCCHC's New Juvenile Standards
 CCHP-RN Certification Review Course

☐ \$185
☐ \$185
☐ \$185

\$ _____
 \$ _____
 \$ _____

Sunday, May 22, 8 am-11:30 am

Advanced Nursing Assessment for Triage and Health Assessments
 Assessment and Treatment of Suicide Risk and Self-Injurious Behaviors
 Effective Quality Improvement Study Design: How to Improve Service

☒ \$99
☐ \$99
☐ \$99

\$ 99.00
 \$ _____
 \$ _____

Sunday, May 22, 1 pm-4:30 pm

Chronic Disease Management
 Tag, You're It: A Crash Course in Correctional Legal Issues via Role Play
 Tobacco Cessation Strategies for Incarcerated Populations

☒ \$99
☐ \$99
☐ FREE

\$ 99.00
 \$ _____
 \$ _____

STEP 5 - Academy Scholarship Contribution

The Academy of Correctional Health Professionals awards scholarships for its members to attend

Academy-sponsored conferences. Please consider making a contribution. ☐ \$10 ☐ \$25 ☐ \$50 ☐ Other _____

\$ _____

STEP 6 - Payment

Billing Fee** (if applicable)

☒ \$30

\$ 30.00

☐ MasterCard ☐ Visa ☐ American Express ☐ Check Enclosed Payable to NCCHC

TOTAL ENCLOSED \$ 573.00

Card Number _____ Expiration Date _____

Signature _____

Billing Address (if different from above) _____

☐ **Please invoice my facility. Purchase orders accepted only from government agencies and their contractors. Purchase order must accompany registration form. There is a \$30 service charge for invoice processing.

Office Use



**National Commission on
Correctional Health Care**

PO Box 11117 • Chicago, Illinois 60611
 Phone: (773) 880-1460 • Fax: (773) 880-2424
 e-mail: ncchc@ncchc.org • www.ncchc.org

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Approve the FY 2010 Public Health Emergency Preparedness (PHEP) Carryover project and amend the budget accordingly.

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

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: \$19,765 Budgeted FY 2010 funds

LINE ITEM NUMBER OF FUNDS REQUIRED: 120-675-99-023.5712

REQUESTED BY: Priscilla Hargraves

SPONSORED BY: Ingalsbe

SUMMARY:

DSHS allowed the local health departments to submit an amended budget to expend funds that were not spent during FY 2010. The Personal Health Department (PHD) has until July 31, 2011 to spend these funds. The total for the project is \$19,765. This will be used to purchase computer equipment for the people in the PHD who are designated in the Continuity of Operations Plan (COOP) as National Incident Management System (NIMS) positions. These are the staff that have specific duties during an emergency response and must be able to log in to the Web EOC and the Public Health Information Network (PHIN). The budget will need to be amended so that the unspent funds of \$19,765 will come out of the computer equipment line item #120-675-99-023.5712.

Agenda Item Routing Form

DESCRIPTION OF Item: Approve the FY 2010 Public Health Emergency Preparedness (PHEP) Carryover project and amend the budget accordingly.

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT: \$19,765 Budgeted FY 2010 funds

LINE ITEM NUMBER: 120-675-99-023.5712

COUNTY PURCHASING GUIDELINES FOLLOWED: N/A

PAYMENT TERMS ACCEPTABLE: N/A

COMMENTS: See budget amendment

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

FORM I: BUDGET SUMMARY (REQUIRED)

Legal Name of Respondent:

Hays County Personal Health Department

Cost Categories	Total Budget (1)	DSHS Funds Requested (2)	Direct Federal Funds (3)	Other State Agency Funds* (4)	Local Funding Sources (5)	Other Funds (6)
<i>Percentage of Funding</i>	100%	100%				
A. Personnel	\$82,440.00	\$82,440.00	\$0.00	\$0.00	\$0.00	\$0.00
B. Fringe Benefits	\$31,819.37	\$31,819.37	\$0.00	\$0.00	\$0.00	\$0.00
C. Travel	\$4,044.08	\$4,044.08	\$0.00	\$0.00	\$0.00	\$0.00
D. Equipment	\$12,168.00	\$12,168.00				
E. Supplies	\$9,118.00	\$9,118.00	\$0.00	\$0.00	\$0.00	\$0.00
F. Contractual	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
G. Other	\$5,755.00	\$5,755.00	\$0.00	\$0.00	\$0.00	\$0.00
H. Total Direct Costs	\$145,344.45	\$145,344.45	\$0.00	\$0.00	\$0.00	\$0.00
I. Indirect Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
J. Total (Sum of H and I)	\$145,344.45	\$145,344.45	\$0.00	\$0.00	\$0.00	\$0.00
K. Program Income - Projected Earnings		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

*Letter(s) of good standing that validate the respondent's programmatic, administrative, and financial capability must be placed after this form if respondent receives any funding from state agencies other than DSHS related to this project. If the respondent is a state agency or institution of higher education, letter(s) of good standing are not required. DO NOT include funding from other state agencies in column 4 or Federal sources in column 3 that is not related to activities being funded by this DSHS project.

FORM I: BUDGET SUMMARY (REQUIRED)

Legal Name of Respondent:

Cost Categories	Total Budget (1)	DSHS Funds Requested (2)	Direct Federal Funds (3)	Other State Agency Funds* (4)	Local Funding Sources (5)	Other Funds (6)
<i>Percentage of Funding</i>	100%	100%				
A. Personnel	\$0	\$0	\$0	\$0	\$0	\$0
B. Fringe Benefits	\$0	\$0	\$0	\$0	\$0	\$0
C. Travel	\$0	\$0	\$0	\$0	\$0	\$0
D. Equipment	\$12,160	\$12,160				
E. Supplies	\$7,605	\$7,605	\$0	\$0	\$0	\$0
F. Contractual	\$0	\$0	\$0	\$0	\$0	\$0
G. Other	\$0	\$0	\$0	\$0	\$0	\$0
H. Total Direct Costs	\$19,765	\$19,765	\$0	\$0	\$0	\$0
I. Indirect Costs	\$0	\$0				
J. Total (Sum of H and I)	\$19,765	\$19,765	\$0	\$0	\$0	\$0
K. Program Income - Projected Earnings		\$0	\$0	\$0	\$0	\$0

NOTE: The "Total Budget" amount for the Equipment and Indirect Costs Categories will have to be allocated (entered) manually among the funding sources. Enter amounts in whole dollars. After amounts have been entered for each funding source, verify that the "Total Budget" amount (column 1) equals the "Check Total" below.

Check Total For: Equipment = \$12,160 Indirect Costs = \$0

*Letter(s) of good standing that validate the respondent's programmatic, administrative, and financial capability must be placed after this form if respondent receives any funding from state agencies other than DSHS related to this project. If the respondent is a state agency or institution of higher education, letter(s) of good standing are not required. DO NOT include funding from other state agencies in column 4 or Federal sources in column 3 that is not related to activities being funded by this DSHS project.

Agenda Item Request Form

Hays County Commissioners' Court

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

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

AGENDA ITEM: Approve redirection of funds in the FY 2011 Public Health Emergency Preparedness (PHEP) contract and amend the budget accordingly.

Also approve the 10% "in-kind match" on the FY2011 PHEP contract be moved to its own cost center per the requirement of the Financial Management Division of the Texas Department of State Health Services (DSHS) and amend the budget accordingly.

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: Budget Amendment per Auditor

LINE ITEM NUMBER OF FUNDS REQUIRED: Please refer to Summary Below

REQUESTED BY: Priscilla Hargraves

SPONSORED BY: Ingalsbe

SUMMARY: Funds from the FY 2010 Public Health Emergency Response extension grant were utilized to purchase radios that were initially earmarked for the FY 2011 PHEP grant. This has left funds in the FY 2011 PHEP budget which need to be moved to other line items so that other needed items to support the program may be purchased.

The required 10% "in-kind match" was approved along with the FY 2011 PHEP grant application on June 15, 2010. The PHD has been documenting the "in-kind match". However, the Financial Management Division of DSHS requires that this match be shown separately from the operating budget and be moved to its own cost center. That cost center will be "00-058".

Budget Amendment:

120-675-99-058.5715 (\$16,200)	120-675-00.5021 (\$10,523)	120-675-00-058.5021	10,523
120-675-99-058.5211 1,265	120-675-00.5101_100 (652)	120-675-00-058.5101_100	652
120-675-99-058.5213 3,500	120-675-00.5101_200 (153)	120-675-00-058.5101_200	153
120-675-99-058.5231 4,000	120-675-00.5101_300 (1,068)	120-675-00-058.5101_300	1,068
120-675-99-058.5489 2,800	120-675-00.5160_400 (2,106)	120-675-00-058.5160_400	2,106
120-675-99-058.5551 4,635	120-675-00.5160_500 (75)	120-675-00-058.5160_500	75
	120-675-00.5160_600 (13)	120-675-00-058.5160_600	13

Agenda Item Routing Form

DESCRIPTION OF Item: Approve redirection of funds in the FY 2011 Public Health Emergency Preparedness (PHEP) contract and amend the budget accordingly.

Also approve the 10% "in-kind match" on the FY2011 PHEP contract be moved to its own cost center per the requirement of the Financial Management Division of the Texas Department of State Health Services (DSHS) and amend the budget accordingly.

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT:

LINE ITEM NUMBER: See budget amendment

COUNTY PURCHASING GUIDELINES FOLLOWED: N/A

PAYMENT TERMS ACCEPTABLE: N/A

COMMENTS: See budget amendment

Bill Herzog

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

Page 2

		Appropriation before <u>Amendment</u>	<u>Amendment</u> <u>Increases</u>	<u>Decreases</u>	Appropriation as <u>Amended</u>
<u>Line Item Expenditures</u>					
<u>DSHS/Bioterrorism 2011 PHEP Grant (675-99-058):</u>					
120-675-99-058.5211	Office Supply	2,960	1,265		4,225
120-675-99-058.5213	Books	0	3,500		3,500
120-675-99-058.5231	Medical Supplies	0	4,000		4,000
120-675-99-058.5489	Telephone	3,000	2,800		5,800
120-675-99-058.5551	Continuing Ed	3,000	4,635		7,635
120-675-99-058.5715	Communication Eqpt	16,200		(16,200)	0
Transfer balance of funds from eqpt previously purchased					
<u>DSHS/Bioterrorism 2011 PHEP Match (675-00-058)</u>					
120-675-00-058.5021	Staff	0	10,523		10,523
120-675-00-058.5101_100	Fica	0	652		652
120-675-00-058.5101_200	Medicare	0	153		153
120-675-00-058.5101_300	Retirement	0	1,068		1,068
120-675-00-058.5160_400	Medical Ins	0	2,106		2,106
120-675-00-058.5160_500	Dental Ins	0	75		75
120-675-00-058.5160_600	Life Ins	0	<u>13</u>		<u>13</u>
			<u>14,590</u>		
<u>Personal Health/Operating (675):</u>					
120-675-00.5021	Staff	534,482		(10,523)	523,959
120-675-00.5101_100	Fica	37,764		(652)	37,112
120-675-00.5101_200	Medicare	8,832		(153)	8,679
120-675-00.5101_300	Retirement	63,058		(1,068)	61,990
120-675-00.5160_400	Medical Ins	147,716		(2,106)	145,610
120-675-00.5160_500	Dental Ins	5,229		(75)	5,154
120-675-00.5160_600	Life Ins	934		<u>(13)</u>	<u>921</u>
				<u>(14,590)</u>	

Transfer to creat separate Hays County match for grant as required by agency

Agenda Item Request Form

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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: Amend Budget of Justice of Peace Pct 3 for Continuing Ed. from Jury expense

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

Amount Required: \$ 300.00.

LINE ITEM NUMBER OF FUNDS REQUIRED: to 001-628-00.5551 Continuing Ed
from 001-628-00.5306 Jury

REQUESTED BY: Andrew Cable/Auditors Office

SPONSORED BY: Conley

SUMMARY:

Judge Cable requires a balance of \$300 for training costs

See Budget Amendment

Agenda Item Routing Form

DESCRIPTION OF Item: Amend Budget of Justice of Peace Pct 3 for Continuing Ed. from Jury expense

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT: \$300.00

LINE ITEM NUMBER: to 001-628-00.5551 Continuing Ed
from 001-628-00.5306 Jury

COUNTY PURCHASING GUIDELINES FOLLOWED: N/A

PAYMENT TERMS ACCEPTABLE: N/A

COMMENTS:

Bill Herzog

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

**FUND NO. 001
FUND TITLE: GENERAL**

<u>Line Item - Expenditures</u>	<u>Appropriation before Amendment</u>	<u>Amendment</u>		<u>Appropriation as Amended</u>
		<u>Increases</u>	<u>Decreases</u>	
<u>Justice of Peace 3 (628):</u>				
001-628-00.5551 Cont.Ed	1,000	300		1,300
001-628-00.5306 Jury	800		(300)	500
Transfer for balance of training costs				
<u>District Court (608):</u>				
001-608-00.5021 Staff	189,161	14,724		203,885
001-608-00.5101_100 Fica	12,453	913		13,366
001-608-00.5101_200 Medicare	2,913	214		3,127
001-608-00.5101_300 Retirement	20,797	1,535		22,332
001-608-00.5160_400 Medical Ins	27,594	3,832		31,426
001-608-00.5160_500 Dental Ins	977	143		1,120
001-608-00.5160_600 Life Ins	134	18		152
		<u>21,379</u>		
<u>Countywide Operations (645)</u>				
001-645-00.5091 Salary Adj	411,878		(21,379)	390,499

Authorize and fund court coordinator position for 428th District Court for balance FY11

**FUND NO. 120
FUND TITLE: FAMILY HEALTH SERVICES**

<u>DSHS Bioterrorism 2010/Public Health Emergency Preparedness (675-99-023):</u>				
120-675-99-023.5712 Computer Eqpt	0	19,675		19,675
120-675-99-023.5201 General Supplies	10,937		(8,660)	2,142
120-675-99-023.5471 Eqpt Svc Fee	1,935		(1,935)	0
120-675-99-023.5489 Telephone	2,253		(831)	1,422
120-675-99-023.5501 Travel	873		(617)	256
120-675-99-023.5551 Cont.Ed	385		98	287
		<u>19,675</u>	<u>(19,675)</u>	
Transfer for computer eqpt.				

**ORDER AMENDING THE COUNTY OF HAYS BUDGET
FOR FY ENDING SEPTEMBER 30, 2011**

**THE STATE OF TEXAS
COUNTY OF HAYS**

WHEREAS, on the 19th day of April, A.D., 2011, the Commissioners' Court of Hays County, Texas,

has determined that a need exists for the reallocation of certain appropriations included in the FY 2011 Budget in accordance with the attached list which is hereby made a part hereof. It was also determined and agreed that the need was of such a nature as to justify and require amendment of the Budget, as provided in Section 111.010(D), Local Government Code.

NOW, THEREFORE, the COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, pursuant to the authority granted to it under Section 111.010(D), Local Government Code, ORDERS that the pertinent parts of the County of Hays Budget for the Fiscal Year ending September 30, 2011 be and they are hereby amended as indicated on the attached list.

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

Passed by the COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, this 19th day of April, 2011

FOR () _____
AGAINST () DR. BERT COBB
ABSTAIN () COUNTY JUDGE, HAYS COUNTY, TEXAS

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

FOR () _____
AGAINST () MARK JONES
ABSTAIN () COMMISSIONER, PRECINCT 2

FOR () _____
AGAINST () WILL CONLEY
ABSTAIN () COMMISSIONER, PRECINCT 3

FOR () _____
AGAINST () RAY WHISENANT
ABSTAIN () COMMISSIONER, PRECINCT 4

ATTEST: _____
LIZ Q. GONZALEZ
COUNTY CLERK, HAYS COUNTY, TEXAS

Agenda Item Request Form

Hays County Commissioners' Court

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

AGENDA ITEM:

11-1-1 Bostwick Subdivision (2 lots). Discussion and possible action to consider approval of preliminary plan.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Roxie Botkin

SPONSORED BY: Commissioner Precinct 2 Mark Jones

SUMMARY:

The Bostwick Subdivision is a proposed subdivision of 16.00 acres of land located off S. Old Stagecoach Road in Precinct 2. The division will consist of 2 lots as follows: Lot 1 – 5.010 acres and Lot 2 – 7.564 acres. Lot 1 is served by an existing private well and OSSF. Lot 2 will also utilize a private well and OSSF at the time of development.

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

AGENDA ITEM:

Discussion and possible action to grant development authorizations to Melissa Maceo, owner of Lot 1 in the Darlings Hill Subdivision; provide guidance to staff regarding future development authorizations in Darlings Hill Subdivision.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Garza

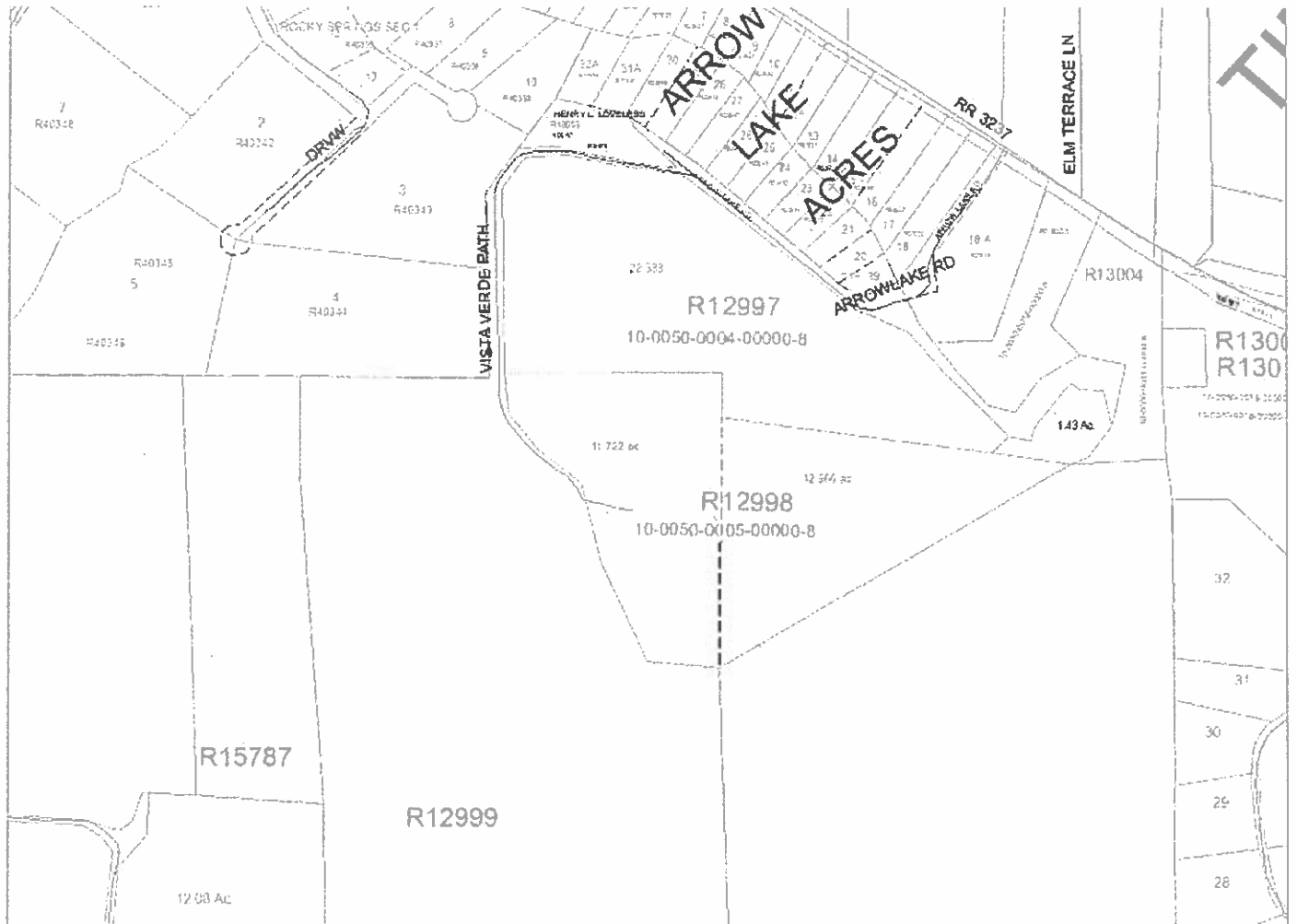
SPONSORED BY: Conley

SUMMARY:

Melissa Maceo has submitted an application for development permits including flood hazard area and OSSF. Upon review of the application staff found that, if permitted, the property owner would be in violation a plat restriction in the subdivision. Specifically the plat note restricts development to one single-family residence per lot. This restriction was put in place because the subdivision is served by a shared access driveway and a condition for plat approval is the limitation on future development on those lots. The purpose for this restriction is to ensure future lot owners adequate access to their homes and limit the wear on each driveway.

Ms. Maceo wishes to build three small guest cabins as part of a "bed and breakfast or wellness retreat". As these do not qualify as a single-family development, staff cannot issue a development authorization. Specifically Chapter 715.4.01 prohibits permitting on any parcel unless all regulations are met.

The proposed development does not meet regulations as submitted; therefore staff will follow the direction of the court.



JOINT ROAD MAINTENANCE AGREEMENT

OWNERS NAME/ LEGAL DESCRIPTION/ PARCEL: The lots are located in the extraterritorial jurisdiction of the City of Wimberley. This tract of land out of the T.F. Brewer Survey in Hays County, Texas, as conveyed to us by deed dated July 9, 2007 and recorded in Volume 3204, Page 100, official public records of Hays County, Texas, known as "Darling's Hill" in accordance with the plat shown herein, subject to any and all easements and restrictions heretofore granted and do hereby dedicate to the owners of the property the use of the streets and easements shown herein.

WHEREAS, EACH PARTY HERETO ON BEHALF OF HIMSELF OR HERSELF, AND RESPECTIVE HEIRS, SUCCESSIONS OR ASSIGNS, WISHES TO CONTRACT FOR PERPETUAL MAINTENANCE OF VISTA VERDE PATH IN WIMBERLEY, TEXAS.

EACH PARTY AGREES AS FOLLOWS:

- 1. MAINTENANCE. THE PARTIES SHALL REGULARLY MAINTAIN AND REPAIR THE EXISTING ROAD. THE EXISTING ROAD SHALL BE MAINTAINED IN A MANNER THAT ENSURES ADEQUATE ACCESS FOR PASSENGER CARS AND EMERGENCY RESPONSE VEHICLES. ALL PARTIES SHALL SHARE EQUALLY IN THE EXPENSES FOR NORMAL MAINTENANCE AND REPAIR. NO EXPENSE SHALL BE INCURRED BY ANY PARTY WITHOUT UNANIMOUS CONSENT OF ALL OTHER PARTIES HERETO. SUCH CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD, SHALL BE IN WRITING, SIGNED BY ALL PARTIES, WITH A COPY DELIVERED TO EACH PARTY.**
- 2. PAYMENT. THE COST FOR AGREED MAINTENANCE AND REPAIR SHALL BE BORNE AND SHARED EQUALLY BY THE OWNERS OF THE PARCELS HAVING EQUAL ACCESS THEREFROM. IN THE CONSENT TO REPAIR, THE PARTIES SHALL DESIGNATE A PARTY TO BE THE AGENT FOR CONTRACTING OR UNDERTAKING THE AGREED REPAIR OR MAINTENANCE AND TO COLLECT EACH PARTY'S SHARE OF THE COST THEREOF.**

3. **SUCCESSIONS IN INTEREST.** THIS AGREEMENT IS BINDING ON THE HEIRS, ASSIGNS AND SUCCESSORS IN INTEREST OF THE PARTIES.
4. **UNDERGROUND UTILITY REPAIRS.** WHEN CHANGES OR EMERGENCY REPAIRS ARE REQUIRED TO THE UNDERGROUND SERVICING SYSTEMS (GAS, WATER, ELECTRICITY, SEWER, CABLE AND PHONE) THAT REQUIRE BREAKING THE SURFACE OF THE EASEMENT PROPERTY , THE PROPERTY OWNER(S) AND OTHER PARTIES HAVING SERVICE SYSTEMS WITHIN THE EASEMENT AREA SHALL BE NOTIFIED IMMEDIATELY. THE METHOD USED TO EXPOSE THE SERVICE SYSTEM FOR CHANGE OR REPAIR SHALL BE AGREED TO BY THE PROPERTY OWNER(S) PRIOR TO INITIATION.
5. **DAMAGE.** IT IS ALSO UNDERSTOOD AND AGREED THAT IF THE OWNER OF A PARCEL HAVING ACCESS OVER THIS EASEMENT DAMAGES OR DISTURBS THE SURFACE OF THE ROADWAY OVER THIS EASEMENT, (OTHER THAN NORMAL AUTOMOBILE AND SERVICE INGRESS AND EGRESS) , HE/SHE SHALL BE RESPONSIBLE TO IMMEDIATELY RESTORE THE ROAD SURFACE TO AS NEARLY AS POSSIBLE THE CONDITION IN WHICH IT EXISTED PRIOR TO BEING DISTURBED.
6. **UNPAID COSTS OR COSTS OF UNREPAIRED DAMAGE TO BE A PROPERTY LIEN.** IN THE EVENT A PARTY DOES NOT PAY HIS OR HER PRO RATA SHARE ON COSTS WITHIN THIRTY (30) DAYS AFTER IT IS REQUESTED, THEN THE REMAINING PARTIES SHALL BE ENTITLED TO CLAIM A LIEN AGAINST THE NON-PAYING PARTY'S PARCEL OF PROPERTY, AND TO BRING SUIT FOR SUCH COSTS INCURRED THEREBY. SAID LIEN SHALL BE FORCLOSABLE AS A MORTGAGE PURSUANT TO THE LAWS OF THE STATE OF TEXAS. IF A PARTY RESPONSIBLE FOR DAMAGE TO THE ROADWAY DOES NOT IMMEDIATELY CORRECT THE DAMAGE, THEN THE REMAINING PARTIES SHALL BE ENTITLED TO

CORRECT THE DAMAGE AND CHARGE THE COSTS ASSOCIATED WITH THAT CORRECTION TO THE PARTY RESPONSIBLE FOR DAMAGE. IF THE PARTY RESPONSIBLE FOR DAMAGE DOES NOT PAY WITHIN THIRTY (30) DAYS OF RECEIPT OF THOSE CHARGES, THEN THE REMAINING PARTIES SHALL BE ENTITLED TO CLAIM A LIEN AGAINST THE NON-PAYING PARTY'S PARCEL OF PROPERTY, AND TO BRING SUIT FOR SUCH COSTS INCURRED THEREBY. SAID LIEN SHALL BE FORCLOSABLE AS A MORTGAGE PURSUANT TO THE LAWS OF THE STATE OF TEXAS.

- 7. ALL PARTIES HEREBY ACKNOWLEDGE AND AGREE TO SHARE THE RESPONSIBILITY FOR MAINTENANCE AND REPAIR EQUALLY AND SHALL NOT PETITION HAYS COUNTY FOR MAINTENANCE UNTIL THE AFOREMENTIONED ROADWAY IS IMPROVED TO CURRENT HAYS COUNTY STANDARDS AT THE EXPENSE OF THE PARTIES HEREIN.**

OWNERS NAME

OWNERS NAME

OWNERS NAME

OWNERS NAME

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 add a Court Coordinator for the 428th District Court and amend the budget accordingly.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: \$21,377.18 (to be confirmed by Auditor's Office)

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Judge Henry

SPONSORED BY: Cobb

SUMMARY:

In accordance with Government Code, Chapter 74. Court Administration Act, Section 74.101. Court Coordinator. (a) The local administrative judge and each district or statutory county court judge may establish a court coordinator system and appoint a court coordinator for his court to improve justice and expedite the processing of cases through the courts. (b) Each court coordinator serves at the pleasure of the judge who appointed him.

The 428th District Court Judge is requesting a dedicated Court Coordinator, grade 111 position. The 428th District Court is in need of a Coordinator to manage and ensure the civil and jail cases are processed through the court system in a timely and efficient manner. This position will also participate in researching and monitoring Drug Court or other relative grants, as well as coordinate case settings on a local level with the District Court Coordinator assigned to Hays, Caldwell, and Comal counties.

Anticipated funding requirements:

Salary $\$35,337/12 = \$2,944.76 \times 5 \text{ months} = \$14,723.75$

FICA/Retirement 18.07% $\$14,723.75 \times 18.07\% = \$2,660.58$

Insurance (Medical, Dental, Life) $\$798.57 \times 5 \text{ months} = \$3,992.85$

Total for May – September 2011 $\$21,377.18$

Agenda Item Routing Form

DESCRIPTION OF Item: Discussion and possible action to add a Court Coordinator for the 428th District Court and amend the budget accordingly.

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT: \$21,377.18

LINE ITEM NUMBER: TBD

COUNTY PURCHASING GUIDELINES FOLLOWED: N/A

PAYMENT TERMS ACCEPTABLE: N/A

COMMENTS: Since this is unbudgeted the Court will need to determine the source of funding. I would recommend either the "salary adjustments" or the "contingencies" line item in countywide.

Bill Herzog

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

HAYS COUNTY JOB DESCRIPTION

Job Code: 0440
Grade: 111
FLSA: Non-Exempt

Prepared by: Human Resources & District Judge
Date Prepared: April 2011

COURT ADMINISTRATOR/COORDINATOR **428th District Court**

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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 general supervision, supervises and performs a wide variety of administrative and clerical court duties for Hays County.

Responsibilities

- Oversees and performs a wide variety of administrative duties for county the 428th District Courts, such as scheduling cases on the court's docket, including hearings, jury trials, and trials before the court. Schedules judges, attorneys, bailiffs, and court reporters.
- Notifies concerned parties.
- Monitors cancellations and modifications of cases and apprises judges of changes.
- Monitors courtroom activities to ensure even case flow.
- Performs administrative duties such as preparing and monitoring annual budget, reviewing court records, maintaining and reviewing court statistics, designing forms, assisting in the development of long- and short-range plans, and coordinating juror activities.
- Monitors jail cases to ensure they flow through the court system in a timely manner.
- Reviews case files for judgment needs and defaults.
- Serves as liaison with related agencies.
- Appoints public defenders to cases in some instances.
- Acts as liaison between the judge and the public.
- Serves as spokesperson for the judge and court.
- Oversees and performs a variety of clerical tasks such as preparing and processing bond forfeiture documents, recording and entering information into computer, preparing form letters, preparing warrants, preparing forms and arranging transportation for health screenings and commitments, waiting on customers, screening calls and correspondence, and producing routine reports.
- Participates in locating, researching, and monitoring Drug Court or other related grants.
- May occasionally act as bailiff.
- Ensures office adherence to code of judicial conduct.

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Knowledge Required

- Knowledge of court regulations, policies, and procedures.
- Knowledge of code of judicial conduct.
- Knowledge of federal, state, and local laws such as criminal procedure, civil procedure, penal code, and court administrator guidelines.
- Knowledge of jail case flow through the court system.
- Knowledge of general public administration principles and practices including employee supervision and training.
- Knowledge of general office procedures and practices.

Required Skill

- Skill in performing court administration duties such as preparing and monitoring court dockets, scheduling court calendars, and acting as liaison between the court, other agencies, attorneys, and the public.
- Skill in supervising and training employees.
- Skill in reading, understanding, and following state and local laws related to criminal procedure, civil procedure, penal code, and court administration.
- Skill in operating standard office equipment, such as personal computers, calculators, and telephones.
- Skill in establishing and maintaining effective working relationships with supervisors, co-workers, vendors, outside agencies, attorneys, and the public.

Education and/or Experience

- Five Two years experience as a court clerk or any equivalent combination of experience and training.

Other Qualifications, Certificates, Licenses, Registrations

- None.

Supervision

The District Court Administrator supervises clerical staff, prepares work schedules, assigns work to employees, and monitors their progress. The position is responsible for training and disciplining employees, preparing performance appraisals, and guiding and developing employees in the accomplishment of their duties and professional growth.

- The Supervisor provides continuing or individual assignments, deadlines, and priority of assignments.

The Supervisor is consulted for deviations to general instructions, problems and unfamiliar situations.

Guidelines

The District Court Administrator Coordinator 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. This employee must have a strong work ethic. The District Court Administrator Coordinator must follow directions, meet deadlines, have good attendance, be punctual, keep promises, be reliable, and have a proper attitude.

Emotional Demands

This position must handle a stress level of dealing with some argumentative or emotional contacts within the general public and Hays County departments. The District Court Administrator Coordinator meets with contacts in a structured setting at Hays County facilities. The contacts are generally cooperative however, this position may have to persuade, influence, motivate, or control situations where individuals may be fearful, skeptical, or uncooperative.

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.

Sometimes required to stand and walk.

Occasionally lift and/or move up to 25 pounds.

Specific vision abilities required by this job include close vision and the ability to adjust focus.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing essential functions of this job. While performing the duties of this job, the employee regularly works in a normal office setting. Crowded conditions may exist. The employee is occasionally exposed to health or physical hazards, such as agitated, violent, or contagious individuals.

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 employment 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:

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 award the Hays County Government Center Furniture Bid to BKM Total Office; and to authorize the building committee and program manager to negotiate a contract.

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: TBD

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Building Committee

SPONSORED BY: Ingalsbe

SUMMARY: All information is available for review in the Purchasing Department.

Six bids were received and reviewed by four members of the building committee, Bob Hinkle, Program Manager and Brenda Jenkins with Broaddus & Assoc. and John Niesen, RA with HDR Architecture.

All bids came in under budget, but after review and evaluation, the group was unanimous in their decision with BKM Total Office.

We understand that local companies are very important to us, but no bids were received from Hays County.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Discussion and possible action to authorize the County Judge to execute a Construction Manager at Risk Agreement between DL Bandy and Hays County for construction services related to immediate needs at the Hays County Law Enforcement Center.

TYPE OF ITEM: Action

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: \$133,805.00

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: CONLEY

SPONSORED BY: CONLEY

SUMMARY:

On the April 5, 2011 agenda, the Hays County Commissioners Court awarded the bid for construction related to immediate needs at the Hays LEC to DL Bandy.

DL Bandy's original proposal according to his RFP response included the following fees:

- Pre-Construction Phase Fee: \$7,500
- Construction Phase Fee: \$40,000
- General Conditions: \$85,585

Program Manager and County staff are in the process of finalizing the CM@R Agreement. Any negotiated changes that deviate from the Agreement in backup will be brought to Court on April 19, 2011.

Agenda Item Routing Form

DESCRIPTION OF Item: Discussion and possible action to authorize the County Judge to execute a Construction Manager at Risk Agreement between DL Bandy and Hays County for construction services related to immediate needs at the Hays County Law Enforcement Center.

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT: \$133,805.00

LINE ITEM NUMBER: 001-645-00.5741

COUNTY PURCHASING GUIDELINES FOLLOWED: Yes

PAYMENT TERMS ACCEPTABLE: Yes

COMMENTS:

Bill Herzog

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS**

This Agreement is made as of _____, 2011 (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 Construction Manager at Risk: _____, for Repairs and Renovations to the Hays County Law Enforcement Center (LEC) Immediate Needs (the "Project").

The Owner and the Construction Manager at Risk agree as follows:

**Article 1
SCOPE OF WORK**

1.1 The Construction Manager at Risk 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 Pre-Construction Phase Services and Construction Phase 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.

**Article 2
CONTRACT DOCUMENTS**

- 2.1 The Contract Documents consist of:
- o This Agreement and all Exhibits attached hereto;
 - o All Addenda issued prior to the Effective Date of this Agreement, and any supplements or modifications to this Agreement to which the parties may agree in writing subsequent to the date hereof;
 - o All Change Orders issued after the Effective Date of this Agreement;
 - o The Schedules, developed by the Construction Manager at Risk and accepted by Owner;
 - o The Drawings, Specifications and other documents developed or prepared by Owner's independent consultants ("Drawings and Specifications"), if any;
 - o The Guaranteed Maximum Price Proposal when accepted by the Owner and executed by Owner and Construction Manager at Risk.
- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Construction Manager at Risk and supersede all prior negotiations, representations or agreements, written or oral, prior to the date of this Agreement.
- 2.3 The term "Construction Manager at Risk" shall be interchangeable with the terms "Construction Manager", "Contractor" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

**Article 3
DEFINITIONS**

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

- 3.1 "Application for Payment" means the document prepared by the Contractor and submitted to the Owner or Owner's Representative showing the Contractor's entitlement to progress payments, the requirements of which are more fully described in Article 10 of the Uniform General Conditions.
- 3.2 "Construction Contingency Allowance" means an amount allocated by and controlled by the Construction Manager which is included as a line item within the GMP and is further described in Section 13.8.
- 3.3 "Construction Cost Limitation", or CCL, means the Owner's

established upper cost limit, or construction budget, for the Project. CCL includes, without limitation, all costs for construction administration, general conditions, cost of work, contingency, and Pre-Construction Phase fees and Construction Phase fees for the Construction Manager at Risk and all of his vendors, suppliers, and subcontractors. The CCL also includes all construction contingencies. The CCL serves as the Construction Manager at Risk's initial Guaranteed Maximum Price (GMP) for the Project. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include Owner's Construction Contingency. The Construction Manager at Risk is obligated to meet all contract conditions while constructing the project within the CCL.

3.4 "Construction Documents" means, collectively, the Uniform General Conditions and Specifications, the Drawings and Specifications, details, Change Orders and other documents prepared by the Owner's consultants that describe the scope and quality of the Project or a Work Package, as applicable, and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

3.5 "Construction Manager at Risk" means the legal entity that executes the Agreement to provide preconstruction and construction services for the Project.

3.6 "Construction Phase Fee" shall have the meaning set forth in Article 14 herein.

3.7 "Construction Phase Services" means the coordination, implementation and execution of the Work required by the Contract Documents.

3.8 "Cost of Work" shall have the meaning set forth in Article 13 herein.

3.9 "Guaranteed Maximum Price" (GMP) means the amount proposed by the Construction Manager and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents, which may be increased or decreased in accordance with the provisions of the Contract Documents. The GMP includes Construction Manager at Risk's Construction Phase Fee, Construction Manager at Risk's General Conditions, the Cost of the Work and the Construction Contingency Allowance.

3.10 "General Conditions"

3.10.1 "Uniform General Conditions" means the additional contract provisions described in Exhibit B.

3.10.2 "Construction Manager at Risk's General Conditions" are Contractor's allowable costs for managing the construction in the field.

3.11 "Monthly Salary Rate" means the amount agreed to by the Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Construction Manager's salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by the Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Construction Manager's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

3.12 "Owner", "the County", "Court" means the Hays County Commissioners Court.



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

3.13 "Owner's Designated Representative" or "ODR" shall have the meaning set forth in Section 8.2 herein.

3.14 "Pre-Construction Phase Fee" shall mean the lump sum amount set forth in Article 14.

3.15 "Pre-Construction Phase Services" means the participation, documentation and execution of the Construction Manager's Pre-Construction Phase deliverables as required by the Contract Documents.

3.16 "Program Manager" means the professional program manager employed by the Owner as program manager of record for the Project and its consultants, which is Broaddus & Associates.

3.17 "Project Schedule" shall mean a schedule for the completion of the Work or a Work Package, as the case may be, submitted by Construction Manager and approved by Owner in accordance with the terms and conditions of any of the multiple GMPs attached hereto and made a part hereof.

3.18 "Project Team" means the Owner, Program Manager, Construction Manager, and Owner's consultants, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.

3.19 "Schedule of Values" shall mean a detailed breakdown of the cost for each classification line item, materials, labor or subcontract for the various portions of the Work supported by such data as is necessary to substantiate its accuracy as the Owner may require.

3.20 "Subcontractor" means a person or entity that has an agreement with the Construction Manager at Risk to perform any portion of the Work.

3.21 "Substantial Completion" of the Work or "Substantially Complete" means that point in which the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents to enable the Owner to use the Project or the agreed, defined portion of the Project, for its intended use, and (i) only minor punch list items or similar minor corrective work remains to be completed; and (ii) a temporary (or partial) certificate of use and occupancy (if issued and required by local governmental authorities) and any other permits or approvals necessary to allow use and occupancy of the Project or the agreed, defined portion thereof, have been issued; and (iii) the Program Manager has certified that the Project or the agreed, defined portion thereof, is substantially complete. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and Construction Manager.

3.22 "Time of Completion" means with respect to each Work Package, collectively the dates of Substantial Completion and Final Completion as specified in the Project Schedule.

3.23 "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 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.

3.24 "Work Package" means each separate and distinct portion of the Work which is to be designed and/or constructed by the Owner's consultants, Program Manager, the Construction Manager, and/or its Subcontractors or their agents and employees pursuant to the terms and provisions of the Contract Documents. At the time the pricing is complete for a particular Work Package and a Change Order is issued modifying the GMP, to the extent necessary, such Work Package as contemplated by Owner and Construction Manager will be described in more detail in such Change Order and as provided in Article 11 of Exhibit B.

Article 4
CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION PHASE SERVICES

The Pre-Construction Phase shall be deemed to commence upon the Effective Date of this Agreement and shall continue through completion of the Guaranteed Maximum Price Proposal and procurement of all major Subcontractor agreements for all Work or Work Packages, if applicable. Construction Manager at Risk is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before the Effective Date of this Agreement. Pre-Construction Phase Services may overlap with Construction Phase Services.

4.1 GENERAL RESPONSIBILITIES

4.1.1 Construction Manager shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. Construction Manager agrees to perform these services using its best efforts, skills, judgments and abilities, in at least a good and workmanlike manner.

4.1.2 Construction Manager shall cooperate with the Program Manager and endeavor to further the interests of the Owner and the Project. Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project (and each Work Package) in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

4.1.3 Construction Manager shall designate a representative authorized to act on the Construction Manager's behalf with respect to the Project.

4.1.4 Construction Manager shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project; and implement such procedures. Construction Manager and the Project Team shall use the Owner In-Site® a web-based project administrative system to share documents including submittal tracking, RFI tracking, meeting minutes, photographs, and daily reports.

4.1.5 Construction Manager 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.

4.1.6 If the Owner elects to "fast-track" or develop the Project in multiple stages or Work Packages, Construction Manager shall organize and perform its services as appropriate to each stage or Work Package. Each Work Package will have a unique schedule for completion and a specific GMP and/or Construction Cost Limitation, at Owner's discretion.

4.1.7 Construction Manager shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. Construction Manager shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by the Owner, Construction Manager shall not remove or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. Construction Manager shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Construction Manager shall promptly update Owner in writing with the list of persons and consultants if they change during the course of the Project.

4.2 GENERAL COORDINATION

4.2.1 The Construction Manager's Pre-Construction Phase Services team shall attend Project Team meetings at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Owner's acceptance of the GMP.



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS**

4.2.2 Construction Manager shall visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.

4.2.3 Construction Manager shall provide recommendations and information to the Project Team on: building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities, if any; equipment, materials and services for common use of the Construction Manager and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule and the CCL.

4.2.4 Construction Manager shall assist the Owner in selecting and directing the services of existing facility surveys or other special consultants hired by the Owner to develop additional information for the design or construction of the Project.

4.2.5 At Owner's request, Construction Manager shall attend public meetings and hearings concerning the development and schedule of the Project.

4.3 CONSTRUCTABILITY PROGRAM

4.3.1 Construction Manager shall implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

4.3.2 Construction Manager shall prepare a "Constructability Report" identifying items that, in the Construction Manager's opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of the Drawings and Specifications, and shall identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report shall be due within seven days of the Effective Date of this Agreement.

4.3.3 Construction Manager shall utilize Owner Insite Project Management Software to be provided by the Program Manager to implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved in writing by the Owner and updated at least monthly during the Pre-Construction Phase.

4.4 SCHEDULING

4.4.1 Construction Manager shall develop a critical path method schedule ("CPM Schedule") for Project Team review and the Owner's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the work of other consultants and suppliers, and the Owner's activities including, but not limited to, Commissioner Court approval meetings, occupant relocations, etc., with the anticipated construction schedules for other contractors. The CPM Schedule must identify all major milestones through Project Final Completion. The CPM Schedule shall be created and maintained in accordance with the Owner's Specifications using the Owner specified format and software.

4.4.2 Construction Manager shall update the CPM Schedule throughout the Pre-Construction and Construction Phases but at least monthly to incorporate an updated, detailed listing for all activities of the Project, including, without limitation:

4.4.2.1 Commencement, milestone and completion dates for each phase of construction, including all Work Packages;

4.4.2.2 Times of commencement and completion for each Subcontractor and an actual versus estimated percent completion for each phase and Work Package;

4.4.2.3 Required activity sequences and durations;

4.4.2.4 Contract Document packages, completion dates, Owner Contract Document package review periods, Project building permits acquisition time requirements, construction contract bid dates; and

4.4.2.5 Processing of shop drawings and samples.

4.4.3 The CPM Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts such as project security and property protection.

4.5 CONSTRUCTION COST ESTIMATES

4.5.1 The Construction Manager at Risk shall prepare and provide detailed Construction Cost Estimates of the Construction Project in a form acceptable to the Owner and distribute to the Project Team throughout the duration of the Project. The Construction Manager at Risk shall provide updated Construction Cost Estimates (CCE) as often as requested by the Owner. The Construction Cost Estimates shall affirm the construction cost of the Project to the Owner in writing.

4.5.2 Construction Manager shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Construction Manager shall advise the Project Team immediately if the Construction Manager has reason to believe that the most current Construction Cost Estimate for the Project or any Work Package will exceed the Construction Cost Limitation (CCL) or not meet Schedule requirements and recommend reasonable strategies for bringing the Project or Work Package, as applicable, inline with the CCL and the Schedule.

4.5.3 Construction Manager shall promptly identify all variances between estimated costs and actual costs during the Construction Phase, and shall promptly report such variances to the Project Team along with recommendations for action, but in any event no more than two (2) business days after acquiring such information.

4.5.4 At any time prior to acceptance of a GMP Proposal, should any CCE exceed or fall outside the approved CCL, the Owner and Construction Manager shall negotiate changes to the Work Package or Project requirements or the CCL as required. After acceptance of a GMP Proposal, Owner shall have no obligation to negotiate hereunder.

4.6 COORDINATION OF CONSTRUCTION DOCUMENTS

4.6.1 Construction Manager shall review all Drawings and Specifications, and other Construction Documents developed by the Owner's consultants.

4.6.2 Construction Manager shall consult with the Project Team on the selection of materials, equipment, component systems, and types of construction used on the Project and advise the Project Team on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

4.6.3 Construction Manager shall advise the Project Team of any error, inconsistency or omission discovered in the Drawings and Specifications, and other Construction Documents, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming the Owner's consultant's professional responsibility).

4.6.4 Construction Manager shall advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project or Work Package cost within the CCL.



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4.6.5 Construction Manager shall review the Construction Documents for compliance with all applicable laws, rules and regulations.

4.7 CONSTRUCTION PLANNING AND BID PACKAGE STRATEGY

4.7.1 Construction Manager shall identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items; advise the Project Team on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior written approval, Construction Manager shall issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

4.7.2 Construction Manager shall make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions and other constraints.

4.7.3 Construction Manager shall review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.

4.7.4 Construction Manager shall develop a bid/proposal package strategy in coordination with the Program Manager that addresses the entire scope of Work for each Work Package, phase or stage of the Project. In developing the bid/proposal package strategy, the Construction Manager shall identify all bid/proposal packages on which the Construction Manager intends to submit a self-performance bid/proposal. The bid/proposal package strategy shall be reviewed with the Owner on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of the Project and the Owner.

4.7.5 Construction Manager shall assist the Owner, the Program Manager, Owner's other consultants, and the Owner's separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, City of San Marcos, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, and the Owner's insurance provider.

4.7.6 Construction Manager shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

4.7.7 Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

4.7.8 Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for Work Packages, critical phases or stages and make recommendations that minimize adverse effects of labor shortages.

4.7.9 In accordance with Uniform General Conditions, Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Construction Manager shall provide recommendations and information to Owner and Program Manager with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities (if any), and equipment, materials, and services for common use of the Subcontractors and verify that such assignments with respect to the Subcontractors is included in the Contract Documents.

4.8 OBTAINING BIDS/PROPOSALS FOR THE WORK

4.8.1 Construction Manager shall publicly advertise and solicit competitive lump sum bids/proposals from trade contractors or Subcontractors for the performance of all major elements of the Work other than the minor Work that may be included in General Conditions. Criteria for determining the bid/proposal that provides the best value to the Owner shall be established by the Project Team and included in the request for bids/proposals. The Construction Manager shall notify the Owner in advance in writing of the date it will receive the bids/proposals.

4.8.2 Construction Manager shall schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

4.8.3 Construction Manager and Owner shall review all trade contractor or Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team during the selection process. Based on the selection criteria included in the request for proposals, Construction Manager shall recommend to the Owner the bid/proposal that provides the best value for the Work Package or Project. Upon Owner's concurrence in the recommendation, Construction Manager may negotiate the terms of the subcontract with the apparent best value bidder/proposer.

4.8.4 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by the Program Manager and Owner. Upon Owner's concurrence in the final terms of the subcontract, Construction Manager shall enter into a written subcontract for the subcontract work and promptly provide a copy to the Owner. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.

4.8.5 If Construction Manager reviews, evaluates, and recommends to Owner a bid/proposal from a reputable trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Construction Manager incurs because of Owner's requirement that the other bid/proposal be accepted.

4.8.6 Construction Manager may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy. The Construction Manager must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. A minimum of 3 other bids must be obtained on potential self-perform packages. The Owner will determine whether the Construction Manager's bid/proposal provides the best value for Owner, which determination is final. Construction Manager must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performance work in the same manner as it does all other subcontract costs.

4.8.7 Construction Manager shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Construction Manager shall not use any Subcontractor to which Owner has a reasonable objection. Further, Construction Manager shall disclose to the Owner any ownership interest or affiliation between the Construction Manager and any Subcontractor prior to entering into a subcontract, and Owner shall have the right, in its sole discretion, to reject any such Subcontractor. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

4.8.8 If a selected trade contractor or subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the Construction Manager may, in consultation with the Owner and without further advertising, fulfill the subcontract requirements by selecting a replacement trade contractor or subcontractor, or self perform the work, assuming the Construction Manager performs the work for an amount not to exceed the original price



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and under the same terms as was offered by the originally selected trade contractor or subcontractor.

4.9 SAFETY

4.9.1 In accordance with Owner's Uniform General Conditions, Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations.

4.9.2 Construction Manager shall provide recommendations and information to the Project Team regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify that appropriate safety provisions are included in the Construction Documents.

Article 5 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION SERVICES

5.1 When the Owner and Construction Manager agree that the Project has been sufficiently developed and documented to allow detailed pricing of its construction, the Construction Manager at Risk shall prepare and submit a Guaranteed Maximum Price (GMP). The GMP must be prepared and delivered in the format specified by Owner and include, without limitation, the Construction Manager at Risk's General Conditions originally submitted in the RFP response, estimated Costs of Work organized by trade; allowance amounts by item; contingency amounts; the Construction Phase Fee originally submitted in the RFP response, a Contract Time and date of Substantial Completion and other items as required by the Owner. The form shall be attached to the contract as an Exhibit D.

5.2 Construction Manager shall not withdraw its Guaranteed Maximum Price Proposal for the Project or the applicable Work Package(s) for ninety (90) days following submission to the Owner, subject to changes in the Guaranteed Maximum Price Proposal for the Project based on the development of a new Work Package during such time period. During such ninety (90) day period, should the GMP Proposal be unacceptable, the Owner reserves the right to request from other firms competitive sealed proposals with respect to the Project or the applicable Work Package(s) and at the expiration of such ninety (90) day period (or sooner), the Owner may hire such other firm to perform the Construction Phase Services, on balance thereof, in which case the Owner may terminate this Agreement, or the Owner may accept Construction Manager's GMP Proposal and the Construction Manager shall perform the Work covered by such GMP Proposal in accordance with its terms and the terms hereof.

5.3 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 Uniform General Conditions or to the terms of this Agreement, the allowances, and all clarifications and assumptions made by the Construction Manager at Risk.

5.4 In formulating the Guaranteed Maximum Price Proposal, Construction Manager at Risk shall include a contingency "Construction Contingency Allowance" 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 Owner's consultants have not developed a full design or specifications to fully describe a building item or system, Construction Manager at Risk shall

develop performance based specifications that will be included in the GMP.

5.5 Before final acceptance of the GMP by the Owner, Construction Manager at Risk 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 the GMP.

5.6 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 Construction Manager at Risk 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.

5.7 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 Construction Manager at Risk. Any exceptions to or modifications of such terms and conditions proposed by the Construction Manager at Risk 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.

5.8 Following Owner acceptance of the GMP Proposal, Construction Manager at Risk shall continue to monitor any changes to 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 Construction Manager at Risk and Project Manager 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 All contingencies are to be used as mutually agreed upon between the Owner and Construction Manager at Risk. The Construction Manager at Risk shall notify the Owner in writing prior to expending any contingency monies with an explanation as to why use of such funds is warranted.

5.10 As the Cost of Work buyout progresses for those Construction Contingency Allowance items specifically identified in the GMP Proposal, the Construction Contingency Allowance amount shall be reduced by mutual agreement of Owner and Construction Manager at Risk 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.

5.11 Prior to utilization of any Contingency and subject to the Owner's approval, the Construction Manager at Risk shall provide complete documentation, to the Owner's satisfaction, describing in detail the scope of work affected and the associated costs.

Article 6 CONSTRUCTION MANAGER AT RISK 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.

6.2 Construction Manager at Risk shall designate in writing a representative who is responsible for the day-to-day management of the



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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 Construction Manager at Risk 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 Construction Manager shall attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes. Prior to each meeting, the Construction Manager shall provide the Project Manager written agenda items for the meeting. Construction Manager shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

6.4 Unless otherwise provided for in the Contract, Construction Manager at Risk shall provide or cause to be provided, and shall pay for all labor, materials, equipment, tools, construction equipment and machinery, 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.

6.5 The Construction Manager at Risk shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Construction Manager at Risk shall keep the Owner informed of the progress and quality of the Work.

6.6 The Construction Manager at Risk 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 Construction Manager at Risk shall be responsible for correcting Work that does not comply with the Contract Documents.

6.7 Construction Manager shall obtain building permits, special permits, licenses, waivers, variances, etc. for permanent improvements as required by law or the Construction Documents. With the assistance of the Owner and Program Manager, obtain all approvals required from authorities having jurisdiction over the Project.

6.8 Construction Manager shall coordinate, monitor and inspect the Work of Subcontractors to ensure conformance with the Construction Documents.

6.9 In accordance with the Uniform General Conditions regarding record documents, the Construction Manager shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

6.10 Construction Manager shall complete any Pre-Construction Phase Services relating to Work Packages that are not complete or that have not commenced as of the commencement of the Construction Phase Services.

6.11 Construction Manager shall provide complete startup of the building systems of the Project per manufacturers' recommendations and the Contract Documents. Construction Manager shall document and certify that all building systems are fully functioning as intended under the Construction Documents and manufacturers recommendations as a condition of Substantial Completion.

6.12 The Construction Manager at Risk's Construction Services and obligations are further described in the Uniform General Conditions and other Contract documents.

Article 7
INTENTIONALLY DELETED

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 Construction 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 Construction Manager at Risk 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 Construction Manager at Risk 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 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 Construction Manager at Risk's services and of the Work.

8.6 Owner shall have the right to reject any defective Work on the Project. Should Construction Manager refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Construction Manager on demand.

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 Construction Manager at Risk's responsibilities for the Work. Construction Manager at Risk shall remain fully and solely responsible for the drawings, specifications, and other contract documents furnished or provided by Construction Manager at Risk, and for constructing the Project in strict accordance with the Contract Documents.

Article 9
INTENTIONALLY DELETED

Article 10
TIME

10.1 Time limits stated in the Contract Documents are of the essence of this Agreement.

10.2 Prior to commencement of the Construction Phase Services and concurrently with the submission of the Guaranteed Maximum Price, the Construction Manager at Risk shall submit for the Owner's approval a detailed CPM schedule for the performance of the Construction Phase Services as specified. The Construction Phase Schedule shall include reasonable periods of time for the Owner's and Program Manager's review and approval of shop drawings and submissions and for approval of



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authorities having jurisdiction over the Project.

10.3 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 Construction Manager at Risk shall provide the Owner with detailed and accurate monthly invoices which also include the following items:

10.3.1 A copy of the original schedule with marked up changes showing original activities and modified ones (as applicable).

10.3.2 Schedule changes (if any).

10.3.3 Schedule update – progress accomplished thus far.

10.3.4 Next month activities and milestones.

10.3.5 Any time savings or delays experienced thus far and an explanation as to why.

10.3.6 A plan on how the Construction Manager at Risk intends to recover from any delays.

10.3.7 Status of buy-outs against the GMP and technical submittals and shop drawings.

10.3.8 Any safety incidents recorded for the period covered in the report.

**Article 11
PAYMENTS**

11.1 Payments for Pre-Construction Phase Services shall be made after GMP Acceptance. Where multiple GMPs are contemplated, Pre-Construction Phase Service Costs shall be proportionally allocated and payments shall be made after each GMP is accepted. Payments for Construction Phase Services shall be made as provided for in the Uniform General Conditions and the Owner's Specifications.

11.2 All payment requests shall be submitted on approved forms with a Schedule of Values approved by the Owner. Billings shall accurately and completely detail Subcontractor payment requests and payments.

11.3 Payment for approved Additional Services and Reimbursable Expenses shall be made monthly upon presentation of the Construction Manager at Risk's statement of services rendered or expenses incurred.

11.4 With each application for payment, Construction Manager at Risk 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 11.18.

11.5 The Construction Manager at Risk's Construction Services Fee shall be shown as a separate line item on the schedule of values. In determining the percentage of completion, Construction Manager at Risk 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 Construction Manager at Risk. 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.

11.6 Retainage as specified in the Uniform General Conditions will be applied to the entire amount requested including the Cost of the Work and the Construction Manager at Risk's Construction Phase Fee. Retainage will not be withheld from payments for Pre-Construction Phase Services.

11.7 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 Construction Manager at Risk 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 Construction Manager at Risk's fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).

11.8 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.

11.9 Owner shall have the right to withhold from payments due Construction Manager at Risk such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager at Risk or failure of Construction Manager at Risk to perform Construction Manager at Risk's obligations under this Agreement.

11.10 Owner is a governmental entity and materials and services utilized in the construction of the Project shall be exempted from state and local taxes. Construction Manager is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Application for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

11.11 Construction Manager at Risk's request for final payment shall not be made until Construction Manager at Risk 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 Construction Manager at Risk's information or knowledge, the release includes and covers all materials and services over which Construction Manager at Risk has control and for which a lien and/or bond claim could be filed. Alternatively, Construction Manager at Risk may furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Construction Manager at Risk 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.

11.12 Construction Manager's Application for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including (1) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (2) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, and (3) consent of surety, if any, to final payment (using the AIA Document G707, April 1970 edition, or in such form otherwise reasonably satisfactory to Owner, (4) an all bills paid affidavit is furnished to Owner which conforms to the provisions of Sec. 53.085 of the Texas Property Code and which certifies that (x) all bills have been paid, except as to those bills to be paid fully from the funds paid for final payment and (y) to the best of Construction Manager information, knowledge and belief, all known debts and claims arising from the Project have been satisfied, and (5) a release of the Construction Manager's constitutional and statutory mechanic's lien or any other claim for payment, conditioned only upon the collection of funds paid to Construction Manager for final payment. Additionally, Construction Manager shall, as a condition precedent to final payment, deliver or furnish to Owner: (1) such documentation and assignments with regard to warranties as required by this Agreement; (2) such drawings and record documents as required by this Agreement or as otherwise required by the Contract Documents; (3) operations and maintenance manuals, records, instructions, and data, including the information required by this Agreement; (4) keys, access cards, and any



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other items for access to and security of the premises; (5) spare parts, overages, and maintenance materials; (6) such other close-out submittals or documentation required by the Contract Documents; (7) and a duly executed Affidavit of Completion in form ready for filing in the Real Property Records of the county in which the Project is located, signifying that the Work under the Contract is complete under the applicable mechanic's lien laws. As a further material term of this Agreement (which hereby survives final payment), Construction Manager shall furnish to Owner within thirty (30) days after final payment, an unconditional bills paid affidavit and waiver/release of lien from each of its Subcontractors and suppliers who were to be paid from the final payment. If any Subcontractor or supplier refuses to furnish such a waiver/release, or in the event that a claim for payment or lien has been asserted by a Subcontractor or supplier furnishing Work to the Project, upon Owner's request, Construction Manager shall furnish a surety bond reasonably acceptable to Owner to release such claim against Owner and lien, if any, and otherwise fully comply with the provisions of Section 53.171 through 53.174 of the Texas Property Code. If Construction Manager fails to furnish such waiver/release or such lien release bond as required herein, Owner is hereby authorized to take such action, as it deems reasonably necessary to protect itself from such claim or lien and to recover from Construction Manager such costs reasonably incurred. If any lien is asserted against Owner after all payments are made, Construction Manager shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

11.13 Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by Construction Manager at Risk and has been verified by Owner or Owner's representatives. The aggregate total of payments to Construction Manager at Risk shall not exceed the total of the actual Cost of the Work as verified by Owner or Owner's representative from Construction Manager at Risk's final accounting plus the applicable Construction Manager at Risk's Construction Fee, as certified for payment in accordance with the Contract. In no event shall the aggregate sum of Construction payments to the Construction Manager at Risk exceed the Guaranteed Maximum Price. If payments made to Construction Manager at Risk exceed that which is due and owing, then Construction Manager at Risk shall promptly refund such excess to Owner.

11.14 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 Construction Manager at Risk under any of the following circumstances if the making of such payment would be materially prejudicial to the Owner:

11.14.1 Construction Manager at Risk is in breach or default under this Agreement;

11.14.2 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;

11.14.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;

11.14.4 Construction Manager is in violation of the applicable laws, the payment request does not include bills paid affidavits from all suppliers and Subcontractors providing materials or services during the period prior to the date of the request, or 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 Construction Manager at Risk;

11.14.5 Construction Manager is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts;

11.14.6 Construction Manager fails to obtain, maintain or renew insurance coverage as required by the Agreement;

11.14.7 If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement; or

11.14.8 Construction Manager at Risk has persistently failed to meet schedule requirements.

11.15 Nothing contained herein shall require the Owner to pay the Construction Manager at Risk 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 Construction Manager at Risk.

11.16 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 Construction Manager at Risk from any of its obligations hereunder or liabilities with respect to such services.

11.17 Construction Manager at Risk shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

11.18 Owner shall have the right to verify and audit the details set forth in Construction Manager at Risk's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Construction Manager at Risk during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager at Risk's business employees; (4) visiting the Project site; and (5) other reasonable action. Construction Manager at Risk'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.

11.19 This Agreement is subject to the assessment of liquidated damages against Construction Manager. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any moneys due Construction Manager.

11.20 The acceptance by Construction Manager at Risk 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 Construction Manager at Risk or Construction Manager at Risk's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Construction Manager at Risk as unsettled at the time of the final request for payment.

**Article 12
INTENTIONALLY DELETED**

**Article 13
COST OF THE WORK**

13.1 The term "Cost of the Work" means costs which the Construction Manager at Risk actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Cost of the Work includes the cost of Construction Manager at Risk's General Conditions for the Work and the cost of the work itself. The costs associated with Pre-Construction Phase and Construction Phase fees are not included in the Cost of the Work

13.2 References in the Uniform General Conditions relating to adjustments in "cost" or "costs" refer to adjustments to the Cost of the Work.

13.3 Construction Manager is entitled to receive payment for the



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actual cost of the allowable cost of the Work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner's written authorization.

13.4 Cost of the Work includes:

13.4.1 Costs of materials and equipment purchased directly by the Construction Manager and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the Uniform General Conditions;

13.4.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations if not otherwise included in General Conditions Cost;

13.4.3 Payments made to Subcontractors and their vendors or suppliers by Construction Manager for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers;

13.4.4 Payments earned by Construction Manager for self-performed subcontract Work, other than Work covered under General Conditions Cost, in accordance with the Construction Documents and the terms of this Agreement and approved by the Owner; and

13.4.5 Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

13.5 CONSTRUCTION MANAGER GENERAL CONDITIONS

13.5.1 Construction Manager is entitled to receive payment of the actual cost of the allowable General Conditions items incurred after receipt of the first Notice to Proceed from the Owner with construction of the Work through Substantial Completion of the Project plus thirty (30) calendar days. Construction Manager is not entitled to reimbursement for General Conditions Costs incurred before receipt of the first Notice to Proceed. General Conditions Costs incurred after Substantial Completion must be approved in advance by the Owner in writing.

13.5.2 Allowable General Conditions items are identified by attached Exhibit B. These items shall be included in the Construction Manager at Risk's General Conditions (sometimes referred to as "General Conditions Costs") amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the Schedule of Values.

13.6 COSTS NOT INCLUDED IN THE COST OF WORK OR GENERAL CONDITIONS COST

The following shall not be included in the Cost of Work to be paid by Owner:

13.6.1 Costs including, but not limited to, costs arising from failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor;

13.6.2 Legal and administrative costs to review and negotiate these Contract Documents;

13.6.3 Travel and subsistence expense of Construction Manager at Risk, its officers or employees incurred while traveling between the Project and Construction Manager at Risk's principal or branch offices, and travel in the metropolitan area of the Project;

13.6.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager at Risk;

13.6.5 Costs incurred by Construction Manager at Risk resulting from the failure of Construction Manager at Risk 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 Construction Manager at Risk to comply with directives of Owner not in conflict with said schedules;

13.6.6 Costs resulting from the failure of Construction Manager at Risk or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents;

13.6.7 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;

13.6.8 Any and all overhead expense or office expense at any location, except site office expense to the extent specifically included herein;

13.6.9 Costs related to Construction Manager at Risk's indemnification obligations under the Contract;

13.6.10 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project;

13.6.11 Any cost arising out of a breach of this Contract or the fault or negligence of Construction Manager at Risk, 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;

13.6.12 Liquidated damages imposed by Owner for failure of Construction Manager at Risk to complete the Work within the Contract Time; and

13.6.13 Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the Guaranteed Maximum Price to be exceeded.

13.7 DISCOUNTS, REBATES AND REFUNDS

The Cost of the Work to be paid by Owner shall be credited with the following items:

13.7.1 All tools and excess materials purchased with proceeds from this contract shall be inventoried and surrendered to the Owner upon final completion of the project;

13.7.2 If Owner makes funds available to Construction Manager at Risk, discounts earned by the Construction Manager at Risk through advance or prompt payments. The Construction Manager at Risk shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The Construction Manager at Risk shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner;

13.7.3 Rebates, discounts, or commissions allowed to and collected by the Construction Manager at Risk 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; and

13.7.4 Construction Manager at Risk shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the Construction Manager at Risk. Should Construction Manager at Risk not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Construction Manager at Risk, including, but not limited to, by deducting the amount from payments due the Construction Manager at Risk.

13.8 CONSTRUCTION CONTINGENCY ALLOWANCE

13.8.1 The Guaranteed Maximum Price Proposal shall include a Construction Contingency Allowance amount to be used to fund increases in the Cost of Work of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work. The Construction Manager shall establish the Construction Contingency Allowance based upon its assessment of the risk to the GMP from such elements as unforeseen conditions, market uncertainty, conflicts in the documents, site logistics, and the complexity of the Project. Construction Manager shall illustrate this contingency in the GMP Schedule of Values. All non-scope changes to the Project are to be paid from this line item unless otherwise noted herein. All buyout savings



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on trade packages will be added to this amount. All buyout shortfalls will be subtracted from this amount.

13.8.2 Any re-allocation of funds from the Construction Contingency Allowance to cover increases in the Cost of Work will be documented by Change Order approved by the Construction Manager, Program Manager and Owner. Such approval by these parties will not be unreasonably withheld and will indicate that the cost of the Work is reasonable and the adjustment has been properly documented. In written Change Orders to use the Construction Contingency Allowance, the Construction Manager shall provide detailed documentation of the scope of Work affected and the bases for any increases in costs.

13.8.3 Upon completion of bidding of the final trade package or one (1) month after the acceptance of each GMP, whichever comes first, if the Construction Contingency Allowance exceeds three percent (3%) of the GMP, the excess shall be released to the Owner by Change Order. Any residual Construction Contingency Allowance shall be released to the Owner by Change Order at Substantial Completion or before by mutual agreement of the parties. If, at any time, the Construction Contingency Allowance is exhausted, the Construction Manager will cover additional contingency costs from the Construction Phase Fee.

**Article 14
CONSTRUCTION MANAGER AT RISK'S FEE**

14.1 PRE-CONSTRUCTION PHASE FEE

14.1.1 The Pre-Construction Phase Fee is the total compensation payable to the Construction Manager for the performance of Pre-Construction Phase Services, except for Additional Pre-Construction Phase Services approved in advance and in writing by the Owner.

14.1.2 Except as specifically allowed in Sections 14.1.3, the Construction Manager shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

14.1.3 If the scope of the Project is changed materially, the Pre-Construction Phase Fee shall be equitably adjusted. There shall be no adjustments in the Pre-Construction Phase Fee following acceptance of the GMP Proposal.

14.2 CONSTRUCTION PHASE FEE

14.2.1 Construction Manager's "Construction Phase Fee" is the maximum amount payable to the Construction Manager for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the Owner elsewhere in the Agreement. References in the Uniform General Conditions to Construction Manager's "overhead" and "profit" mean the Construction Manager's Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the following items:

14.2.2 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Construction Manager.

14.2.3 Salaries of Construction Manager's officers, project manager(s), estimators, schedulers and all other employees not performing services directly related to the Project.

14.2.4 Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions Cost. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; trade or professional association dues; costs for hiring and/or relocation of any of the Construction Manager's personnel; and travel, per diem and subsistence expense of Construction Manager, its officers or employees except as

specifically allowed under General Conditions Cost.

14.2.5 Any financial costs incurred by the Construction Manager including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

14.2.6 Any legal, accounting, professional or other similar costs incurred by the Construction Manager, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

14.2.7 Any Federal and/or State income and franchise taxes paid by Construction Manager. Any fines, penalties, sanctions or other levies assessed by any governmental body against Construction Manager.

14.2.8 Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CRM Schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work or Work Package within the Time of Completion; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

14.2.9 The cost of any and all insurance deductibles payable by the Construction Manager and costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

14.2.10 Any and all costs that would cause the Guaranteed Maximum Price for the Work or any Work Package, as applicable, minus the amounts allocated in the GMP for the Construction Contingency Allowance, to be exceeded.

14.2.11 Any and all costs not specifically identified as an element of the Cost of Work.

**Article 15
CONTRACT SAVINGS**

15.1 If the allowable, final, verified, audited amount of the General Conditions Cost, Cost of the Work, and Construction Contingency Allowance is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be adjusted accordingly. Owner shall be entitled to retain 100% of the balance of any unused allowance amount.

15.2 Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting Work, provided however, that Construction Manager may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

15.3 Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after final payment.

**Article 16
PRE-EXISTING CONDITIONS, DESIGN ERRORS,
AND OMISSIONS**

16.1 The Construction Manager at Risk acknowledges that it was afforded unrestricted access to the existing improvements and conditions on



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the Project site and it has thoroughly investigated those conditions. The results of Construction Manager at Risk's investigation have been taken into account in establishing the Guaranteed Maximum Price of the Work. Therefore, Construction Manager at Risk shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Construction Manager at Risk discovered or, in the exercise of reasonable care, should have discovered in Construction Manager at Risk's investigation. The Construction Manager at Risk 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 Construction Manager at Risk is responsible for discovering and correcting any error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents. Before submitting its Guaranteed Maximum Price Proposal, the Construction Manager shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Construction Manager shall not make or be entitled to any claim for any adjustment to the Time of Completion or the Contract Sum for errors or omissions in the Construction Documents that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's Pre-Construction Phase design review process that Construction Manager did not bring to the attention of the Owner and the Program Manager in a timely manner.

**Article 17
BONDS AND INSURANCE**

17.1 Within ten (10) days of acceptance by the Owner of a Guaranteed Maximum Price Proposal, Construction Manager at Risk shall provide performance and payment bonds on forms prescribed by Owner in accordance with the requirements set forth in the Uniform General Conditions. The penal sum of the performance and payment bonds shall be equal to the Guaranteed Maximum Price. When a Guaranteed Maximum Price is established, Construction Manager at Risk 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.

17.2 A Certificate of Insurance indicating the expiration date of the Construction Manager at Risk's general liability insurance is required. No policy providing such insurance shall be cancelled without thirty (30) days prior written notice to the Owner.

17.3 Construction Manager shall not commence Work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Construction Manager. Prior to commencing any work under the Agreement, the following insurance coverage shall be provided by the Construction Manager at Risk:

17.3.1 Pre-Construction Phase Services: Construction Manager at Risk shall provide coverage for Employer's Liability, Workers' Compensation, Comprehensive General Liability, and Comprehensive Automobile Liability, as set forth in the Uniform General Conditions.

17.3.2 Construction Phase: In addition to the coverage required for the Pre-Construction Phase Services, Construction Manager at Risk shall provide Owner's and Contractor's Protective Liability, General Liability Umbrella and Builders Risk Insurance as set forth in the Uniform General Conditions of the contract.

17.4 Construction Manager shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base proposals.

17.5 Construction Manager at Risk shall develop the GMP including the cost of all premiums for insurance coverage required by the Agreement, Uniform General Conditions, or the Contract Documents. The GMP should not include the cost of premiums for any additional insurance coverage desired by the Construction Manager at Risk for the Project. No mark-up shall apply to Insurance premiums.

17.6 Construction Manager shall not cause or allow any of its required insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If the Construction Manager fails to obtain, maintain or renew any insurance required by the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Construction Manager.

17.7 Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Construction Manager.

17.8 Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the parties to this Agreement or the underwriter of any of such policies. Damages caused by the Construction Manager and not covered by insurance shall be paid by the Construction Manager.

17.9 During construction, the Owner has the option to audit the Construction Manager at Risk's insurance costs.

17.9.1 If the audit indicates that actual insurance costs are less than the costs included by the Construction Manager at Risk then Construction Manager at Risk 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 15 of the Uniform General Conditions.

**Article 19
PROJECT TERMINATION AND SUSPENSION**

19.1 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and breach is not cured or an acceptable plan to cure the breach is not established within the fifteen (15) day period.

19.2 This Agreement may be terminated by the Owner for Owner's convenience pursuant to Article 14 of the Uniform General Conditions.

19.3 If the Owner elects not to accept a GMP Proposal or the parties are unable or unwilling to agree on a GMP for the Project or any Work Package within ninety (90) days after submission by the Construction Manager of such GMP Proposal in accordance with Section 5.2, the Owner may terminate this Agreement effective immediately upon written notice to Construction Manager.

19.4 In the event of termination pursuant to Section 19.3 or in the event of termination that is otherwise not the fault of the Construction Manager, the Construction Manager shall be entitled to compensation for all services performed to the termination date provided, however, Construction



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Manager has delivered to Owner such statements, accounts, reports and other materials as required together with all reports, documents and other materials prepared by Construction Manager prior to termination. Upon such payment, Owner shall have no further obligation to the Construction Manager.

19.5 Termination of this Agreement shall not relieve Construction Manager or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence of Construction Manager related to the Project. In the event of a termination, Construction Manager hereby consents to employment by Owner of a substitute construction manager to complete the services under this Agreement.

19.6 In the event of termination, Owner shall have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

19.7 If the Project is suspended or abandoned in whole or in part for more than ninety (90) consecutive days during the Pre-Construction Phase, the Construction Manager shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) consecutive days, the Construction Manager's compensation for Pre-Construction Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted. If the Project is resumed after being suspended for less than ninety (90) consecutive days, the Construction Manager's compensation for Pre-Construction Services shall not be adjusted.

**Article 20
INDEMNITY**

20.1 REFER TO UNIFORM GENERAL CONDITIONS ARTICLE 3.3.11 FOR INDEMNIFICATION.

20.2 Construction Manager at Risk 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 Construction Manager at Risk, or by Owner at the direction of Construction Manager at Risk, 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 Construction Manager at Risk and Construction Manager at Risk shall be given full opportunity to negotiate a settlement. Construction Manager at Risk 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 Construction Manager at Risk 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 Construction Manager agree and acknowledge that

Owner is entering into this Agreement in reliance on Construction Manager's represented expertise and ability to provide construction management services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

21.2 Construction Manager represents, and agrees that it will perform its services in accordance with the highest standards of Construction Manager'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 over the Project. Construction Manager agrees to bear the full cost of correcting Construction Manager's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

21.3 Construction Manager's duties shall not be diminished by any approval by Owner nor shall the Construction Manager be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Construction Manager's skill and knowledge in performing the services required hereunder.

21.4 Construction Manager represents and agrees that all persons connected with the Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

21.5 Construction Manager represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Construction Manager (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

21.6 Construction Manager represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

21.7 The Construction Manager at Risk shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

21.8 The Construction Manager at Risk shall provide a notarized certification that no ACBM's were used.

**Article 22
MISCELLANEOUS PROVISIONS**

22.1 Assignment. Neither the Construction Manager, nor the Owner, shall voluntarily or involuntarily, directly, or indirectly, transfer, assign, hypothecate, pledge, or otherwise dispose of all or any portion of its interest in this Agreement to any third party without the prior written consent of the other party, which consent may be withheld in such party's sole discretion; provided however, that the Owner shall have the right to assign its interest in the Agreement without the necessity of receiving the Construction Manager's consent in conjunction with (i) Owner's transfer to any parent, subsidiary, or affiliated corporation of Owner (collectively, "Owner Affiliate"), or (ii) an internal restructuring of Owner. Any attempt to transfer, assign, hypothecate, pledge, or otherwise dispose of a party's interest in the Agreement without the required consent shall be void. In the event of a transfer to an Owner Affiliate, the Construction Manager agrees to release the Owner from liability for any of the Owner's executory obligations under this Agreement, and in the event of the Owner's sale or lease of the Project to a party other than an Owner's Affiliate, Owner shall be released from the Owner's executory obligations under this Agreement only if the Construction Manager, in its reasonable discretion, approves the financial capability of the assignee. Except as provided herein, no permitted assignment hereunder shall relieve the assignor from any of its liabilities, responsibilities, or obligations imposed upon assignee as if it were the original party to this Agreement; furthermore, the assignor shall



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provide the other party to this Agreement with reasonably satisfactory evidence of compliance with the foregoing. Subject to the above provisions, this Agreement shall be binding upon and inure to the parties hereto, and their respective successors and/or assigns.

22.2 GAAP. All Project records of expenses including, but not limited to those pertaining to Additional Pre-Construction Phase Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate, shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

22.3 Standards of Practice and Compliance with Laws. Construction Manager shall: (i) conduct all activities in compliance with applicable laws and regulations; (ii) promote the highest standards of business ethics and integrity; (iii) maintain the confidentiality of Owner information and protect confidential and proprietary information about employees and the organization; (iv) conduct activities and relationships with others so as to avoid conflicts of interest, in appearance and fact; (v) conduct business transactions with suppliers, contractors, vendors, and other third parties at arm's length and free from offers or solicitation of gifts and favors, or other improper inducements; and (vi) exercise responsible stewardship to preserve and protect Owner's assets by making productive and effective use of Owner's resources. Construction Manager's failure to comply with this Section shall be deemed a material breach of this Agreement.

22.4 Franchise Tax Certification Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code or that it is exempt from the payment of such taxes.

22.5 Entire Agreement; Modifications This Agreement supersedes all prior agreements, written or oral, between Construction Manager and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This 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 Construction Manager 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 and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located 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 party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

22.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

22.10 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Construction Manager a

representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Construction Manager shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

22.11 Records. Construction Manager shall comply with the following requirements:

22.11.1 Construction Manager shall maintain all of its records relating to the Contract Documents, including but not limited to all subcontracts and purchase orders and all of its Applications for Payment and supporting documentation required under the Contract Documents, for a period of not less than four (4) years following completion or termination of the Agreement.

22.11.2 Within four (4) years following completion or termination of the Agreement, Construction Manager agrees to provide access (at reasonable times and place during normal business hours) to Owner or such other persons as authorized or directed by Owner to all books, documents and records required hereunder to be retained by the Contractor relating to this Agreement and to cooperate and assist during any internal compliance review, investigation, monitoring protocol and/or audit of Owner.

22.11.3 Construction Manager is obliged to notify Owner of any violation of any applicable law or regulation immediately after Construction Manager, its employees, or agents become aware of it. Such notification can be given through any of the following methods by contacting the person indicated in the Notice Section of this Agreement or by contacting Owner's Designated Representative.

22.12 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Construction Manager or Owner for whom it is intended; or sent by U.S. Mail to the last known business address of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner.

22.13 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

22.14 Illegal Dumping. The Construction Manager shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

22.15 By signature hereon, Construction Manager certifies that no member of the Board of Trustees of the Owner, or its Executive Officers, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.

22.16 Construction Manager recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Construction Manager, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Construction Manager hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.



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**Article 23
COMPENSATION**

23.1 The Construction Cost Limitation (CCL) for the project is \$1,470,000. The total compensation payable to the Construction Manager at Risk for all services, materials, labor and other work provided for the Project, including the Pre-Construction Services Fee, the Construction Services Fee and the Cost of the Work cannot exceed the Construction Cost Limitation.

23.2 FOR PART I PRE-CONSTRUCTION PHASE (BASIC) SERVICES, Owner shall pay the Construction Manager at Risk a Pre-Construction Services Fee as follows:

Part I Pre-Construction Services Fees	
Pre-Construction Services Phase Fee:	
Part I Pre-Construction Services Subtotal:	

If the scope of the Project or description of the Pre-Construction Services is changed materially, the compensation for Pre-Construction Services shall be equitably adjusted.

23.3 FOR PART II BASIC CONSTRUCTION SERVICES Owner shall pay Construction Manager at Risk a Construction Services Fixed Fee as follows:

Part II Construction Services	
Construction Manager at Risk Construction Phase Fee:	
Construction Manager at Risk Over Time Fee:	
Construction Manager at Risk General Conditions:	
Construction Manager at Risk General Conditions (Over Time):	
Cost of Work	
Part II Construction Services Subtotal:	

23.4 SUMMARY OF COMPENSATION

Part I Pre-Construction Services	
Part II Construction Services (less Construction Contingency Allowance)	
Construction Contingency Allowance	
Construction Cost Limitation	

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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 Construction Manager at Risk 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 Construction Manager at Risk shall substantially complete the LEC Immediate Needs within one hundred eighty (180) Calendar Days of the Owner's Notice to Proceed for the Work. This Substantial Completion Date for LEC Immediate Needs 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.

23.6 LIQUIDATED DAMAGES. For each consecutive calendar day after the date of Substantial Completion set forth in Section 23.5 that the Work or any Work Package is not substantially completed, the Owner may deduct the amount of One Thousand Dollars and Zero Cents, \$1000.00, from any money due or that becomes due the Construction Manager, not as a penalty but as liquidated damages representing the parties' estimate as of the Effective Date and cost of the damages that the Owner will sustain for late completion.

23.7 The parties stipulate and agree that calculating Owner's actual damages for late completion of the Project or any Work Package would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.



**AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS**

23.7 NOTICES. Notices required by this Agreement shall be sent to the following persons at the indicated locations. A party shall not change the person or the address for notices without prior written approval of the other part

<p>If to Owner: Judge Bert Cobb, M.D. Hays County Courthouse 111 E San Antonio Street San Marcos, TX 78666</p> <p>With copy to: Codi Newsom, Project Manager Broadus & Associates 1301 S. Capitol of Texas Hwy, Suite A-302 Austin, Texas 78746</p>	<p>If to Construction Manager at Risk: XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX</p> <p>With copy to: Codi Newsom, Project Manager Broadus & Associates 1301 S. Capitol of Texas Hwy, Suite A-302 Austin, Texas 78746</p>
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23.8 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	Uniform General Conditions
Exhibit C	INTENTIONALLY DELETED
Exhibit D	Guaranteed Maximum Price Submission Form (to be provided by Owner's representative)
Exhibit E	Sub-consultants and 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 Bonds
Exhibit H	Hays County Construction Manager at Risk Conceptual Program Budget
Exhibit I	Hays County Prevailing Wage Rates
Exhibit J	Request for Proposal (RFP) No. 2011-P09 including Addendum Nos. XXX
Exhibit K	RFP No. 2011-P09 Proposal by Contractor (Herein referred to "Proposal")

23.9 Upon execution below, the Owner authorizes the Contractor to perform Part I Pre-Construction Services only, for the sum XXXXXXXX. Further authorization of services shall occur after execution of Guaranteed Maximum Price Proposal satisfactory to the Owner per this Contract.

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

Owner, Hays County

Construction Manager at Risk

By: _____

By: _____

Judge Bert Cobb, M.D.
Hays County, Texas

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

Attest: _____

Notary-
The instrument was acknowledged before me

Liz Gonzalez
Hays County Clerk

on: _____

by: _____

Notary Name: _____

State of: _____

County of: _____

Expires: _____



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit A

Personnel Titles, Roles and Responsibilities

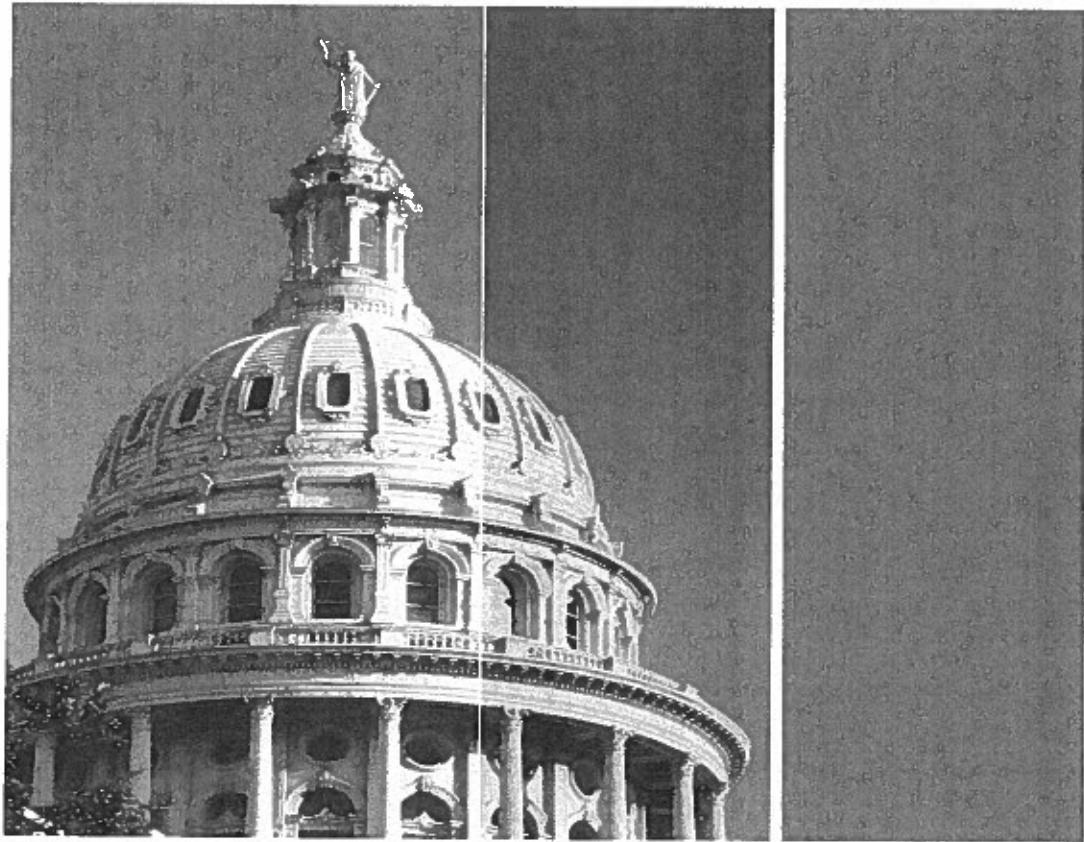
(to be provided by the contractor)



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit B

Uniform General Conditions



2010 Uniform General Conditions

Uniform General Conditions for Construction Contracts

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Article 1. Definitions

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

- 1.1 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.2 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.3 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.4 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.5 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.
- 1.6 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor and A/E.

- 1.7 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.8 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.9 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.10 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.11 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.12 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.13 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.14 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.15 *Construction Manager-at-Risk*, in accordance with Tex. Gov't Code, Chapter 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.16 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.17 *Day* means a calendar day unless otherwise specifically stipulated.

- 1.18 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov't Code § 2166.2531.
- 1.19 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.20 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.21 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.22 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.23 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.24 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.25 *Owner* means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner.
- 1.26 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.
- 1.27 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
- 1.28 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).

- 1.29 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.30 *Punchlist* means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.31 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.32 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.33 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.34 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.35 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.36 *Site* means the geographical area of the location of the Work.
- 1.37 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.
- 1.38 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.39 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.

- 1.40 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.41 *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.42 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.
- 1.43 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.44 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.45 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.46 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

Article 2. Wage Rates and Other Laws Governing Construction

- 2.1 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Owner is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2 Wage Rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the bid or proposal specifications. The specified wage rates are minimum rates only. Owner is not bound to pay 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 qualified labor adequate to perform the Work is available locally at the prevailing wage rates.
- 2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site and shall notify each worker, in writing, of the following as they commence work on the Contract: the worker's job classification, the established minimum wage rate requirement for that classification, as well as the worker's actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the worker and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.
- 2.2.1.1 Contractor shall submit a copy of each worker's wage-rate notification to ODR with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Project.
- 2.2.1.2 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Chapter 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification.

Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.

2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.

2.2.3 Complaints of Violations.

2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Chapter 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.

2.3 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Travis County, Texas, or as may otherwise be designated in the Supplementary General Conditions.

2.4 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.

2.5 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent,

Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.

- 2.6 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

Article 3. General Responsibilities of Owner and Contractor

- 3.1 **Owner's General Responsibilities.** Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
- 3.1.1 **Preconstruction Conference.** Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is 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. Topics include 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 between the Project team members.
- 3.1.2 **Owner's Designated Representative.** Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
- 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.
- 3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing.
- 3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Supplementary General Conditions or Special Conditions.
- 3.1.3 **Owner Supplied Materials and Information.**
- 3.1.3.1 Owner will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
- 3.1.3.2 Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.

3.1.4 Availability of Lands. Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

3.1.5 Limitation on Owner's Duties.

3.1.5.1 Owner 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. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.

3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.

3.2 Role of Architect/Engineer. Unless specified otherwise in the Contract between Owner and Contractor, A/E shall provide general administration services for Owner during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for action. A/E has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by ODR, upon request.

3.2.1 Site Visits.

3.2.1.1 A/E will make visits to the Site at intervals as provided in the A/E's Contract with Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to Owner.

- 3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.
- 3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.
- 3.2.3 Limitations on Architect/Engineer Authority. A/E is not responsible for:
 - 3.2.3.1 Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project, nor will A/E supervise, direct, control or have authority over the same;
 - 3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;
 - 3.2.3.3 Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or
 - 3.2.3.4 Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.
- 3.3 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and 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. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures.
 - 3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions and other provisions of the Contract, and as outlined in the pre-construction conference.

- 3.3.2 Contractor's Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Supplementary General Conditions.
- 3.3.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.
- 3.3.4 Services, Materials, and Equipment. Unless otherwise specified, 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, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 3.3.5 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss.
- 3.3.6 Non-Compliant Work. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.7 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner.
- 3.3.7.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents including provisions of the Contract between Contractor and Owner.

- 3.3.7.2 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. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves 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 Contractor in the same manner in which Contractor is bound to Owner.
- 3.3.8 Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with Owner. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements or alternative resolution processes, except as Owner and Contractor may agree in writing.
- 3.3.9 Cleaning. 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. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.
- 3.3.10 Acts and Omissions of Contractor, its Subcontractors and Employees. Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom ODR finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 3.3.11 Indemnification of Owner. Contractor covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, Owner and the elected and appointed officials, employees, officers, directors, volunteers, and representatives of Owner, 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 or property damage, made upon Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, or any agent, officer, director, representative, employee,

consultant or the Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, its officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death or property damage. **IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

3.3.11.1 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.

3.3.11.2 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract.

3.3.12 Ancillary Areas. Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:

3.3.12.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by Owner.

3.3.12.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.

3.3.12.3 Use only established roadways or construct and use such temporary roadways as may be authorized by Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.

3.3.12.4 Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.

- 3.3.13 Separate Contracts. Owner reserves the right to award other contracts in connection with other portions of the Project under these same or substantially similar contract conditions, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.
- 3.3.14 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.
- 3.3.15 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site and Project information as requested.
- 3.3.16 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by Contractor. Owner will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor.

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

- 4.1 General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Chapter 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).
 - 4.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. § 20.13(b) outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender neutral means.
 - 4.1.2 A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.
- 4.2 Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:
 - 4.2.1 Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.
 - 4.2.2 Conduct the good-faith effort activities required and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.
 - 4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.
 - 4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.
 - 4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor's performance of the HUB subcontracting plan.

- 4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
 - 4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).
- 4.3 Failure to Demonstrate Good-Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.

Article 5. Bonds and Insurance

5.1 **Construction Bonds.** Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253. On Construction Manager-at-Risk and Design-Build Projects the Owner shall require a security bond, as described in Subsection 5.1.2 below.

5.1.1 **Bond Requirements.** Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to Owner, on Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.

5.1.1.1 A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.

5.1.1.2 A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.

5.1.2 **Security Bond.** The security bond provides protection to Owner if Contractor presents an acceptable guaranteed maximum price ("GMP") to Owner and 1) fails to execute the GMP; or 2) fails to deliver the required payment and performance bonds within the time period stated below.

5.1.3 **When Bonds Are Due**

5.1.3.1 Security bonds are due within ten (10) days of signing a Construction Manager-at-Risk or Design-Build Contract.

5.1.3.2 Payment and performance bonds are due within ten (10) days of Contractor's receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build

project, or within ten (10) days of Contractor's receipt of a fully executed Contract on competitively bid or competitive sealed proposal projects.

- 5.1.4 Power of Attorney. 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.
- 5.1.5 Bond Indemnification. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 5.1.6 Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 5.1.7 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner 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.
- 5.1.8 Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 5.1.9 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).

5.2 Insurance Requirements. Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.

5.2.1 Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14.

5.2.2 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

5.2.2.1 Insurance Coverage Required.

5.2.2.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation as to Owner, employer's liability insurance of not less than:

\$100,000 each accident;

\$100,000 disease each employee ; and

\$500,000 disease policy limit.

5.2.2.1.2 Commercial General Liability Insurance. Including premises, operations, independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's liability for bodily injury (including death) and property damage with a minimum limit of:

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$2,000,000 products and completed operations aggregate;
and

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

5.2.2.1.3 Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. *This requirement applies if the Work or the Project includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer's liability limits for asbestos abatement will be:

\$500,000 each accident;

\$500,000 disease each employee; and

\$500,000 disease policy limit.

If this Contract is for asbestos abatement only, the all-risk builder's risk or all-risk installation floater (e) is not required.

- 5.2.2.1.4 Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

- 5.2.2.1.5 All-Risk Builder's Risk Insurance, if applicable (or all-risk installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be all-risk, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and Owner-furnished equipment specified by Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. The policy shall have endorsements as follows:

5.2.2.1.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

5.2.2.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.

5.2.2.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.

5.2.2.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder's risk insurance requirements.

- 5.2.2.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
- 5.2.2.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.
- 5.2.2.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.
- 5.2.2.1.5.8 Builder's risk insurance policy shall remain in effect until Substantial Completion.
- 5.2.2.1.6 "Umbrella" Liability Insurance. Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

5.2.3 Policies must include the following clauses, as applicable:

- 5.2.3.1 This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to Owner.
- 5.2.3.2 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Owner for liability arising out of operations under the Contract with Owner.
- 5.2.3.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.
- 5.2.3.4 A waiver of subrogation in favor of Owner shall be provided in all policies.

- 5.2.4 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.
- 5.2.5 Workers' compensation insurance coverage must meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

Article 6. Construction Documents, Coordination Documents, and Record Documents

6.1 Drawings and Specifications.

- 6.1.1 Copies Furnished. Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and Addenda as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.
- 6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.
- 6.1.3 Interrelation of Documents. The Contract Documents as referenced in the Contract between Owner and Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials); and (e) other Contract Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.
- 6.1.5 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, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.

6.1.6 Discrepancies and Omissions in Drawings and Specifications.

- 6.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.
- 6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 6.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 6.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 6.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
- 6.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

6.2 Requirements for Record Documents. Contractor shall:

- 6.2.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.

- 6.2.2 Maintain this record set of Drawings and Specifications which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.
- 6.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 6.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and 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 and as described in the Contract Documents.
- 6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents, unless otherwise required by the Supplementary General Conditions or Special Conditions.
- 6.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 6.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

Article 7. Construction Safety

- 7.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to ODR and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors 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 erect and maintain all necessary safeguards for such safety and protection.
- 7.2 Notices. Contractor shall provide notices as follows:
- 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 7.2.2 Coordinate 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. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 7.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 7.3.2 Give ODR and A/E prompt notice of all such events.
- 7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
- 7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.

- 7.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.
- 7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
- 7.4.2 Supply ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 7.5 Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify ODR immediately.
- 7.5.1 Bind all Subcontractors to the same duty.
- 7.5.2 Upon receiving such notice, ODR will 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. Upon completion of this investigation, ODR will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 7.5.3 Owner may hire third-party Contractors to perform any or all such steps.
- 7.5.4 Should compliance with ODR's instructions result in an increase in Contractor's cost of performance, or delay the Work, Owner will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.
- 7.6 Trenching Plan. When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to ODR prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.
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Article 8. Quality Control

8.1 Materials & Workmanship. Contractor shall execute Work in a good and workmanlike manner in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.

8.2 Testing.

8.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide the following testing:

8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.

8.2.1.2 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 establish compliance with the Contract Documents.

8.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.

8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

8.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.

8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:

8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.

8.2.3.2 Acceptance by Owner of the quality and nature of tests.

- 8.2.3.3 All tests taken in the presence of A/E and/or ODR, or their representatives.
- 8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
- 8.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
- 8.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.
- 8.2.4 Notice of Testing. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.
- 8.2.5 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.
- 8.2.6 Covering Up Work. If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by ODR, uncover and recover the work at Contractor's expense.
- 8.3 Submittals.
 - 8.3.1 Contractor's Submittals. Contractor shall submit 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 subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.
 - 8.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to ODR and A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.

- 8.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) days duration after receipt by A/E and ODR for review and approval. If re-submittal required, allow a minimum of an additional fifteen (15) days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.
- 8.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to ODR the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.
- 8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any

deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.

8.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.

8.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.

8.3.5 No Substitutions Without Approval. ODR and A/E may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, ODR and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by ODR and A/E when:

8.3.5.1 The Contract Documents do not require extensive revisions; and

8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to Owner; and

8.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:

8.3.5.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;

8.3.5.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents;

8.3.5.3.3 The request directly relates to a “product design standard” or “performance standard” clause in the Contract Documents;

8.3.5.3.4 The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;

8.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and ODR can approve the requested substitution;

8.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;

8.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or

8.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.

8.3.6 Unauthorized Substitutions at Contractor’s Risk. Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

8.4 Field Mock-up.

8.4.1 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.

8.4.1.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.

8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.

8.4.1.3 Contractor shall include field mock-ups in their Work Progress Schedule and shall notify ODR and A/E of readiness for review sufficiently in advance to coordinate review without delay.

8.5 Inspection During Construction.

8.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents.

8.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and its agents an opportunity to perform an inspection of the Work.

8.5.2.1 Should corrections of the Work be required for approval, Contractor shall not cover up corrected Work until Owner indicates approval.

8.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to ODR of the anticipated need for a cover-up inspection. Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

Article 9. Construction Schedules

- 9.1 **Contract Time.** **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion in a reasonable time after Substantial Completion, Contractor shall be responsible for Owner's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.
- 9.2 **Notice to Proceed.** Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.
- 9.3 **Work Progress Schedule.** Refer to Supplementary General Conditions or Special Conditions for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.
- 9.3.1 **Schedule Requirements.** Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- 9.3.1.1 Contractor shall re-submit initial schedule as required to address review comments from A/E and ODR until such schedule is accepted as the Baseline Schedule.
- 9.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.

- 9.3.2 Schedule Updates. Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and ODR as directed, but as a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to ODR and shall not be incorporated into the revised Baseline Schedule without ODR's consent.
- 9.3.3 The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a schedule, schedule update or revision constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule.
- 9.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.
- 9.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.
- 9.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.
- 9.4 Ownership of Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

9.5 Completion of Work. Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.

9.5.1 If, in the judgment of Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

9.5.1.3 An increase in hours of work or number of shifts.

9.5.1.4 Expedite delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.

9.5.2 Within ten (10) days after such notice from ODR, Contractor shall notify ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should ODR deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with ODR's approval.

9.6 Modification of the Contract Time.

9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.

9.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted 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 only consume float without delaying the project Substantial Completion date(s).

9.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent Contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at

the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

9.6.2.2 Excusable Delay. Contractor is entitled to an equitable adjustment of the Contract Time, issued via change order, for delays caused by the following:

9.6.2.2.1 Errors, omissions and imperfections in design, which A/E corrects by means of changes in the Drawings and Specifications.

9.6.2.2.2 Unanticipated physical conditions at the Site, which A/E corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.

9.6.2.2.3 Changes in the Work that effect activities identified in Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by ODR or recommended by A/E and ordered by ODR.

9.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of Contractor.

9.6.2.2.5 Suspension of Work for convenience of ODR, which prevents Contractor from completing the Work within the Contract Time.

9.6.3 Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor's schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 9.6.2.2.4 and within the reasonable control of Owner, the Contract price and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 11.

9.7 No Damages for Delay. Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of Owner.

- 9.8 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, Contractor may not be entitled to a time extension for the period of concurrent delay.
- 9.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 9.6.2.1 above. If Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. State claims for extensions of time in numbers of whole or half days.
- 9.9.1 Within ten (10) days after the cessation of the delay, Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.
- 9.9.2 No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 9.9.3 Contents of Time Extension Requests. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
- 9.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.
- 9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.
- 9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.9.4 Owner's Response. Owner will respond to the Time Extension Request by providing to 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 Contractor.

- 9.9.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.
- 9.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.
- 9.10 Failure to Complete Work Within the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.
- 9.11 Liquidated Damages. Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Supplementary General Conditions or Special Conditions.

Article 10. Payments

- 10.1 Schedule of Values. Contractor shall submit to ODR and A/E for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to ODR. The accepted Schedule of Values will be the basis for the progress payments under the Contract.
- 10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by ODR, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing close out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
- 10.1.1.1 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.
- 10.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to ODR at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 10.2. Progress Payments. Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.
- 10.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and ODR a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:

- 10.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values;
 - 10.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;
 - 10.2.1.3 HUB subcontracting plan Progress Assessment Report as required in Paragraph 4.2.5.1;
 - 10.2.1.4 Such additional documentation as Owner may require as set forth in the Supplementary General Conditions or elsewhere in the Contract Documents; and
 - 10.2.1.5 Construction payment affidavit.
- 10.2.2 Contractor's Application for Payment. As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, A/E and ODR will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, ODR and A/E may require modifications to the preliminary pay worksheet prior to the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by A/E and/or ODR. Attach all additional documentation required by ODR and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.
- 10.2.3 Certification by Architect/Engineer. Within five (5) days or earlier following A/E's receipt of Contractor's formal Application for Payment, A/E will review the Application for Payment for completeness, and forward it to ODR. A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.
- 10.3 Owner's Duty to Pay. Owner has no duty to pay the Contractor except on receipt by ODR of: 1) a complete Application for Payment certified by A/E; 2) Contractor's updated Work Progress Schedule; and 3) confirmation that Contractor's record documentation at the Site is kept current.

- 10.3.1 Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.
- 10.3.2 Retainage. Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Supplementary General Conditions or Special Conditions. Retainage is managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.
 - 10.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.
 - 10.3.2.2 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release.
 - 10.3.2.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.
- 10.3.3 Price Reduction to Cover Loss. Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:
 - 10.3.3.1 Defective or incomplete Work not remedied;
 - 10.3.3.2 Damage to Work of a separate Contractor;
 - 10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;
 - 10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;
 - 10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
 - 10.3.3.6 Assessment of fines for violations of prevailing wage rate law; or
 - 10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.

10.3.4 Title to all material and Work covered by progress payments transfers to Owner upon payment.

10.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance, or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.

10.4 Progress Payments. Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.

10.4.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.

10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.

10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.

10.5 Off-Site Storage. With prior approval by Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by Owner.

10.5.1 Store materials in a commercial warehouse meeting the criteria stated below.

10.5.2 Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with Owner's representative.

10.5.3 Inspection by Owner's representative is allowed at any time. Owner's inspectors must be satisfied with the security, control, maintenance, and preservation measures.

10.5.4 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 considered for payment.

- 10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.
 - 10.5.6 With each monthly payment estimate, submit a report to ODR and A/E listing the quantities of materials already paid for and still stored in the off-site location.
 - 10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.
 - 10.5.8 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 Owner or Owner's agents at a location near the jobsite as directed by ODR. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.
- 10.6 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2255.022.
- 10.6.1 Contractor who receives a payment from a governmental entity shall pay Subcontractor the appropriate share of the payment not later than the tenth (10th) day after the date the vendor receives the payment.
 - 10.6.2 The appropriate share is overdue on the eleventh (11th) day after the date Contractor receives the payment.

Article 11. Changes

- 11.1 Change Orders. A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 11.9.
- 11.1.1 Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or ULCO, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order or a ULCO.
- 11.1.2 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, as permitted under Tex. Gov't Code, Chapter 2260.
- 11.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.
- 11.1.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.

- 11.1.5 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.
- 11.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Supplementary General Conditions or Special Conditions or as agreed to by the parties and incorporated into a Change Order.
- 11.3 Claims for Additional Costs.
- 11.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, they shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 7.2.1. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.
- 11.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 14 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 11.4, Contractor shall make such claim as provided in Subsection 11.3.1.
- 11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case,

Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.

- 11.4 Minor Changes. A/E, with concurrence of ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on as-built record documents.
- 11.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. 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 Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of ODR.
- 11.6 Extension of Time. All changes to the Contract Time shall be made as a consequence of requests as required under Section 9.6, and as documented by Change Order as provided under Section 11.1.
- 11.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
- 11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
- 11.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established

Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.

- 11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.
- 11.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see Section 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
- 11.7.5 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to ODR.
- 11.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
 - 11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, plus the total cost of State and Federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined.

Allowable percentages for overhead and profit on any specific change shall not exceed fifteen (15) percent for the first \$10,000 of value for self-performed work or portion thereof, ten (10) percent for the second \$10,000 of value for self-performed work or portion thereof and seven and a half (7.5) percent for any value of the self-performed work that exceeds \$20,000.
 - 11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost

Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first \$10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second \$10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding \$20,000.

- 11.8.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. Owner does not accept and will not pay for additional Contract cost identified as indirect or consequential damages.
- 11.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.
- 11.9 Unilateral Change Order (ULCO). Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.
 - 11.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights as to the disputed amount, subject to Article 15.
- 11.10 Final Resolution of Changes. Upon execution of a Change Order and /or a ULCO by Owner, Contractor and A/E, all costs and time issues regarding that change are final and not subject to adjustment.

Article 12. Project Completion and Acceptance

12.1 Closing Inspections.

12.1.1 Substantial Completion Inspection. When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.

12.1.1.1 Prior to the Substantial Completion inspection, Contractor shall furnish a copy of its marked-up Record Documents and 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 as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR determines that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security and maintenance. A/E will provide with this certificate a list of Punchlist items (the pre-final Punchlist) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.

12.1.2 Final Inspection. Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, ODR, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

12.1.2.1 Correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify A/E and ODR in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.

12.1.3 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 Owner.

12.1.4 Purpose of Inspection. Inspection is for determining the completion of the Work, and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of Owner's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.

12.1.5 Additional Inspections.

12.1.5.1 If Owner's inspection team determines that the Work is not substantially complete at the Substantial Completion inspection, ODR or A/E will give Contractor written notice listing cause(s) of the rejection. Contractor will set a time for completion of

incomplete or defective work acceptable to ODR. Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion inspection.

12.1.5.2 If Owner's inspection team determines that the Work is not complete at the final inspection, ODR or A/E will give Contractor written notice listing the cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all Work so designated prior to again requesting a final inspection.

12.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. Owner may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion, or assessing the cost of additional inspections.

12.1.6 Phased Completion. The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

12.2 Owner's Right of Occupancy. Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, ODR will notify Contractor in writing and identify responsibilities for security and maintenance Work performed on the premises by third parties on Owner's behalf does not constitute occupation or use of the Work by Owner for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of Owner so as to not disrupt Owner's use of, or access to occupied areas of the Project.

12.3 Acceptance and Payment

12.3.1 Request for Final Payment. Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and ODR for review and approval.

12.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception.

12.3.3 Architect/Engineer Approval. A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to Owner.

12.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.

12.3.5 Final Payment Due. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.

12.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by Owner, relating to the condition of the Work except those arising from:

12.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);

12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;

12.3.6.3 Terms of any warranties required by the Contract, or implied by law; or

12.3.6.4 Claims arising from personal injury or property damage to third parties.

12.3.7 Waiver of Claims. Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.

12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods.

Article 13. Warranty and Guarantee

- 13.1 Contractor's General Warranty and Guarantee. Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, 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, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.
- 13.2 Warranty Period. Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.
- 13.3 Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
- 13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.
 - 13.3.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.
- 13.4 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 is absolute. None of the following will constitute an acceptance of defective 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:
- 13.4.1 Observations by Owner and/or A/E;
 - 13.4.2 Recommendation to pay any progress or final payment by A/E;
 - 13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;

- 13.4.4 Use or occupancy of the Work or any part thereof by Owner;
 - 13.4.5 Any acceptance by Owner or any failure to do so;
 - 13.4.6 Any review of a Shop Drawing or sample submittal; or
 - 13.4.7 Any inspection, test or approval by others.
- 13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. ODR will certify the date of service commencement in the Substantial Completion certificate.
- 13.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
 - 13.5.2 Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.
- 13.6 Correction of Defects. Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.
- 13.7 Certification of No Asbestos Containing Materials or Work. Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA- 40 C.F.R § 763-99(7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of their Contract responsibilities are non Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.

Article 14. Suspension and Termination

- 14.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is 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.

14.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.

14.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.

14.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.

- 14.2 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.

- 14.3 Termination by Owner for Cause.

14.3.1 Upon written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:

- 14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;
- 14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including ODR;
- 14.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified in the Contract;
- 14.3.1.4 Failure to remedy defective work condemned by ODR;
- 14.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;
- 14.3.1.6 Persistent endangerment to the safety of labor or of the Work;
- 14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;
- 14.3.1.8 Any material breach of the Contract; or
- 14.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 14.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Should Owner decide to terminate the Contract under the provisions of Section 14.3, it will provide to Contractor and its surety thirty (30) days prior written notice.
- 14.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of time.
- 14.3.5 If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

- 14.3.5.1 This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.
 - 14.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.
 - 14.3.5.3 This obligation for payment survives the termination of the Contract.
 - 14.3.5.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 14.5.
- 14.5 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
- 14.5.1 Owner will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
 - 14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - 14.5.2.1 Stop all work.
 - 14.5.2.2 Place no further subcontracts or orders for materials or services.
 - 14.5.2.3 Terminate all subcontracts for convenience.
 - 14.5.2.4 Cancel all materials and equipment orders as applicable.
 - 14.5.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.

- 14.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.
- 14.6 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.
- 14.7 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

Article 15. Dispute Resolution

- 15.1 Unresolved Contractor Disputes. The dispute resolution process provided for in Tex. Gov't Code, Chapter 2260, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.
- 15.2 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Chapter 2260.
- 15.3 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.
- 15.4 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.

Article 16. Miscellaneous

- 16.1 Supplementary General and Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:
- 16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.
- 16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 16.2 Federally Funded Projects. On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.
- 16.3.1 Accessibility and Administration.
- 16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 16.3.1.2 Owner shall administer the software.
- 16.3.2 Training. When used, Owner shall provide training to the Project team members.

End of Uniform General Conditions



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit C

Intentionally Deleted



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit D

Guaranteed Maximum Price Submission Form

(to be provided by Owner's representative)



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit E

Sub-consultants and Subcontractors List

(to be provided by Contractor at buyout)



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit F

Project Overall Schedule

(to be provided by Contractor at Notice to Proceed)



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit G

Payment and Performance Bonds



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

EXHIBIT G – PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

STATE OF TEXAS §
 §
HAYS COUNTY §

KNOW ALL MEN BY THESE PRESENTS: That _____, a corporation organized and existing under the laws of the State of _____, and fully authorized to transact business in the State of Texas, whose address is _____, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, and fully authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto Hays County, Texas, hereinafter called the "Owner," in the penal sum of \$ _____ plus ten percent (10%) of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees and liquidated damages arising out of or connected with the below identified Contract in lawful money of the United States, to be paid in Hays County, Texas, for the payment of which sum and the performance of such Contract well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be increased or decreased by the amount of any Modification, which increases or decreases the Contract Sum.

The obligation to pay same is conditioned as follows:

WHEREAS, the Principal entered into a written Contract with Owner, (acting through its authorized representative, _____), dated the _____ day of _____, 20____, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein (including, but not limited to, all provisions in the Contract with respect to obligations to correct *defective* Work, obligations in connection with defaults under the Contract, indemnification obligations, obligations to provide reimbursement and repayment, and obligations to pay liquidated damages), for repairs and renovations of the Hays County Law Enforcement Center Immediate Needs.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the Contract Documents during the original term thereof and any extension thereof which may be granted by the Owner, notice of which extension being hereby waived by the Surety, and during the life of any guaranty or warranty required under said Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized Modifications of said Contract that may hereafter be made, notice of which Modifications to the Surety being hereby waived by the Surety, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, if the Owner declares Principal in default under the Contract and the Owner formally terminates the Principal's right to complete the Contract by written notice to the Principal and the Surety, the Surety shall promptly and at the Surety's sole expense either (a) arrange for the Principal, with the consent of the Owner, to perform and complete the Contract in accordance with the Contract Documents, including without limitation all Modifications or subcontracts that may hereafter be made, notice of which Modification or subcontracts to the Surety being hereby waived; or (b) undertake to perform the Contract through its agents or through independent contractors. In any event, Surety's obligations hereunder to perform and complete the Contract shall remain in full force and effect. If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on this Bond ten (10) days after delivery of written notice from the Owner to the Surety demanding the Surety perform, and the Owner shall be entitled to enforce any remedy available to the Owner at Surety's cost and expense, including, without limitation, reasonable legal fees.



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

EXHIBIT G – PAYMENT AND PERFORMANCE BONDS

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Hays County, State of Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work performed or to be performed, thereunder or the Specifications, Drawings, etc., accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive (i) notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications, Drawings, etc., and (ii) notice of any subcontracts, purchase orders, or other obligations related to the Contract.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Hays County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas. All notices hereunder shall be deemed given and received (i) when deposited in a post office or other depository under the care or custody of the United States Postal Services, properly stamped and addressed as a registered or certified item, return receipt requested, or (ii) when delivered by express mail or parcel service or delivery service to the party's address.

IN WITNESS WHEREOF, this instrument is executed in four (4) copies, each one of which shall be deemed an original, this the _____ day of _____, 20____.

ATTEST:

Secretary

ATTEST:

Secretary

PRINCIPAL:

By: _____

President

SURETY:

By: _____

Attorney-in-Fact

The Resident Agent of the Surety in Travis County, Texas, for delivery of notice and service of process is:

Name: _____

Street Address: _____

APPROVAL OF OWNER:

Hays County

By: _____

(NOTE: Date of Performance Bond must be date of Contract. If Resident Agent is not a corporation, give a person's name.)

(insert form of Dual Obligee Rider)



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

EXHIBIT G – PAYMENT AND PERFORMANCE BONDS

PAYMENT BOND

STATE OF TEXAS §
 §
HAYS COUNTY §

KNOW ALL MEN BY THESE PRESENTS: That _____, a corporation organized and existing under the laws of the State of _____, and fully authorized to transact business in the State of Texas, whose address is _____, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, and fully authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto Hays County, Texas, hereinafter called the "Owner", in the penal sum of \$ _____ plus ten percent (10%) of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees and liquidated damages arising out of or connected with the below identified Contract in lawful money of the United States, to be paid in Hays County, Texas, for the payment of which sum well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be increased or decreased by the amount of any Modification, which increases or decreases the Contract Sum.

The obligation to pay same is conditioned as follows:

WHEREAS, the Principal entered into a written Contract with Owner, (acting through its authorized representative, _____), dated the _____ day of _____, 20____, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein (including, but not limited to, all provisions in the Contract with respect to obligations to correct *defective* Work, obligations in connection with defaults under the Contract, indemnification obligations, obligations to provide reimbursement and repayment, and obligations to pay liquidated damages), for repairs and renovations of the Hays County Law Enforcement Center Immediate Needs..

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material and specially fabricated materials in the prosecution of the Work provided for in said Contract, and normal and usual extras not exceeding fifteen percent (15%) of the Contract Sum, notice of which Modifications or subcontracts to the Surety is hereby expressly waived by the Surety, then this obligation shall be void; otherwise Surety is obligated to make prompt payment for all labor, subcontracts, materials, specially fabricated materials, and normal and usual extras not exceeding fifteen percent (15%) of the Contract Sum, and such obligation shall remain in full force and effect; labor, subcontracts, materials and specially fabricated materials shall be construed in accordance with Section 53.001, et seq. of the Texas Property Code, as amended, and this Bond shall be construed in accordance with Section 53.202 of the Texas Property Code, as amended.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Hays County, State of Texas.

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Contract or to the Work performed, or to be performed, thereunder, or the Specifications, Drawings, etc. accompanying the same, shall in anywise affect its obligation on this Bond, and it does hereby waive (i) notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or to the Specifications, Drawings, etc. accompanying the same and (ii) notice of any subcontract, purchase order, or other obligation related to the Contract.



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

EXHIBIT G – PAYMENT AND PERFORMANCE BONDS

This Bond is given pursuant to the provisions of Subchapter I of Chapter 53 of the Texas Property Code, as amended, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Hays County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas. All notices hereunder shall be deemed given and received (i) when deposited in a post office or other depository under the care or custody of the United States Postal Service, properly stamped and addressed as a registered or certified item return receipt requested, or (ii) when delivered by express mail or parcel service or delivery service to the party's address.

IN WITNESS WHEREOF, this instrument is executed in four (4) copies, each one of which shall be deemed an original, this the _____ day of _____, 20__.

ATTEST:

PRINCIPAL:

Secretary

By: _____

President

ATTEST:

SURETY:

By: _____

Attorney-in-Fact

The Resident Agent of the Surety in Travis County, Texas, for delivery of notice and service of process is:

Name: _____

Tel. No. () _____

Street Address: _____

APPROVAL OF OWNER:

Hays County

By: _____

(NOTE: Date of Payment Bond must be date of Contract. If Resident Agent is not a corporation, give a person's name.)

(insert form of Dual Obligatee Rider)



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit H

Hays County Construction Manager at Risk
Conceptual Program Budget

(to be provided by Contractor)



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit I

Hays County Prevailing Wage Rates

**Hays County Government Center
Minimum Prevailing Wage Rates**

#	Trade	Occupational Code	Approved Rate
1	Acoustic Ceiling Installer		\$ 10.78
2	Air Conditioning Helper		\$ 8.86
3	Air Conditioning & Heating Mechanic		\$ 17.73
4	Asbestos Project Supervisor		\$ 14.49
5	Asbestos Worker, Crew Lbr		\$ 12.90
6	Asphalt Paving Machine		\$ 8.48
7	Asphalt Raker		\$ 7.33
8	Brick masons & Block masons	47-2021	\$ 17.99
9	Bricklayer, Helper		\$ 7.25
10	Broom or Sweeper		\$ 7.25
11	Bulldozer, 150 hp or less		\$ 8.10
12	Bulldozer, over 150 hp		\$ 9.78
13	Carpenter	47-2031	\$ 16.57
14	Carpenter, Superintendent		\$ 13.99
15	Carpet Installer	47-2041	\$ 12.13
16	Caulker		\$ 10.10
17	Cement Masons & Concrete Finishers	47-2051	\$ 10.52
18	Concrete Finisher, Paving		\$ 8.72
19	Construction & Building Inspectors	47-4011	\$ 8.22
20	Construction & Extraction Occupations	47-0000	\$ 9.67
21	Construction & Related Workers, All Other	47-4099	\$ 8.00
22	Construction Laborers	47-2061	\$ 13.67
23	Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel, less 1-1/2		\$ 9.75
24	Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel, over 1-1/2		\$ 9.75
25	Drywall & Ceiling Tile Installers	47-2081	\$ 14.20
26	Drywall System Finisher		\$ 9.29
27	Earth Drillers, Except Oil & Gas	47-5021	\$ 10.64
28	Electrician	47-2111	\$ 17.33
29	Electrician, Helper		\$ 7.49
30	Elevator Mechanic	47-4021	\$ 22.89
31	Equipment Operator, Heavy		\$ 12.38
32	Equipment Operator, Light		\$ 11.57
33	Fireproofing Installer		\$ 12.10
34	Explosive Workers, Ordnance Handling Experts and Blasters	47-5031	\$ 11.53
35	First-Line Supervisors/Managers of Construction Trades and Extraction Workers	47-1011	\$ 16.14
36	Flooring Layer, Resilient		\$ 8.62

**Hays County Government Center
Minimum Prevailing Wage Rates**

#	Trade	Occupational Code	Approved Rate
37	Form Setter, Curbs & Paving		\$ 7.32
38	Form Setter, Structures		\$ 13.15
39	Foundation Drill, Crawler Mounted		\$ 10.86
40	Foundation Drill, Truck Mounted		\$ 12.92
41	Gardener		\$ 7.25
42	Glazier	47-2121	\$ 14.75
43	Ground man		\$ 7.25
44	Hazardous Materials Removal Workers	47-4041	\$ 13.27
45	Helper-Air Conditioning & Heating Mechanics		\$ 8.51
46	Helpers, Brick masons, Block masons, Stonemasons and Tile and Marble Setters	47-3011	\$ 10.42
47	Helpers, Carpenters	47-3012	\$ 9.27
48	Helpers, Construction Trades, All Other	47-3019	\$ 9.21
49	Helpers, Electricians	47-3013	\$ 9.40
50	Helpers, Extraction Workers	47-5081	\$ 9.45
51	Helpers, Painters, Paperhangers, and Stucco Masons	47-3014	\$ 7.51
52	Helpers, Pipe layers, Plumbers, Pipefitters and Steamfitters	47-3015	\$ 9.17
53	Helpers, Roofers	47-3016	\$ 8.10
54	Helpers, Structural Iron Workers		\$ 8.51
55	Highway Maintenance Workers	47-4051	\$ 9.23
56	Insulation Workers, Floor, Ceiling and Walls	47-2131	\$ 14.62
57	Insulation Workers, Mechanical	47-2132	\$ 12.02
58	Irrigation Technician		\$ 7.25
59	Iron Worker		\$ 14.58
60	Laborer		\$ 8.15
61	Landscape Foreman		\$ 11.08
62	Lather		\$ 15.78
63	Lineman		\$ 12.19
64	Mechanic		\$ 10.12
65	Millwright		\$ 15.18
66	Motor Grader Operator, Fine Grade		\$ 10.71
67	Operating Engineers and Other Construction Equipment Operators	47-2073	\$ 11.96
68	Painter/Wallcover	47-2141	\$ 12.62
69	Painter, Sprayer		\$ 8.12
70	Paving, Surfacing and Tamping Equipment Operators	47-2071	\$ 11.33

**Hays County Government Center
Minimum Prevailing Wage Rates**

#	Trade	Occupational Code	Approved Rate
71	Pipefitter		\$ 17.46
72	Piping/Duct Insulator		\$ 14.28
73	Pipe layer	47-2151	\$ 10.01
74	Plasters and Stucco Masons	47-2161	\$ 14.95
75	Plumbers, Pipefitters & Steamfitters	47-2152	\$ 17.70
76	Powder man		\$ 10.64
77	Reinforcing Iron and Rebar Workers	47-2171	\$ 10.65
78	Roller, Pneumatic, Self Propelled		\$ 7.45
79	Roller, Steel Wheel, Tamping		\$ 7.25
80	Roofers	47-2181	\$ 11.83
81	Roofing Foreman		\$ 9.89
82	Sandblaster		\$ 7.80
83	Septic Tank Servicers and Sewer Pipe Cleaners	47-4071	\$ 12.79
84	Sheetmetal Worker, Duct	47-2211	\$ 17.88
85	Sheetmetal Worker, Roofing		\$ 9.54
86	Sprinkler Fitter		\$ 17.68
87	Steelworker, Prefabricator		\$ 10.60
88	Steelworker, Reinforcing		\$ 7.25
89	Steelworker, Structural	47-2221	\$ 10.20
90	Stone Mason	47-2022	\$ 13.36
91	Tapers	47-2082	\$ 12.99
92	Terrazzo Workers and Finishers	47-2053	\$ 11.61
93	Tile and Marble Setter	47-2044	\$ 13.77
94	Trenching Machine, Heavy		\$ 9.05
95	Trenching Machine, Light		\$ 8.30
96	Truck Driver		\$ 7.72
97	Wagon Drill, boring Machine or Post Hole Driller		\$ 7.36
98	Wallcovering Installer		\$ 10.25
99	Waterproofer		\$ 11.90
100	Welder, Structural		\$ 11.98
101	Welder, Non-structural		\$ 9.62



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit J

Request for Proposal (RFP) No. 2011-P09
including Addendum Nos. ###



AGREEMENT
BETWEEN HAYS COUNTY AND CONTRACTOR
FOR
LAW ENFORCEMENT CENTER IMMEDIATE NEEDS

Exhibit K

RFP No. 2011-P09 Proposal by Contractor
(Herein referred to "Proposal")

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM:

Discussion and possible action to consider granting a variance from Hays County Development Regulations, Chapter 715, Subchapter 4.01, to allow permitting of an On-Site Sewage Facility Development Permit to Johnny Campbell, owner of a 4.99 acre portion of lot 11 in Silver Spur Ranchettes.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Roxie Botkin

SPONSORED BY: Precinct 4 Commissioner Ray Whisenant

SUMMARY:

Mr. Campbell is the owner of a 4.99 acre portion of a lot in the Silver Spur Ranchettes Subdivision in Precinct 4. He applied for a permit to construct an On-Site Sewage Facility to replace his existing failing system. He has been informed that his parcel was part of an illegal division of land and is required to be platted under both the Local Government Code and the Hays County Development Regulations. In addition to the platting requirement, Chapter 715.4.01 of the Hays County Development Regulations prohibits the Department from issuing any development permit on a tract of land that is not in compliance with all current rules.

The property owner has been made aware of the plat requirement, and the noncompliant portions of the lot will have to be re-platted to meet Hays County rules.

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 Professional Services Agreement with R.G. Miller Engineers, Inc. for study and recommendation for repairs/improvements to River Oaks Dam, aka Bell Springs Dam. This action will authorize the County Judge to sign/execute the PSA.

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: \$50,000 as budgeted

LINE ITEM NUMBER OF FUNDS REQUIRED: 5448-008

REQUESTED BY: Jerry Borcharding

SPONSORED BY: Commissioner Whisenant

SUMMARY: TCEQ has inspected this dam and has determined that it is in poor condition and recommends that a Licensed Texas Professional Engineer study the structure to determine adequacy. Included as backup is the TCEQ report and the PSA.

Agenda Item Routing Form

DESCRIPTION OF Item: Discussion and possible action to approve a Professional Services Agreement with R.G. Miller Engineers, Inc. for study and recommendation for repairs/improvements to River Oaks Dam, aka Bell Springs Dam. This action will authorize the County Judge to sign/execute the PSA.

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT: \$50,000 as budgeted

LINE ITEM NUMBER: 020-710-00. 5448_008

COUNTY PURCHASING GUIDELINES FOLLOWED: Yes

PAYMENT TERMS ACCEPTABLE: Yes

COMMENTS:

Bill Herzog

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____



TCEQ DAM SAFETY
Field Operations
Dam Evaluation Report

River Oaks Ranch Dam

TX07060

GENERAL INFORMATION

INVENTORY No.: TX07060 WATER RIGHT AUTHORIZATION: 05360-1
OWNER: River Oaks Ranch Homeowners Association
STREAM: Fitzhugh Creek
BASIN: Colorado COUNTY: Hays
GENERAL LOCATION: 20 miles North of Wimberley
DAM HEIGHT: 26 ft DOWNSTREAM HAZARD RATING: Significant
NORMAL CAPACITY: 119 ac.ft MAXIMUM CAPACITY: 130 ac.ft
NORMAL WATER LEVEL: 1251.7 ft msl
CURRENT WATER LEVEL: 1243.5 ft msl
PREVIOUS INSPECTION DATE: None
CURRENT INSPECTION DATE: July 17, 2009
INSPECTION BY TCEQ PERSONNEL: Tom Weirich, P.E., P.G., Jose J. Ayala, and Michael Reyes, E.I.T.
PERSONNEL CONTACTED: None

SUMMARY

River Oaks Ranch Dam, a small, significant hazard dam in Hays County, was inspected by Texas Commission on Environmental Quality (TCEQ) staff as part of our regular inspection schedule. It was found in overall poor condition due to the heavy and dense vegetation on the downstream slope, which prevented its inspection. However, the upstream slope was inspected and had some evident benching occurring in three levels on the embankment. The crest had notable areas of depressions, cracks, and erosion, which were specifically occurring along the upstream and downstream edges of the crest. The service and emergency spillways were both found to be in fair condition, with some deficiencies. Repairs to these areas are recommended.

BACKGROUND

River Oaks Ranch Dam has never been inspected by TCEQ or its predecessor agencies. No other information is available in TCEQ records containing information regarding design and

Texas Commission on Environmental Quality • PO Box 13087 • Austin, Texas • 78711-3087

The TCEQ is an equal opportunity/affirmative action employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation, or veteran status. In compliance with the Americans with Disabilities Act, this document may be requested in alternate formats by contacting the TCEQ at 512/239-0028, fax 239-4488, or 1-800-RELAY-TX (TDD), or by writing PO Box 13087, Austin, Texas, 78711-3087. Authorization for use or reproduction of any original material contained in this publication, i.e., not obtained by other sources, is freely granted. The Commission would appreciate acknowledgement.

construction of the dam.

CURRENT EVALUATION

Figure 1 is an aerial photo of the dam with elevation contours. Figure 2 is a sketch of the dam and surrounding area, indicating photo locations.

Crest of Embankment

- The crest/roadway was found in an overall fair condition.
- The crest/roadway had an approximate length of 660 feet, and a width of approximately 24 feet (Photos 1, 2 and 3).
- Longitudinal cracks and erosion were observed occurring along both the upstream and downstream edges of the crest. Cracks were probed 3-6 inches in depth (Photo 4a).
- Rutting was noted at the mid-section of the crest/roadway of the dam (Photos 4b & 4c).
- A misaligned section of the guardrail was observed along the edge of the crest, and leaning towards the downstream side (Photo 5).

Upstream Slope of Embankment

- The upstream embankment slope was in an overall fair condition with a 4(H) horizontal: 2(V) vertical slope (Photo 6).
- Minor benching was observed along most of the lower portion of the upstream embankment slope. No rip-rap was found along the upstream slope embankment (Photo 7).
- Significant benching was also observed in two different locations on the upstream slope above from the waterline (Photo 8). Benching occurred 2' - 3' in depth and 3' - 4' from the crest/roadway edge.
- Significant erosion gullies, with depths ranging from 12-18 inches deep, were noted at the right end area of the dam (Photo 9).

Downstream Slope of Embankment

- The downstream embankment was in poor condition.
- Due to vegetation, the downstream embankment was inaccessible and a thorough inspection of it was not possible (Photos 12 and 13).
- Areas beyond the downstream toe were accessible with reduced visibility (Photos 14 and 15).

Service Spillway & Discharge Channel

- The service spillway is located at the right end of the dam and consists of five (5) corrugated metal pipes, (CMP), 48 inches in diameter. Overall the spillway was found to be in fair condition. Back cutting erosion from road run-off was also affecting the integrity of the far right wing wall, where erosion gullies were present (Photo 16).
- The 48 inch CMP showed some slight arched pipes, see also Photo 16.
- Vertical cracks in the concrete wing walls of the service spillway were noted (Photo 17a). Also noted was the growth of vegetation from cracks on the spillway's concrete apron (Photo 17b).
- Undercutting was occurring beneath the upstream edge of the spillway apron along the

spillway approach. It was noted that the upstream spillway apron exhibited hollow sounds when its surface was tapped with survey rod.

- The service spillway outlet was almost completely covered in vegetation. In addition, vegetation was noted growing in numerous cracks in the spillway's concrete apron (Photo 18).
- Cutback erosion and established vegetation was noted at the discharge end of the concrete spillway apron. Moderate brush was observed growing from this area (Photo 19).
- The downstream channel had an approximate depth of 6 feet and a width of 30 feet. Also noted were training berm's that channeled water flow away from the toe and into the discharge channel (Photo 20). It was also noted that small trees were observed in the center of the discharge channel and on the side slopes of the channel (Photo 20 and 21).

Emergency Spillway & Discharge Channel

- The emergency spillway was in fair condition (Photo 22a).
- The emergency spillway channel was not well defined with an approximate depth of 3 feet and a width of 9 feet (Photos 22a and 22b).

Downstream Hazards

- A desktop ArcGIS analysis following the inspection indicated one residence at risk which was located approximately 300 yards downstream of the dam, with floor lines approximately 20 feet above the natural channel, (2) man made reservoirs of what may be water treatment reservoirs, and the county road (crest/roadway) crossing the emergency spillway (Figure 1 and Photo 11).

HYDROLOGIC / HYDRAULIC ANALYSES

There is no documentation in TCEQ records indicating that hydrologic and hydraulic analyses have been performed for this structure. In accordance with 30 Texas Administrative Code (TAC) §299.15, a dam of this size (small) and hazard classification (significant) should be able to safely pass 50% of the Probable Maximum Flood (PMF).

OPERATION AND MAINTENANCE (O&M) PLAN

We have no record of an Operation and Maintenance (O&M) for this dam.

EMERGENCY ACTION PLAN (EAP)

We have no record of an Emergency Action Plan (EAP) for this dam.

POTENTIAL FAILURE MODES

- The upstream slope showed wave benching occurring, where embankment material has been eroded away. If left unchecked, this could lead to instability of the crest/roadway and a loss of the reservoir.
- The downstream slope had heavy vegetation and tree growth allowing little or no visibility to further inspect the downstream slope. Probable consequences to these deficiencies may include tree root systems creating seepage paths and piping conditions within the embankment where internal erosion may be occurring. Additionally, the large trees may blow over during a storm and damage the dam or cause a breach. Heavy

vegetation can also harbor burrowing rodents, which can lead to a piping failure. If tunnels run through most of the dam, it can lead to a collapse of the embankment material and loss of the reservoir.

- The service spillway outlet showed signs of undercutting erosion, and if the soil supporting the concrete apron continues to be removed, eventually the spillway apron will collapse and can result in unprotected flow under the spillway floor and degradation of its stability. This could also lead to a loss of the reservoir and should be investigated.

RECOMMENDATIONS

1. A hydrologic and hydraulic analysis should be performed by a Licensed Texas Professional Engineer LTPE for this structure to show safe passage of the required projected flood (50% of the Probable Maximum Flood).
2. Debris, brush, and trees (less than 4" diameter) should be removed from the upstream and downstream slopes, and the service spillway. Trees larger than 4" diameter may remain until their natural death, at which time the tree and roots should be removed and resulting hole(s) backfilled with properly compacted clay. Removal of larger trees and backfill repairs should be supervised by a LTPE with dam experience. All brush and vegetation should also be removed from the service and emergency spillways and discharge channels. Once the downstream slope has been cleared of unwanted vegetation, the slope should be inspected by your LTPE to determine if problems are present that require repairs such as slides, burrows, seepage, etc.
3. Depressions on the crest and roadway guardrails should be monitored to ensure the affected areas of the crest are stable and not showing signs of settling and movement. If continued settling and movement is indicated, it should be remediated by an LTPE experienced in dam design and repair. Any plans for proposed repairs should be sent to the TCEQ Dam Safety Program for review and approval before any work is initiated.
4. Cracks in the service spillway should be cleared of vegetation and sealed with an elastic sealant and closely monitored.
5. Erosions gullies should be repaired by compacted fill and protected from future erosion by installing suitable rock riprap.
6. Undercutting at spillway inlet and outlet should be properly backfilled and provide properly sized riprap in basin areas.
7. An operation and maintenance plan is required for all dams (30 Texas Administrative Code, §299.43). The plan should include clearing unwanted vegetation from the upstream slope, downstream slope and clearing of unwanted vegetation and debris from the service and emergency spillways and discharge channels. A short grass cover provides an ideal surface to protect against erosion, prevents harborage for burrowing animals, and also allows for easier detection of incipient problems. Irrigation may be necessary to maintain a short grass cover. Mowing should be performed twice yearly.
8. TCEQ requires that an Emergency Action Plan (EAP) be developed for this significant hazard dam. Such a plan would be used to warn affected downstream residents in the event of an unplanned release of water from the reservoir. Guidance on items to be included in an EAP can be found in our *Guidelines for Developing Emergency Action Plans for Dams in Texas (GI-394)*.

http://www.tceq.state.tx.us/assets/public/comm_exec/pubs/gi/gi357/chapter8.pdf

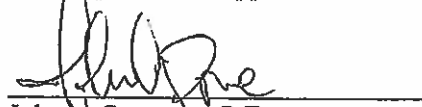
Such a plan should be provided to the TCEQ Dam Safety office for our review.

CONCLUSIONS

The owner should address the recommendations made in this report as soon as possible and develop a regular maintenance and repair program. Designs for repairs of the dam structure that are not strictly of a maintenance nature should be prepared by a LTPE and sent to the TCEQ Dam Safety Program for review and approval before any work is initiated. It should be noted that it is the owner's responsibility to maintain the dam in a safe condition in order to prevent loss of life and limit the potential for property loss. In doing so, the owner will reduce liability exposure and, with regular maintenance, will minimize costs. Due to the overall "poor" condition, the dam will be re-inspected within two years.



Tom Weirich, P.E., P.G.
Dam Safety Program
Field Operations Support Division



Johnny Cosgrove, P.E.
Dam Safety Program
Field Operations Support Division



Jose J. Ayala
Dam Safety Program
Field Operations Support Division



Michael Reyes, E.I.T.
Dam Safety Program
Field Operations Support Division

PROFESSIONAL SERVICES AGREEMENT

HAYS COUNTY, TEXAS

HAYS COUNTY, a political subdivision of the State of Texas (hereinafter the "County") with administrative offices at 111 E. San Antonio, Suite 300, San Marcos, Texas 78666, and R. G. Miller Engineers, Inc. (hereinafter "Contractor"), whose primary place of business is located at 12121 Wickchester Lane, Suite 200, Houston, Texas 77079, hereby enter into this Professional Services Agreement (hereinafter "Agreement") effective this 15th day of April, 2011 (hereinafter "Effective Date"). The County and Contractor (collectively "the parties to this Agreement" or "the parties") agree as follows:

1. OVERVIEW

Provision of the services described in this contract will assist Hays County in responding to comments generated by the Texas Commission on Environmental Quality (TCEQ) after an inspection of the River Oaks Ranch dam on July 17, 2009. Services will include a hydrologic and hydraulic analysis of the existing dam, preparation of a plan for addressing TCEQ comments regarding the physical condition of the dam, and coordination with the County in implementing the plan, including required construction activities and other corrective action.

2. SERVICES

Contractor agrees to perform services for the County in accordance with the County's instructions and, in particular, the instructions of Jerry Borcharding, P.E., County Engineer and/or legal counsel for the Hays County Commissioners Court; and in conformance with the descriptions, definitions, terms, and conditions of this Agreement. The Scope of Services shall be limited to those services and terms attached hereto as Exhibit "A", and subsections of Exhibit "A", if as and when they are attached hereto and signed by the parties (collectively "the Work"). If the parties to this Agreement amend the Work required under this Agreement (by adding or removing specific services and/or terms enumerated in Exhibits "A" and/or "C"), the Compensation cited in Section 5 of this Agreement may also be amended to conform with the change in Scope of Services, as agreed by the parties.

3. ADDITIONAL TERMS

Additional Terms and Obligations of the parties to this Agreement, if any, are stated in Exhibit "C", attached hereto.

4. DURATION

The parties agree that the Work shall be completed on or about the 15th day of August, 2011 (hereinafter the "Completion Date"). In the event that Contractor is unable to complete the Work by the Completion Date, Contractor shall request an extension of the Completion Date in writing no later than fifteen (15) business days prior to the Completion Date. The County may grant extensions of the Completion Date for all reasonable extension requests and shall do so in writing.

5. COMPENSATION

Contractor will be compensated for the Work on an hourly-charge basis, the terms of which are cited in Contractor's rate schedule, which is attached hereto as Exhibit "B". Despite any reference to Contractor's rate schedule, which shall be used as a reference only in the event of a change in the Scope of Services (i.e. Amendment), the parties agree that the County shall pay Contractor a total fee not to exceed \$50,000.00 for the Work under this Agreement.

6. PAYMENT

Contractor shall invoice the County for the Work performed under this Agreement on a monthly basis, beginning at the end of the first full month following the Effective Date. The County agrees to promptly pay all invoices by sending payment to Contractor's address stated in Section 8, below. The County shall owe Contractor an additional one percent (1%) per month on any unpaid balance, beginning at the end of the first full month following the County's receipt of said invoice(s) and accruing monthly thereafter.

7. NOTICE OF COMPLETION

Upon Completion of the Work, Contractor shall send a Notice of Completion to the County in writing, and the County shall have the option to inspect the Work (or the product thereof) before it is considered complete under this Agreement. If the County is satisfied that the Work under this Agreement is complete, the County shall send Contractor an Acceptance of Completion in writing. If, after inspection, the County does not agree that the Work is completed or believes that the Work is of deficient quality, the County shall send Contractor a Deficiency Letter, stating the specific aspects of the Work that are incomplete and/or deficient. If, after ten (10) business days from the County's receipt of Contractor's Notice of Completion, the County does not send Contractor either an Acceptance of Completion or a Deficiency Letter, the Work under this Agreement shall be considered complete.

8. NOTICE (GENERAL)

All notices issued by Contractor under or regarding this Agreement shall be provided in writing to the County at: Hays County, Attn: County Judge, 111 E. San Antonio, Suite 300, San Marcos, Texas 78666; Facsimile – (512) 393-2282; Email – bert.cobb@co.hays.tx.us.

All notices issued by the County under this Agreement shall be provided in writing to Contractor at: R. G. Miller Engineers, Inc., Attn: Duane Barrett, P.E., CFM, 12121 Wickchester Lane, Suite 200, Houston, Texas 77079; Facsimile – (713) 461-8455; Email – dbarrett@rgmiller.com.

Notices from one party to another under this Section may be made by U.S. Mail, parcel post, Facsimile, or Electronic Mail, sent to the designated contact at any of the designated addresses cited above.

9. INSURANCE

Contractor agrees that, during the performance of all terms and conditions of this Agreement, from the Effective Date until the County's acceptance of Contractor's Notice of Completion or until this Agreement is otherwise considered completed as a matter of law, Contractor shall maintain Commercial General Liability insurance that meets or exceeds the industry standard for professional services provider in Contractor's field of employment and for the type of services that are being performed by Contractor under this Agreement.

10. MUTUAL INDEMNITY

Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Contractor's negligent performance of the Work under this Agreement and that of its subcontractors or anyone for whom the Consultant is responsible or legally liable.

The County agrees, to the fullest extent permitted by law, to indemnify and hold harmless Contractor, its officers, directors, employees and subcontractors against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the County's negligent acts in connection with this Agreement.

Neither the County nor Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

11. COMPLIANCE WITH LAWS

Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this Agreement and/or applicable to the parties performing the terms and conditions of this Agreement.

12. SURVIVAL

Notwithstanding any termination of this Agreement, the following Sections, and the terms and conditions contained therein, shall remain in effect: 2, 3, 4, 5, 10, 12, 14, 15, 16, 17, 18, 20, and 21.

13. FORCE MAJEURE

Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this Agreement, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of the delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy.

14. SEVERABILITY

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

15. MULTIPLE COUNTERPARTS

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

16. SECTION HEADINGS, EXHIBITS

The Section and Subsection headings of this Agreement, as well as Section 1, Entitled "Overview", shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the Agreement are included merely for organization and ease of review. The Exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

17. WAIVER BY PARTY

Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this Agreement of any covenant, term, condition, agreement, right, or duty that arises under this Agreement shall be considered a one-time waiver and shall not be construed to be a waiver of an succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this Agreement.

18. GOVERNING LAW AND VENUE

THIS AGREEMENT SHALL BE COVERED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this Agreement will be brought in Hays County, Texas.

19. ASSIGNMENT

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

20. BINDING EFFECT

Subject to an provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.

21. ENTIRE AGREEMENT; AMENDMENT

This Agreement (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendment to this Agreement must be made in writing and signed by

the parties to this Agreement prior to the performance of any terms or conditions contained in said amendments.


22. WORK PRODUCT

Any and all product, whether in the form of calculations, letters, findings, opinions, or the like, shall be the property of Hays County during and after performance of the Work. Contractor shall have a right to retain a copy of all Work product for record-keeping purposes.

Signatures by the parties to this Professional Services Agreement follow on the next page.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Professional Services Agreement, and hereby declare that THEY HAVE READ AND DO UNDERSTAND AND AGREE TO EACH AND EVERY TERM, CONDITION, AND COVENANT CONTAINED IN THIS AGREEMENT AND IN ANY DOCUMENT INCORPORATED BY REFERENCE.

Hays County Texas


Contractor

By: Judge Bert Cobb, M.D.
Hays County Judge

By: Jack P. Miller, P.E.
President – R. G. Miller Engineers, Inc.

EXHIBIT A

Scope of Work

1. Visit the site of the River Oaks Ranch Dam to inspect the embankment, discharge structures, emergency overflow, etc. Meet with Hays County officials to discuss the existing condition of the dam and plans for clearing the embankment of brush, small trees, and debris. In addition, develop a strategy for coordinating with the TCEQ.
2. Consult with Dodson & Associates, Inc. on the Probable Maximum Flood analysis and provide information and assistance as needed for that study. Have Dodson complete the study as soon as practicable and provide support to Dodson as needed.
3. Once the dam embankment has been cleared, complete a thorough inspection of the embankment, roadway, and spillway structures along with representatives of Hays County, Dodson & Associates, Inc., and TCEQ.
4. Carefully document the results of the on-site inspection and provide an update to TCEQ. Use photographs, measurements, video, etc. for documentation purposes. Establish metrics for tracking and documenting changes in conditions along the embankment and roadway.
5. Develop a plan for addressing all TCEQ comments and completing necessary repairs to the dam embankment, roadway, and/or spillway structures. Generate exhibits as needed to illustrate the location, type, and extent of repairs needed.
6. Prepare quantity take-offs and an estimate of the costs associated with required repairs to the dam, roadway, and spillway structures.
7. Work with Hays County officials, Dodson & Associates, Inc., and the TCEQ to finalize a draft long-term operation and maintenance plan and a draft emergency action plan (EAP) developed for the dam by Hays County officials.
8. Provide field inspection services during the construction/repair period, visiting the construction site as needed.
9. Work with the contractor and Hays County to close out the project, including final field inspection and preparation of a set of as-built exhibit mark-ups.
10. Coordinate with the TCEQ and assist Hays County in closing out the project with regard to TCEQ comments and requirements.

EXHIBIT B

Fee Schedules

R.G. Miller Engineers, Inc.

Senior Project Manager	\$ 165.00/Hr.
Construction Administrator	\$ 135.00/Hr.
Project Coordinator	\$ 115.00/Hr.
Associate Engineer	\$ 85.00/Hr.
Administrative Assistant	\$ 65.00/Hr.

Dodson & Associates, Inc.

Principal	\$ 220.00/Hr.
Project Manager	\$ 160.00/Hr.
Hydrologist	\$ 105.00/Hr.
Senior GIS Analyst	\$ 125.00/Hr.
Clerical Staff	\$ 75.00/Hr.

--EXHIBIT "C" --

Additional Terms to the Services provided by Contractor, if any, are as follows:

A. Dodson & Associates, Inc. will work as a sub-contractor to R.G. Miller Engineers, Inc. Dodson will submit invoices to R.G. Miller Engineers, and a single combined invoice will be submitted to Hays County by R.G. Miller Engineers, Inc. each month.

B. _____

C. _____

D. _____

E. _____

F. _____

G. _____

H. _____

I. _____

J. _____

K. _____

r.g. miller engineers, inc.

PROPOSAL FOR ENGINEERING SERVICES
Program Management & Construction Phase Services
for the River Oaks Ranch Dam
Hays County, Texas

DATE: April 4, 2011
TO: Mr. Jerry Borcharding, P.E. – County Engineer for Hays County, Texas
FROM: Duane Barrett, P.E., CFM

Dear Mr. Borcharding:

This proposal for engineering services is associated with the provision of program management and construction phase services related to rehabilitation work on the River Oaks Ranch Dam in Hays County, Texas. The services described in this proposal are intended to assist Hays County in responding to comments generated by the Texas Commission on Environmental Quality (TCEQ) after an inspection of the dam on July 17, 2009. A copy of the TCEQ inspection report is attached, along with a map that illustrates the location of the dam and associated lake. The River Oaks Ranch Dam is located on a small tributary to Fitzhugh Creek approximately 20 miles north of Wimberley. An asphalt road lies atop the crest of the dam, which is approximately 700 feet in length. The service spillway consists of five (5) corrugated steel pipe culverts. An emergency spillway is located at the north end of the dam.

I have reviewed the TCEQ report on the River Oaks Ranch Dam and feel confident that R.G. Miller Engineers, Inc. can provide valuable service to Hays County in connection with the current situation. My understanding of that situation is that you initially replied to TCEQ in March 2010 and need to "get rolling" pretty quickly now, as it has been about a year since that response was filed. My review of the TCEQ report and recommendations indicates that the problems at the dam are not overly severe and can be remedied at a reasonable cost. The TCEQ comments are briefly summarized below.

- 1) Remove debris, brush, and small trees (< 4") from dam & spillway.
- 2) Monitor depressions and cracks along existing roadway atop dam.
- 3) Clear and seal cracks in service spillway concrete apron.
- 4) Use rip-rap to control erosion in gullies at ends of dam.
- 5) Backfill & place rip at each end of service spillway.
- 6) Repair dam slopes where affected by erosion and benching.
- 7) Perform hydrologic & hydraulic analysis for 50% of PMF.
- 8) Resolve ownership questions involving Hays County and River Oaks Ranch HOA.
- 9) Develop an Emergency Management Plan (EAP) for the dam.
- 10) Prepare an Operation and Maintenance (O&M) Plan for the dam.

I noticed in the TCEQ report that they did not actually recommend that the existing road be repaired at this time. They only recommended monitoring of the roadway and its condition. It is possible that roadway improvements will be required, but we need first to be sure that such repairs are actually warranted. I suggest that we complete a very careful inspection of the road-

way and dam, compare current conditions with those observed by TCEQ in July 2009, and make decisions accordingly.

I have taken the liberty of developing a draft "action plan" for the dam, a copy of which is attached for your review. This plan lists the eight (8) recommendations made in the TCEQ report, along with a couple of others that I added to make a total of ten (10) action items. For each item, I tried to identify actions that should be taken immediately (within the next 2 to 3 weeks), in the near term (in the next 2 to 3 months), and in the long term (regular maintenance, inspection, etc. in coming years). This proposal is based on the assumption that RGME will serve as "program manager" for the project. In that role, we will coordinate between Hays County and the TCEQ, complete on-site inspections, plan the necessary work at the dam, prepare drawings and cost estimates, work with contractors, etc. We are not proposing to prepare construction plans for this project because most of the work items required are not of sufficient scope and size to warrant that level of effort; I think a set of exhibits will work just fine, unless we have to repair the roadway. The scope of work and budget represented in this proposal reflect the approach just described.

I strongly recommend that we get Andy Yung, P.E., CFM of Dodson & Associates, Inc. in Houston to complete the Probable Maximum Flood analysis requested by TCEQ. Andy has completed several of those analyses, he is familiar with TCEQ rules and personnel, and I have worked with him for many years. In fact, we are working together on a very similar dam project in Walker County. Andy is very good at these types of studies and is familiar with TCEQ staff. Andy's proposal for the PMF analysis is attached.

Other services required in connection with the dam project (field survey, geotechnical services, etc.) will be provided by local consultants. In a program management role, RGME will work with Hays County personnel to direct as much work as possible to local firms and will solicit your input and assistance in determining what local firms will be added to the project team.

SCOPE OF WORK

The following scope of work involves a number of tasks associated with the provision of engineering management and construction phase services, which will be provided as needed and requested by Hays County.

1. Visit the site of the River Oaks Ranch Dam to inspect the embankment, discharge structures, emergency overflow, etc. Meet with Hays County officials to discuss the existing condition of the dam and plans for clearing the embankment of brush, small trees, and debris. In addition, develop a strategy for coordinating with the TCEQ.
2. Consult with Dodson & Associates, Inc. on the Probable Maximum Flood analysis and provide information and assistance as needed for that study. Have Dodson begin the study as soon as practicable and provide support to Dodson as needed.
3. Once the dam embankment has been cleared, complete a thorough inspection of the embankment, roadway, and spillway structures along with representatives of Hays County, Dodson & Associates, Inc., and TCEQ.
4. Carefully document the results of the on-site inspection and provide an update to TCEQ. Use photographs, measurements, video, etc. for documentation purposes. Establish metrics for tracking and documenting changes in conditions along the embankment and roadway.

5. Develop a plan for addressing all TCEQ comments and completing necessary repairs to the dam embankment, roadway, and/or spillway structures. Generate exhibits as needed to illustrate the location, type, and extent of repairs needed.
6. Prepare quantity take-offs and an estimate of the costs associated with required repairs to the dam, roadway, and spillway structures.
7. Work with Hays County officials, Dodson & Associates, Inc., and the TCEQ to finalize a draft long-term operation and maintenance plan and a draft emergency management plan (EAP) developed for the dam by Hays County officials.
8. Provide field inspection services during the construction/repair period, visiting the construction site as needed.
9. Work with the contractor and Hays County to close out the project, including final field inspection and preparation of a set of as-built exhibit mark-ups.
10. Coordinate with the TCEQ and assist Hays County in closing out the project with regard to TCEQ comments and requirements.

BUDGET REQUIREMENTS

The budget required to complete the tasks described above is estimated to be \$26,540. The following table provides a breakdown of man-hours and budget requirements for individual tasks associated with the project. Adding \$860 for miscellaneous expenses brings the total budget requirement to \$27,400.

BUDGET ESTIMATE FOR WORK TO BE COMPLETED BY RGME STORM WATER GROUP						
Task No.	Task Description	Sr. Project Manager	Construction Administrator	Associate Engineer	Project Coordinator	Admin. Staff
1	Visit the Dam Site	8				
2	Work with Dodson on PMF Study	4		8		
3	Complete Detailed On-Site Inspection	8				
4	Document Inspection Results	4		4	8	4
5	Develop Rehab/Repair Plan	8	4	16	24	
6	Prepare Cost Estimate & Bid Package	4	4	12	8	12
7	Review O&M Plan and EAP	4				
8	Provide Services During Construction	24	4			
9	Close Out Construction	4	4	8		4
10	Close Out Project with TCEQ	8		8	8	4
Sub-Totals		76	16	56	48	24
Hourly Rate		\$165	\$135	\$85	\$115	\$65
Budget for Individual Personnel		\$12,540	\$2,160	\$4,760	\$5,520	\$1,560
TOTAL BUDGET REQUIREMENT						\$26,540

All services herein stated will be invoiced in accordance with a Professional Services Agreement approved by Hays County. If additional services are required, R. G. Miller Engineers, Inc. will prepare a work authorization defining the scope of services with an estimated cost based on the attached rate schedule and will not proceed until receiving a signed authorization. We will not exceed the fees outlined in this proposal without prior written authorization.

CLOSING

Please don't hesitate to contact me if you have any questions regarding this proposal. Thank you very much for the opportunity to work with you. We look forward to a successful project and a long-term working relationship with Hays County.

Sincerely,

R.G. Miller Engineers, Inc.

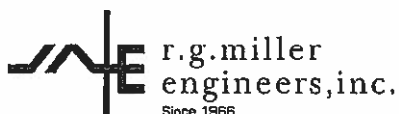
Texas Firm Registration No. F-487

A handwritten signature in black ink, appearing to read "Duane Barrett", with a stylized flourish at the end.

Duane Barrett, P.E.

Senior Project Manager

Head of Storm Water Department



Texas Firm Registration No. F-487
April 4, 2011

STANDARD RATE SCHEDULE

Principal	\$ 190.00/Hr.
Sr. Project Manager	\$ 165.00/Hr.
Project Manager	\$ 130.00/Hr.
Project Engineer	\$ 120.00/Hr.
Sr. Designer	\$ 115.00/Hr.
Project Coordinator	\$ 115.00/Hr.
Engineering Assistant	\$ 85.00/Hr.
Designer	\$ 95.00/Hr.
CAD Technician	\$ 75.00/Hr.
Administrative Assistant	\$ 65.00/Hr.
Clerical	\$ 55.00/Hr.
Construction Administrator	\$ 135.00/Hr.
Field Inspector	\$ 85.00/Hr.

Field Survey Crews:

2 Person Survey Crew	\$ 95.00/Hr.
3 Person Survey Crew	\$ 120.00/Hr.
4 Person Survey Crew	\$ 145.00/Hr.

Reimbursable Expenses	At Cost
Project Mileage	\$0.64 per mile

There is a 4-hour minimum charge for all surveying services required in the field.
Overtime (hours x 1½) is charged for all surveying after 8 hours per day and on
Saturday and Sunday, if such overtime is requested by the Project Owner.

DODSON

& ASSOCIATES, INC.

Hydrologists and Civil Engineers

*Our Mission:
The Best in Water Resources Engineering*



April 1, 2011

DAI Job No. 1958

Mr. Duane Barrett, P.E., CFM
R.G. Miller Engineers, Inc.
12121 Wickchester Lane, Suite 200
Houston, Texas 77079

Re: River Oaks Ranch Dam Safety Analysis

Dear Mr. Barrett:

We are pleased to present this cost proposal for engineering services related to a dam safety analysis for River Oaks Ranch Dam in Hays County, Texas. The following sections of this letter provide background information on the project, a scope of work for the proposed analysis, and a detailed budget breakdown.

BACKGROUND INFORMATION

The River Oaks Ranch Dam is located in Hays County along County Road 169 in the northern part of the county. County Road 169 crosses the top of the dam between Lake Shore Drive and River Run Road (approximately 1.7 miles south-southwest of the intersection of County Road 169 and Ranch Road 3238). The lake has a drainage area of approximately 367 acres and, according to a July 2009 Texas Commission on Environmental Quality (TCEQ) inspection report, a maximum capacity of about 130 acre-feet. The reservoir has been classified by the TCEQ as a small significant-hazard dam.

INTRODUCTION

TCEQ noted in the 2009 inspection report the need for a hydrologic and hydraulic analysis of the dam since one is not available. TCEQ has set certain guidelines for the hydrologic and hydraulic analysis of dams in Texas. The most recent release of Hydrologic and Hydraulic Guidelines for Dams in Texas published by TCEQ has been considered in this proposal.

As additionally noted in the inspection report, since the TCEQ has identified this dam as a small significant-hazard, it is necessary that the dam be able to pass 50% of the Probable Maximum Flood (50% PMF), also known as the design flood. The effort identified in this proposal will determine the adequacy of the spillways to safely pass the design flood and make recommendations if they cannot.

5629 F.M. 1960 West, Suite 314 Houston, TX 77069-4216
(281) 440-3787 - FAX (281) 440-4742
www.dodson-hydro.com

SCOPE OF WORK

The overall effort defined in this scope-of-work is to collect data for the purposes of performing a hydrologic and hydraulic analysis, and to provide support for review of the Emergency Action Plan (EAP) and Operations & Maintenance Plan (O&M Plan) for the dam. Please note that this scope-of-work assumes that no breach analysis will be required (see additional services for breach analysis effort). We anticipate that this effort will require the following tasks:

Task 1: Data Collection [Budget = \$2,435]

- a. **Field Reconnaissance and Hazard Assessment:** This subtask will include visiting the site to identify issues related to the hydrologic and hydraulic analysis of the dam and spillways. It will also include a visit to the downstream reach to identify potential damage areas below the dam, as accessible.
- b. **Survey Plan:** We will create a survey plan for the collection of necessary survey data related to the dam, spillways, reservoir, and downstream reach, as needed.
- c. **LiDAR Data Collection:** We will obtain the LiDAR¹ data for Hays County for the use in identifying the available flood pool storage behind the dam.

Task 2: Hydrologic Analysis [Budget = \$11,675]

- a. **Construct a Hydrologic Model:** This subtask includes creating a hydrologic model using HEC-HMS. The effort involved in this subtask consists of defining the drainage area to the dam and the end of the downstream damage reach, the appropriate rainfall (for the design storm), runoff parameters, and the design storm duration to reflect current field conditions and to determine the capacity of the spillway features during the "design flood" condition.
- b. **Intermediate Documentation:** We will provide intermediate documentation of results. If it is determined that the spillways are inadequate to safely pass the design flood, we will provide recommendations to retrofit the dam/spillways to meet TCEQ criteria.
- c. **Final Documentation:** We will provide final documentation of the hydrologic analysis in the form of a report suitable for submission to the TCEQ for review. This report will include all tables and exhibits necessary to effectively communicate the methods and results of the analyses.

Task 3: Review and Coordination [Budget = \$8,050]

- a. **EAP Review:** This subtask includes a thorough review of the Emergency Action Plan for the River Oaks Ranch Dam. Comments will be provided to your office.
- b. **O&M Review:** This subtask includes a thorough review of the Operations and Maintenance Plan for the River Oaks Ranch Dam. Comments will be provided to your office.

¹ LiDAR (Light Detection And Ranging) data is derived by aerial survey with a laser mounted on an airplane. As the plane sends out laser signals, it picks up returns as the laser bounces off the ground. The returns amount to approximately one million survey points per square mile and generally have a vertical accuracy for elevation measurement of ± 6 inches.

- c. **TCEQ Coordination and Response:** This subtask includes coordination with the TCEQ dam safety team and response to any comments they may issue related to the review of our report.
- d. **Meetings with Client:** This subtask includes meetings and coordination with you as the client, as well as Hays County. This includes two face-to-face meetings in Hays County.

DELIVERABLES

We will provide the following deliverables:

- Five (5) copies of the H&H Report
- CD of Adobe Acrobat (.pdf) files of exhibits prepared by Dodson and computer models developed for this analysis

OVERALL BUDGET & ANTICIPATED SCHEDULE

As indicated in the attached table, the budget estimated for completion of this project is a **\$22,600**, which will be lump sum based on percent complete. Please note that this total includes the tasks noted above plus **\$440** for travel expenses associated with the two meetings in Hays County. We anticipate combining one of those meetings with the field reconnaissance to keep the budget to a minimum. Additionally, we expect that the overall effort can be completed in about six weeks of receipt of notice to proceed.

ADDITIONAL SERVICES

Should it be determined that a breach analysis is necessary for whatever reason (e.g., the existing spillway configuration is inadequate to convey the design flood, or it is required for the EAP), we can provide a breach analysis that meets TCEQ criteria. This effort will include utilizing the "simplified" breach analysis for small dams (as identified the TCEQ H&H Guidelines) to estimate downstream inundation. [Please note that this additional services effort is not a detailed breach analysis, as that appears to be unwarranted at this time.] The additional services task will also include inundation mapping of the downstream reach using LIDAR data, which may be used as an attachment to the EAP, as necessary. The budget for this additional service is **\$5,660**.

If the scope of work and budget described in this proposal are acceptable, please have the person responsible for payment of invoices signify their acceptance in the space provided on the following page and forward a copy of the signed proposal to us. We will consider this as authorization to begin work on the project.

Sincerely,



Andy Yung, PE, CFM
Vice President and Senior Hydrologist
Dodson & Associates, Inc.

Accepted by: _____ Date: _____

Invoice Address: _____

Telephone/Fax No.: _____

Attachments: Attachment 1-Standard Terms & Conditions
 Attachment 2-Budget Breakdown

This proposal has been prepared for the exclusive use of the person/company to whom it is addressed. It should not be otherwise duplicated or distributed without the express written consent of Dodson & Associates, Inc. All rights reserved.

ATTACHMENT 1
DODSON & ASSOCIATES, INC.
GENERAL TERMS AND CONDITIONS FOR CONSULTING SERVICES

These General Terms and Conditions are a part of each agreement between Dodson & Associates, Inc. and its client for the performance of services. Dodson & Associates, Inc. is identified as "DAI". The party for whom the services are performed is identified as "CLIENT", and the written agreement between the parties, including these General Terms and Conditions, is called "this AGREEMENT".

1. AUTHORIZATION FOR WORK TO PROCEED

Signing of this AGREEMENT for services shall be authorization by the CLIENT for DAI to proceed with the work, unless stated otherwise in the scope of work included in this AGREEMENT. The offer of this AGREEMENT is valid for 90 days after the date of the attached scope of work. The CLIENT will contact DAI prior to signing this AGREEMENT if more than 90 days have passed and will allow revisions to the fee as necessary to reflect the delay in authorization.

2. STANDARD OF PRACTICE

Services performed by DAI under this agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this agreement, or in any report, opinion, document or otherwise.

3. DOCUMENTS

Reports and documents prepared and deliverable to CLIENT pursuant to this AGREEMENT will become CLIENT's property upon full payment to DAI. DAI may retain file copies of such deliverables. All other reports, notes, calculations, data, drawings, estimates, specifications, and other documents and computer materials prepared by DAI are instruments of DAI's services and will remain DAI's property. DAI will maintain these records for a period of three (3) years after completion of the work. After the expiration of this three-year period, DAI reserves the right to dispose of such records in accordance with DAI's document control procedures.

All deliverables provided to CLIENT are for CLIENT's use only for the purpose disclosed to DAI, and CLIENT will not transfer them to others or use them or permit them to be used for any extension of the services or any other project or purpose, without DAI's express written consent.

4. SALES TAXES

All sales taxes required to be paid by DAI will be billed to CLIENT in addition to fees.

5. BILLING AND PAYMENT

CLIENT, recognizing that timely payment is a material part of the consideration of this agreement, shall pay DAI for services performed in accordance with the rates and charges set forth herein. Invoices will be submitted by DAI on a monthly basis and shall be due and payable within thirty (30) calendar days of invoice date. If CLIENT objects to all or any portion of an invoice, CLIENT shall so notify DAI in writing within ten (10) calendar days of receipt of the bill in question, and pay when due that portion of the invoice, not in dispute.

CLIENT shall pay an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by law, whichever is lower) of the invoiced amount per month for any payment received by DAI more than thirty (30) calendar days (or longer at DAI's option) from receipt of the invoice,

Dodson & Associates, Inc.
General Terms and Conditions for Consulting Services

excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment thereafter shall first be applied to accrued interest and then to the principal unpaid amount.

If CLIENT for any reason fails to pay the undisputed portion of DAI invoices within 45 days of presentation, DAI reserves the right to cease work on the project and CLIENT shall waive any claim against DAI, and shall defend and indemnify DAI from and against any claims for injury or loss stemming from DAI's cessation of service. CLIENT shall also pay DAI the cost associated with premature project demobilization. In the event the project is remobilized, CLIENT shall also pay the cost of remobilization, and shall renegotiate appropriate contract terms and conditions, such as those associated with budget, schedule or scope of service.

In the event any bill or portion thereof is disputed by CLIENT, CLIENT shall notify DAI within ten days of receipt of the bill in question, and CLIENT and DAI shall work together to resolve the matter within 60 days of its being called to DAI's attention. If resolution of the matter is not attained within 60 days, either party may terminate this agreement.

6. LIMITATION OF LIABILITY

In order for CLIENT to obtain the benefits of a fee which includes a lesser allowance for risk funding, CLIENT agrees to limit DAI's liability arising from DAI's professional acts, errors or omissions, such that the total aggregate liability of DAI shall not exceed DAI's total fee for the services rendered on this project.

7. CONSEQUENTIAL DAMAGES

CLIENT shall not be liable to DAI and DAI shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by CLIENT or DAI, their employees, agents or subcontractors. Consequential damages include, but are not limited to loss of use and loss of profit.

8. TERMINATION

In the event termination becomes necessary, the party (CLIENT or DAI) effecting termination shall so notify the other party and termination will become effective thirty (30) calendar days after receipt of the termination notice. Irrespective of which party shall effect termination or the cause of termination, CLIENT shall within thirty (30) calendar days (or longer at DAI's option) of termination remunerate DAI for services rendered and costs incurred up to the effective time of termination, in accordance with DAI's prevailing fee schedule and expense reimbursement policy.

9. ADDITIONAL SERVICES

Any services beyond those specified will be provided for separately under an additional Work Authorization or amended Work Authorization.

IF ANY ONE OR MORE OF THE PROVISIONS CONTAINED IN THIS AGREEMENT SHALL BE HELD UNENFORCEABLE, THE ENFORCEABILITY OF THE REMAINING PROVISIONS SHALL NOT BE IMPAIRED.

Dodson & Associates, Inc.
General Terms and Conditions for Consulting Services

STANDARD HOURLY RATE SCHEDULE

The following rates will apply to all hourly (time & materials) tasks included in this AGREEMENT.

<i>Category of Personnel</i>	<i>Hourly Rate</i>
Principal	\$220.00
Senior Project Manager	\$190.00
Project Manager	\$160.00
Senior Hydrologist	\$130.00
Senior GIS Specialist	\$125.00
Senior Geomorphologist	\$125.00
Hydrologist	\$105.00
GIS Specialist	\$100.00
Geomorphologist	\$100.00
Analyst/Technician	\$100.00
Administrative	\$75.00
<i>Reimbursable Expense</i>	<i>Rate</i>
Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	Current Govt. Mileage Rate

Adjustment in Above Rates for Work in Subsequent Years:

New rates shall be posted each September by Dodson & Associates, Inc. and will be in effect for services performed on an hourly (time & materials) basis after that posting date. For the purposes of this AGREEMENT, the above rates will be escalated at five percent (5%) per year each September.

BUDGET: RIVER OAKS RANCH DAM SAFETY ANALYSIS (HAYS COUNTY, TEXAS)

TASKS	Principal	Project Manager	Hydrologist	Senior GIS Analyst	Clerical Staff	Budget
<i>Hourly Rate</i>	\$ 220.00	\$ 160.00	\$ 105.00	\$ 125.00	\$ 75.00	
Data Collection						
Field Reconnaissance and Hazard Assessment	4	4				\$ 1,520
Survey Plan	1	2		2		\$ 790
LIDAR Data Collection				1		\$ 125
Lump Sum LIDAR Data Purchase						\$ 300
Subtotal	5	6	0	3	0	\$ 2,435
Hydrologic Analysis						
Drainage Area Determination	1			4		\$ 720
Rainfall Determination	1		4			\$ 640
Runoff Parameters		1	2	2		\$ 620
Reach for Estimated D/S Wave Height	1		2	1		\$ 555
Storm Duration Determination	1		4			\$ 640
Spillway Capacity Determination	4	2	12			\$ 2,460
Memo with Recommendations/Results	4	1	2	4		\$ 1,750
Document Findings in Report for TCEQ	4	12	8	4	2	\$ 4,290
Subtotal	16	16	34	15	2	\$ 11,675
Review and Coordination						
EAP Review	4					\$ 880
O&M Review		2				\$ 320
TCEQ Coordination and Response	4	2	8	2		\$ 2,290
Meetings with Client/Inspection	12	12				\$ 4,560
Subtotal	20	16	8	2	0	\$ 8,050
Travel Expenses (2 trips to Hays County)						\$ 440
TOTAL						\$ 22,600

Additional Services						
Develop Hydraulic Cross Sections for Inundation Analysis	2	2	2	4		\$ 1,470
Simplified Breach Analysis	4	2	8			\$ 2,040
Create Inundation Mapping	2		2	12		\$ 2,150
Subtotal	8	4	12	16	0	\$ 5,660

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 resolution of the Commissioners Court accepting a petition for the creation of a "Coalition of Central Texas Utilities Development Corporation"; approving the Articles of Incorporation, Bylaws, and Directors of said corporation; and authorizing the County Judge to execute an Interlocal Cooperation Agreement between Hays County, the City of Leander, and the City of Bee Cave related to LCRA's intent to sell its water and wastewater systems.

CHECK ONE: ☐ CONSENT ☒ ACTION ☐ EXECUTIVE SESSION

☐ WORKSHOP ☐ PROCLAMATION ☐ PRESENTATION

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: WHISENANT

SPONSORED BY: WHISENANT

SUMMARY: Per the Court's Open Meeting discussion on April 12, 2011, this item considers the County's participation in a coalition of local governments that are interested in receiving information related to bidding for the local water and wastewater utilities, systems, and facilities recently advertised by the Lower Colorado River Authority (LCRA). This contemplated action must be made pursuant to the request of 3 Hays County citizens. It would establish Commissioner Ray Whisenant as one board member on the corporation that would act under the Interlocal Agreement between the collaborating local governmental entities.

**ARTICLES OF INCORPORATION
OF THE
COALITION OF CENTRAL TEXAS UTILITIES DEVELOPMENT CORPORATION**

We, the undersigned natural persons, each of whom is eighteen (18) years of age, or more, and one being a qualified voter of the City of Leander, Texas ("City"), one being a qualified voter of the City of Bee Cave, Texas, and one being a qualified voter of the County of Hays, Texas, acting as incorporators of a corporation incorporated pursuant to *Subchapt. D, Chapt. 431, Tex. Trans. Code* (the "Act"), in compliance with the procedures and requirements of *Chapt. 394, Tex. Loc. Gov't. Code* ("Chapt. 394"), hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE I

The name of the corporation is COALITION OF CENTRAL TEXAS UTILITIES DEVELOPMENT CORPORATION (the "Corporation").

ARTICLE II

The Corporation is a public non-profit corporation.

ARTICLE III

The period of duration of the Corporation shall be perpetual.

ARTICLE IV

The Corporation is organized for the purpose of aiding, assisting, and acting on behalf of Local Governments, as defined in *Sec. 394.003, Tex. Loc. Gov't. Code* and these Articles, in the performance of their governmental functions to promote the common good and general welfare of the Local Governments and to assist local groups and entities to preserve valuable rights, serve as a legal entity to organize, finance, purchase and transfer, or hold, operate and sell, water and wastewater assets, facilities, utilities and systems; and the development and improvement of public utilities, systems and infrastructure.

The Corporation is also organized to aid, assist and act on behalf of the Corporation, Local Governments, and publicly controlled entities, to acquire, and to aide and assist governmental and local entities to acquire, water and wastewater utilities, systems and facilities from the Lower Colorado River Corporation: and

- (a) to acquire, own, hold, improve, use or otherwise deal with real or personal property, or any interest therein, wherever situated, to accomplish the successful transition of the referenced water and wastewater utilities, systems and facilities to governmental entities or locally controlled public entities;
- (b) to plan, develop and coordinate proposals to finance, bid and negotiate for, and purchase water and wastewater utilities, systems and facilities;

(c) to provide for the operation and maintenance of water and wastewater utilities, systems and facilities as may be required for the public good; and

(d) to transfer, sell and convey to local governments and publicly controlled legal entities the water and wastewater utilities, systems and facilities that are acquired by the Corporation.

The Corporation is formed pursuant to the provisions of the Act to assist and act on behalf of the Local Governments and to engage in activities in the furtherance of the purposes of its creation, and may exercise all of the rights, powers, privileges, authority and functions given to local government corporations incorporated under the Act, together with all the powers, privileges, authority and functions given by state law to non-profit corporations, including, without limitation, the powers and authority given under *Art. 1396, -1.01 - 50.01, VATCS*.

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes; provided the Corporation shall not have any authority to issue bonds, notes or any debt obligation, or by contract undertake an obligation that is not to be funded solely by revenues of the purchased water and wastewater utilities, systems and facilities, or by binding contractual commitments made by local governments and legal entities to purchase increments or portions of the water and wastewater utilities, systems and facilities; provided that no bonds, notes or financial obligations of the Corporation shall ever be or become debt obligations of the Local Governments.

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of *Subdivision (2), Sec. 101.001, Tex. Civ. Prac. & Rem. Code*. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, *Sec. 101.001 et seq., Tex. Civ. Prac. & Rem. Code*.

ARTICLE V

The Local Governments shall be the members of the Corporation. The members are the City of Leander, the City of Bee Cave and the County of Hays, Texas (the "Local Governments"). Other local governments may become members by amendment to these Articles, upon their individually complying with the Act and *Chapt. 394, Tex. Loc. Gov't. Code*.

ARTICLE VI

All powers of the Corporation shall be vested in a Board composed of directors appointed by the Local Governments. The initial board of directors is appointed by majority vote of the governing bodies of the City of Leander, the City of Bee Cave and the County of Hays, Texas. The Board shall initially consist of three (3) directors, and the initial directors of the Corporation ("Director" or "Directors") shall be those persons named in Article VIII. The initial Directors shall serve for the term prescribed in the Bylaws. Subsequent Directors shall have the qualifications required by the Act and additional Directors may be appointed as provided in the Bylaws. Any Director may be removed from, with or without cause, by the Local Government that appointed the Director.

The Board of Directors shall annually, by majority vote, designate a director to serve as the Chairperson of the Board. Each Local Government may also appoint an officer or employee of the Local Government to serve as an ex-officio, non-voting member of the Board. All other matters pertaining to the affairs of the Corporation shall be governed by the Corporation Bylaws, so long as such Bylaws are not inconsistent with these Articles of Incorporation, or the laws of the State of Texas.

ARTICLE VII

The street address of the initial registered office of the Corporation is 200 West Willis Street, Leander, Williamson County, Texas, 78641, and the name of its initial registered agent at such address is Pix Howell.

ARTICLE VIII

The number of Directors initially constituting the Board is three (3). The names, addresses, and positions of the initial Directors, as approved and appointed by the Local Governments are as follows:

Pix Howell, 635 Box Canyon Road, Wimberley, Texas 78676	Position One
Frank Salvato, 1613 Flint Ct, Lakeway, Texas 78734	Position Two
Ray Whisenant, 206 Gatlin Street, Dripping Springs, Texas 78620	Position Three

ARTICLE IX

The names and street addresses of the incorporators, a majority of which reside within the jurisdictional boundaries of the Local Governments are as follows:

Barbara Johnson, 703 Timarron, Leander, Texas 78641

Ray Whisenant, 206 Gatlin Street, Dripping Springs, Texas 78620

Jack McCool, 3504 Avendale Dr., Bee Cave, Texas 78738

ARTICLE X

The City Council of the City of Leander approved these Articles of Incorporation and the Directors named in Article VIII by resolution as set forth in the April 11, 2011, Council minutes. The City Council of the City of Bee Cave approved these Articles of Incorporation and the Directors named in Article VIII by resolution as set forth in the April 12, 2011, Council minutes. The Commissioners Court of Hays County, Texas, approved these Articles of Incorporation and the Directors named in Article VIII by resolution as set forth in the April 12, 2011, minutes of the Commissioners Court.

ARTICLE XI

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director's capacity as a Director, except for liability (i) for any breach of the Director's duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director's office, or (iv) for acts or omissions for which the liability of a Director is expressly provided by statute. Any repeal or amendment of this Article by the Directors shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences, in any suit or legal claim regarding or growing out of the duties of the Corporation or the Director, Directors shall have all the legal immunities, privileges and defenses available at law or in equity, and shall have no liability or limited liability to the fullest extent permitted by state law, or any amendment to state law that further limits the liability of a Director.

ARTICLE XII

In accordance with the provisions of *Sec. 501(c)(3), U.S. Internal Revenue Code of 1986*, as amended (the "Code"), and regardless of any other provisions of these Articles of Incorporation or the laws of the State of Texas, the Corporation: (a) shall not permit any part of the net earnings of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes); (b) shall not devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; (c) shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office; and (d) shall not attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives. Any income earned by the Corporation after payment of reasonable expenses, debt, contract obligations with governmental and public purpose legal entities, and establishing a reserve, shall accrue to the Local Governments for application as provided below.

The Local Governments shall, at all times, have an unrestricted right to receive any income earned by the Corporation, exclusive of amounts needed to cover reasonable expenditures, debt, contract obligations and reasonable reserves for future activities. Unless otherwise directed by the Local Governments, any income of the Corporation received by the Local Governments shall be deposited

into a special account and used to reduce on a pro-rata basis the principal amount of any financial obligations incurred to purchase the water and wastewater utilities, systems and facilities, and any excess distributed pursuant to Interlocal Cooperation Agreements entered into by the Corporation to accomplish its governmental purpose. No income shall inure to the benefit of any private interests.

If the Board of Directors determines by resolution that the purposes for which the Corporation was formed have been substantially met and all bonds issued by and all obligations incurred by the Corporation have been fully paid, the Board shall execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of *Sec. 394.026, Loc. Gov't. Code*, or with applicable law then in existence. In the event of dissolution or liquidation of the Corporation, all assets will be turned over to the Local Governments for application as above provided.

ARTICLE XIII

If the Corporation is a private foundation within the meaning of the *Code, Section 509(a)*, the Corporation shall: (a) distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by the *Code, Section 4942*; (b) not engage in any act of self-dealing as defined in the *Code, Section 4941(d)*; (c) not retain any excess business holdings as defined in the *Code, Section 4943(c)*; (d) not make any investments in such manner as to subject it to tax under the *Code, Section 4944*; and (e) not make any taxable expenditure as defined in the *Code, Section 4945(d)*. The Corporation shall to the fullest extent consistent with the accomplishment of its governmental purposes endeavor to operate in a manner to assure it is not a private foundation.

ARTICLE XIV

A majority of the Local Governments may at any time consider and approve an ordinance or order directing the Board to proceed with the dissolution of the Corporation, at which time the Board shall proceed with the dissolution of the Corporation in accordance with applicable state law. The failure of the Board to proceed with the dissolution of the Corporation in accordance with this Section shall be deemed a cause for the removal from office of any or all of the Directors as permitted by Article VI of these Articles of Incorporation.

ARTICLE XV

These Articles may not be amended unless approved by the governing body of all of the Local Governments; provided the Local Governments shall not unreasonably withhold approval of amendments to provide for other local governments to become members of the Corporation.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of _____, 2011.

Barbara Johnson, Incorporator

Ray Whisenant, Incorporator

Jack McCool, Incorporator

THE STATE OF TEXAS ☐

COUNTY OF WILLIAMSON ☐

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of April, 2011.

(SEAL)

Notary Public-State of Texas

THE STATE OF TEXAS ☐

COUNTY OF HAYS ☐

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of April, 2011.

(SEAL)

Notary Public-State of Texas

THE STATE OF TEXAS ☐

COUNTY OF TRAVIS

□

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of April, 2011.

(SEAL)

Notary Public-State of Texas

BYLAWS
of the
COALITION OF CENTRAL TEXAS UTILITIES DEVELOPMENT CORPORATION

ARTICLE I
PURPOSES

Section 1.01. General Purposes. The Coalition of Central Texas Utilities Development Corporation ("Corporation") is organized for the purpose of aiding, assisting, and acting on behalf of the local governments that are members of the Corporation, in the performance of their governmental functions, to promote the common good and general welfare of area within the local governments and neighboring areas, to assist local governments, groups and entities to preserve valuable rights, serve as a legal entity to organize, finance, purchase and transfer, or hold, operate and sell, water and wastewater assets, facilities, utilities and systems; and the development and improvement of public utilities, systems and infrastructure. A specific purpose of the Corporation is to aid, assist and act on behalf of the Corporation, local governments, and publicly controlled entities, to acquire, and to aide and assist governmental and local entities to acquire, water and wastewater utilities, systems and facilities from the Lower Colorado River Authority.

Section 1.02. Implementation. The Corporation is also organized to aid, assist and act on behalf of the local governments for the purposes set forth in Article IV of the Articles of Incorporation.

Section 1.03. General Powers and Authority. The Corporation is formed pursuant to the provisions of the Act to assist and act on behalf of the local governments and to engage in activities in the furtherance of the purposes of its creation, and it shall have and may exercise all of the rights, powers, privileges, authority and functions given to local government corporations incorporated under *Subchapter D, Chapt. 431, Tex. Trans. Code* (the "Act"), together with all the powers, privileges, authority and functions given by state law to non-profit corporations, including, without limitation, the powers and authority given under *Art. 1396, -1.01 - 50.01, Vernon's Annotated Texas Civil Statutes*. The Corporation is organized and created by the City of Leander, the City of Bee Cave and Hayes County, Texas (the "Local Governments") pursuant to and in compliance with *Chapt. 394, Tex. Loc. Gov't. Code*, and may accept and admit additional local governments as members by amendment of the Articles of Incorporation upon and after such additional local governments complying with the requirements of *Subchapter D, Chapt. 431, and Chapt. 394*. The term "local governments" shall have the meaning given in *Subchapter D, Chapt. 431, and Chapt. 394*, and the defined term "Local Governments" shall mean and include the three above named local governments and each additional local government that becomes a member of the Corporation.

Section 1.04. Additional Powers and Authority. The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for

which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes set forth above and in Article IV of the Articles of Incorporation; provided the Corporation shall not issue bonds, notes or any debt obligation, or by contract undertake a financial obligation, that will not to be funded by funds available, or revenues of the purchased water and wastewater utilities, systems and facilities purchases, or by binding contractual commitments made by local governments and legal entities to purchase increments or portions of the water and wastewater utilities, systems and facilities that are purchased.

Section 1.05. Governmental Body. The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of *Subdivision (2), Sec. 101.001, Tex. Civ. Prac. & Rem. Code*. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, *Sec. 101.001 et seq., Tex. Civ. Prac. & Rem. Code*.

ARTICLE II BOARD OF DIRECTORS

Section 2.01. Appointment, Classes, Powers, Number and Terms. All powers of the Corporation shall be vested in the Board of Directors (the "Board"). The Board shall initially consist of three (3) persons. The Directors of the Board may be increased to nine (9) Directors. Directors of the Corporation shall be appointed by position to the Board by the participating Local Governments.

The terms of office of the Directors shall be two years, and the term for each such Director position shall begin on the date a Director is first appointed to the position and such term shall expire two years after the date of the appointment, or until his or her successor is appointed by the participating Local Government; provided that if a Director is been appointed to fill an unexpired term the term of the Director shall expire on the expiration date of the term of the Director whose position he or she was appointed to fill. Any Director may be removed from office at any time, with or without cause, by the Local Government that appointed such Director. The number of Directors may be increased or decreased by an amendment to the Bylaws adopted by a majority vote of the Local Government members of the Corporation.

If any of the following persons of a Local Government are not serving as a member of the Board, he or she, or their designee shall be entitled to serve as an ex-officio, non-voting member of the Board: (1) the County Judge; or (2) the City Manager.

Any person designated as an ex-officio member of the Board is entitled to notice of, and to attend, meetings of the Board.

Section 2.02. Meetings of Directors. The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within Central Texas as the

Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the City of Leander.

The Board shall meet in accordance with and give notice of each meeting of the Board for the same length of time and in the same manner and location as is required counties under *Chapt. 551, Tex. Gov't. Code* (the "Open Meetings Act"). An agenda for each meeting of the Board shall be posted at the County Courthouse of each County in which the County is a member of the Corporation. Notice of the meetings shall also be posted by the City of Leander and City of Bee Cave in the manner and at the location at which notices of meetings of their governing body are posted.

The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to *Chapt. 552, Tex. Gov't. Code* (the "Open Records Act").

Section 2.03. Annual Meetings. The annual meeting of the Board shall be held at the time and at the location in designated by the Board, for the purposes of transacting such business as may be lawfully brought before the meeting.

Section 2.04. Regular Meetings. Regular meetings of the Board shall be held at such times and places as shall be designated, from time to time, by the Board.

Section 2.05. Special and Emergency Meetings. Special and emergency meetings of the Board shall be held whenever called by the Chairperson or Secretary of the Board, or by two Directors who are serving terms of office at the time the meeting is called. The Secretary shall give notice of each special meeting in person, by telephone, fax, mail or telegraph at least three (3) days before the meeting to each Director and to the public in compliance with the Open Meetings Act. Notice of each emergency meeting shall also be given in the manner required under *Sec. 551.045, Tex. Loc. Gov't. Code*. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special or emergency meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon to the extent allowed by the Open Meetings Act. The Secretary is authorized to post and give notices and designate others to post notice of meetings that are prepared by the Secretary, that are called in a manner authorized in these Bylaws.

Section 2.06. Quorum. A majority of the Directors holding office shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. If at any meeting of the Board there is less than a quorum present, a majority of Directors present may adjourn the meeting from time to time. The act of a majority of the Directors holding office shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles of Incorporation, or by these Bylaws.

A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action unless his dissent is entered in the minutes of the

meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to Directors voting in favor of the action.

Section 2.07. Conduct of Business. At the meetings of the Board, agenda items shall be considered in such order as from time to time the Board may determine.

At all meetings of the Board, the Chairperson shall preside, and in the absence of the Chairperson, the Vice Chairperson shall preside. In the absence of the Chairperson and the Vice Chairperson, a chairperson for the meeting shall be chosen from among the Directors present.

The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any qualified person to act as secretary of the meeting; provided that a member of the staff of any Local Government may be designated to take, record and prepare the minutes of the meeting.

Section 2.08. Executive Committee, Other Committees. The Board may, by resolution adopted by the affirmative vote of at a majority of the Directors, designate two (2) or more Directors to constitute an executive committee or other type of committee. Such committee may consist of other persons representing parties participating in the coalition of local entities that seek to acquire the water and wastewater utilities, systems and facilities may serve on the committee. A committee shall act in the manner provided in the authorizing resolution. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board from time to time. Committees shall have advisory powers and shall not be authorized to exercise the powers of the Board.

Section 2.09. Compensation of Directors. Directors, as such, shall not receive any salary or compensation for their services as Directors; provided, that nothing contained herein shall be construed to preclude any Director from receiving reimbursement for expenses reasonably incurred in performing the duties of Director.

Section 2.10. Director's Reliance on Consultant Information. A Director shall not be liable if, while acting in good faith and with ordinary care, he or she relies on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation, or any ex-officio member of the Board;
- (b) legal counsel, public accountants, or other persons employed or otherwise retained by the Board, as to matters the officer reasonably believes are within the person's professional or expert competence; or

- (c) a Board committee of which the Director is not a member.

ARTICLE III OFFICERS

Section 3.01. Titles and Term of Office. The officers of the Corporation shall be a chairperson of the Board, a vice chairperson of the Board, a corporate secretary and a treasurer. The officers of the Corporation may include a president, one or more vice presidents, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that neither the Chairperson of the Board nor the President shall hold the office of Secretary. The term of office for each officer shall be one year commencing with the date of the annual meeting of the Board at which each such officer is elected or appointed by the Board. The Chairperson is elected annually, by majority vote of the Directors then holding office, to serve a one year term of office. The authorization for president and vice president does not require the creation of such offices.

Officers elected or appointed by the Board shall be subject to removal by the Board at any time, with or without cause, by a majority vote of not less than three Directors.

A vacancy in the office of any officer elected or appointed by the Board shall be filled by the Board.

Section 3.02. Powers and Duties of the Chairperson. The Chairperson shall be a member of the Board and shall preside at all meetings of the Board. He or she shall have such duties as are assigned by the Board, and not inconsistent with state law. The Chairperson may call special or emergency meetings of the Board.

Section 3.03. Powers and Duties of the Vice Chairperson. The Vice Chairperson shall be a member of the Board. The Vice Chairperson shall perform the duties and exercise the powers of the Chairperson upon the Chairperson's death, absence, disability, or resignation, or upon the Chairperson's inability to perform the duties of his or her office. Any action taken by the Vice Chairperson in the performance of the duties of the Chairperson shall be conclusive evidence of the absence or inability to act of the Chairperson at the time such action was taken.

Section 3.04. Powers and Duties of the President. The President shall be the principal executive officer of the Corporation and, subject to the Board, he or she shall be in general charge of the properties and affairs of the Corporation. In furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, the President, Chairperson, or Vice Chairperson may sign and execute all bonds, notes, deeds, conveyances, franchises, assignments, mortgages, notes, contracts and other obligations in the name of the Corporation. The Chairperson shall perform the duties of the President until such time, if any, that such office is budgeted, created and filled by Board appointment.

Section 3.05. Vice Presidents. A Vice President shall have such powers and duties as may be

assigned to him or her by the Board or the President, including the performance of the duties of the President upon the death, absence, disability, or resignation of the President, or upon the President's inability to perform the duties of his or her office. Any action taken by the Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

Section 3.06. Treasurer. The Treasurer shall have custody of all the funds and securities of the Corporation which come into his or her hands. When necessary or proper, he or she may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; he or she may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; whenever required by the Board, he or she shall render a statement of his or her case account; he or she shall enter or cause to be entered regularly in the books of the Corporation to be kept by him or her for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; he or she shall perform all acts incident to the position of Treasurer subject to the control of the Board; and he or she shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require. With Board approval the Treasurer may contract with any Local Government to maintain such books, accounts and records, subject to the Treasurer's on-going review and approval.

Section 3.07. Secretary. The Secretary shall keep the minutes of all meetings of the Board in books provided for that purpose; he or she shall attend to the giving and serving of all notices; in furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, he or she may sign with the President in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; he or she shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, he or she shall in general perform all duties incident to the office of Secretary subject to the control of the Board. With Board approval the Secretary may contract with a Local Government to maintain the minutes, books and records of the Corporation, subject to the Secretary's on-going review and approval. The Board may contract with a Local Government and, as authorized by such contract, appoint one or more employees of the Local Government as an Assistant Secretary. The Board may designate qualified persons to function as an Assistant Secretary(s).

Section 3.08. Compensation. Officers may be entitled to receive compensation for personal services which are necessary and reasonable in carrying out the Corporation's purposes as the Board may from time to time determine, provided, that in no event shall the salary or compensation be excessive. Board members, even in their capacity as officers, are not entitled to

compensation except as otherwise provided in Article II, Section 9.

Section 3.09. Officer's Reliance on Consultant Information. In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by: (a) one or more other officers or employees of the Corporation, or any ex-officio member of the Board; (b) legal counsel, public accountants, or other persons employed or otherwise retained by the Board, as to matters the officer reasonably believes are within the person's professional or expert competence; or (c) a Board committee.

ARTICLE IV MISCELLANEOUS PROVISIONS

Section 4.01. Fiscal Year. The fiscal year of the Corporation shall begin October 1st of each year; provided the first fiscal year shall begin April 15, 2011, and end September 30, 2011.

Section 4.02. Seal. The seal of the Corporation shall be such as from time to time may be approved by the Board.

Section 4.03. Notice and Waiver of Notice. Whenever any notice other than public notice of a meeting given to comply with the Open Meetings Act, is required to be given under the provisions of these Bylaws, such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. A waiver of notice, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 4.04. Resignations. Any Director or officer may resign at any time. Such resignations shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 4.05. Gender. References herein to the masculine gender shall also refer to the feminine in all appropriate cases and vice versa.

Section 4.06. Appropriations and Grants. The Corporation shall have the power to request and accept any appropriation, grant, contribution, donation, or other form of aid from any federal or state agency, political subdivision, municipality, or any other source.

ARTICLE V INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 5.01. Right to Indemnification. Subject to the limitations and conditions as provided in this Article V and the Articles of Incorporation, each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "proceeding"), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Corporation to the fullest extent permitted by the Texas Non-Profit Corporation Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability. It is further provided that this provision shall not be construed as a waiver of any immunity, exemption or defense any such Director or officer may have at law or in equity, including, but not limited to, those available under the Act or pursuant to *Sec. 101.001 et seq., Tex. Civ. Prac. & Rem. Code*; provided that a Director or officer shall not be entitled to indemnification for his or her intentional wrongful actions.

Section 5.02. Advance Payment. The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 1 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be

indemnified under this Article V or otherwise.

Section 5.03. Indemnification of Employees and Agents. The Corporation, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation but who are or were serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

Section 5.04. Appearance as a Witness. Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

Section 5.05. Non-exclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 3 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles of Incorporation of the Corporation or these Bylaws, agreement, vote of shareholders or disinterested Directors or otherwise.

Section 5.06. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

Section 5.07. Notification. Any indemnification of or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the calendar quarter immediately following the date of the indemnification or advance.

Section 5.08. Savings Clause. If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to

this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by law.

ARTICLE VI PROVISIONS RELATING TO MINORITY CONTRACTING

Section 6.01. Disadvantaged Business Certification. The Corporation shall attempt to stimulate the growth of disadvantaged businesses by encouraging the full participation of disadvantaged businesses in all phases of its procurement activities and affording those disadvantaged businesses a full and fair opportunity to compete for Corporation contracts

ARTICLE VII CODE OF ETHICS

Section 7.01. Policy and Purposes.

(a) It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

(b) This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

(c) The Directors, officers and employees of the Corporation shall further be subject to the ethics and conflicts provisions set forth in *Chapts. 171 and 176, Tex. Loc. Gov't. Code*.

Section 7.02. Conflicts of Interest.

(a) Except as provided in subsection (c), a Director or officer is prohibited from participating in a vote, decision, or award of a contract involving a business entity or real property in which the Director or the officer has a substantial interest, if it is foreseeable that the business entity or real property will be economically benefited by the action. A person has a substantial interest in a business (i) if his or her ownership interest is ten percent or more of the voting stock or shares of the business entity or ownership of \$15,000 or more of the fair market value of the business entity, or (ii) if the business entity provides more than ten percent of the person's gross income. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. An interest of a person related in the second degree by affinity or the third degree by consanguinity to a Director or officer is considered a substantial interest.

(b) If a Director or a person related to a Director in the first or second degree by affinity or the first, second, or third degree by consanguinity has a substantial interest in a business entity or real property that would be pecuniarily affected by any official action taken by the Board, such Director, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest. The affidavit shall be filed with the Secretary of the Board.

(c) A Director who has a substantial interest in a business entity that will receive a pecuniary benefit from an action of the Board may vote on that action if a majority of the Board has a similar interest in the same action or if all other similar business entities in the Corporation will receive a similar pecuniary benefit.

(d) An employee of a public entity may serve on the Board.

Section 7.03. Acceptance of Gifts. No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or officer's discretion. As used here, "benefit" does not include:

(a) a fee prescribed by law to be received by a Director or officer or any other benefit to which the Director or officer is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Director or officer;

(b) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the Director or officer;

(c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities:

- (1) if not more than one honorarium is received from the same person in a calendar year;
- (2) if not more than one honorarium is received for the same service; and
- (3) if the value of the honorarium does not exceed \$250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services;

(d) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest is reported.

Section 7.04. Bribery. A Director or officer shall not intentionally or knowingly offer, confer or agree to confer on another, or solicit, accept, or agree to accept from another:

(a) any benefit as consideration for the Director's or officer's decision, opinion, recommendation, vote, or other exercise of discretion as a Director or officer;

(b) any benefit as consideration for the Director's or officer's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a duty imposed by law on the Director or officer.

Section 7.05. Nepotism. No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity (marriage relationship) or within the third degree of consanguinity (blood relationship) to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

ARTICLE VIII AMENDMENTS

Section 8.01. Amendments. A proposal to alter, amend, or repeal these Bylaws shall be made by the affirmative vote of a majority of the full Board at any annual or regular meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by majority vote of the Board of Directors to be effective.

**INTERLOCAL COOPERATION AGREEMENT
REGARDING CREATION AND OPERATION OF THE
COALITION OF CENTRAL TEXAS UTILITIES
DEVELOPMENT CORPORATION**

THIS INTERLOCAL COOPERATION AGREEMENT REGARDING CREATION AND OPERATION OF THE COALITION OF CENTRAL TEXAS UTILITIES DEVELOPMENT CORPORATION ("Agreement") is entered into and effective as of the ____ day of April, 2011, by and between the COUNTY OF HAYS, TEXAS, whose offices are located at the Hays County Courthouse #300, 111 E. San Antonio St., San Marcos, Texas 78666 ("Hays County"), the CITY OF BEE CAVE, TEXAS, a Texas general law city, whose offices are located at 4000 Galleria Parkway, Bee Cave, Texas 78738 ("Bee Cave"), and the CITY OF LEANDER, TEXAS, a Texas home-rule city, whose offices are located at 200 W. Willis Street, Leander, Texas 78641 ("Leander"). In this Agreement, Hays County, Bee Cave and Leander are sometimes individually referred to as a AParty@ and collectively referred to as the "Parties."

RECITALS

WHEREAS, the Lower Colorado River Authority ("LCRA") is attempting to sell and convey water and wastewater utilities, systems and facilities that serve a large number of local governments and communities within an area extending from Llano County to Matagorda County, Texas;

WHEREAS, divesting the local governments and communities of all participation in decisions regarding the quality, quantity, dependability and cost of services of the water and wastewater utilities, systems and facilities is contrary to the intent of the agreements made by the LCRA;

WHEREAS, ownership of the water and wastewater utilities, systems and facilities by private, for profit, entities is not in the public interest and will adversely impact the local economy;

WHEREAS, a coalition of cities, counties, municipal utility districts, and other governmental entities, citizen organizations has been formed for the purpose of meeting the LCRA=s requirements that purchase proposals and indicative bids include all the water and wastewater utilities, systems and facilities proposed for sale by the LCRA;

WHEREAS, the coalition members support the immediate creation of the Coalition of Central Texas Utilities Development Corporation (the "Development Corporation") for use as a legal entity to organize and submit an indicative bid and proposal to the LCRA for the purchase of the water and wastewater utilities, systems and facilities; and

WHEREAS, the Development Corporation enable the local governments and communities to do all things reasonably necessary to submit an indicative bid to the LCRA, and to proceed to finance and purchase the water and wastewater utilities, systems and facilities, without risk or financial obligation to the participating local governments and communities;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I. CREATION OF THE DEVELOPMENT CORPORATION

The Parties hereby agree to create, establish, operate and participate in the efforts of the Development Corporation to accomplish the purposes set forth in the Articles of Incorporation.

II. APPROVAL OF ARTICLES, BYLAWS AND DIRECTORS

Each of the Parties hereby authorizes and approves: (a) the Articles of Incorporation of the Development Corporation attached hereto and incorporated herein for all purposes as Exhibit "A"; (b) the Bylaws of the Development Corporation attached hereto and incorporated herein for all purposes as Exhibit "B"; and the initial directors of the Development Corporation listed in Article VIII of the Articles of Incorporation.

III. INTENT OF THE PARTIES

It is the intent of the Parties to work and cooperate with the Development Corporation, and the local governments and communities in which the water and wastewater utilities, systems and facilities being sold by the LCRA are located, to: (a) accomplish the purposes of the Development Corporation; and (b) enable local governments to enter into interlocal agreements with the Development Corporation, as appropriate to further and enable the communities being impacted to accomplish the purposes of the Development Corporation and the coalition.

IV. FINANCIAL OBLIGATIONS

The Development Corporation shall have no authority whatsoever to issue any contractual or financial obligation, debt, bonds or notes that shall ever be or become obligations of the Parties, or of any other local government that becomes a member of the Development Corporation. The Development Corporation shall have the authority and powers set forth in the Articles of Incorporation, including, but not limited to, the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish its purposes, that are funded solely by revenues of the purchased water and wastewater utilities, systems and facilities, or by binding contractual commitments made by local governments and legal entities to purchase increments or portions of the water and wastewater utilities, systems and facilities.

V. GENERAL PROVISIONS

5.01. Authority. This Agreement is made in part under the authority conferred in *Chapter 791, Texas Government Code, Chapt. 562, Tex. Loc. Gov't. Code, and Section 552.001, Tex. Loc. Gov't. Code.*

5.02 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

5.03. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement. contemplated and will not be affected or limited by this Agreement. Venue for any action arising hereunder will be in Travis County, Texas.

5.04. Entire Agreement. Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties regarding the Development Corporation or the water and wastewater utilities, systems and facilities referenced herein, and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter. The Parties confirm that further agreements regarding the Development Corporation and the water and wastewater utilities, systems and facilities are contemplated and will not be affected or limited by this Agreement.

5.05. Amendments. Any amendment of this Agreement must be in writing and will be effective only if approved by the governing body and executed by the authorized representatives of each of the Parties.

5.06. Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Travis County, Texas.

5.07. Notices. Any notices given under this Agreement will be effective if (i) forwarded to the other Party by hand-delivery; (ii) transmitted to the other Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

Leander: 200 W. Willis Street
P. O. Box 319
Leander, Texas 78641-1781
Attn: City Manager
Telephone: (512) 528-2700
Facsimile: (512) 528-2831
Email: Robert Powers <robert@ci.leander.tx.us>

Hays County: Dr. Bert Cobb
County Judge
Hays County Courthouse #300
111 E. San Antonio St.
San Marcos, Texas 78666
Telephone: (512) 393-2205
Facsimile: (512) 393-2282

Bee Cave: 4000 Galleria Parkway
Bee Cave, Texas 78738
Attn: City Administrator
Telephone: (512) 767-6600
Facsimile: (512) 767-6619

5.08. Force Majeure. Parties shall not be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or due to circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

5.09. Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

5.10 Term. The initial term of this Agreement shall be from the Effective Date hereof until March 31, 2012. Thereafter, this Agreement shall automatically renew for successive one year periods beginning on April 1, 2012 and on each April 1st thereafter. Provided however, either Party hereto shall have the option of terminating this Agreement upon 90 days written notice to the other Party.

Attest:

Debbie Haile, City Secretary

CITY OF LEANDER, TEXAS

By: _____
John D. Cowman, Mayor

Date Signed: _____

Attest:

Kaylynn Holloway, City Secretary

CITY OF BEE CAVE, TEXAS

By: _____
Caroline Murphy, Mayor

Date Signed: _____

Attest:

Liz Gonzalez, County Clerk,
Ex-Officio Clerk of the
Hays County Commissioners Court

COUNTY OF HAYS, TEXAS

By: _____
Dr. Bert Cobb, County Judge
Date Signed: _____

RESOLUTION

A RESOLUTION OF THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, APPROVING AND AUTHORIZING AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE COUNTY OF HAYS, THE CITY OF BEE CAVE AND THE CITY OF LEANDER, TEXAS; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

Whereas, Hays County a political subdivision in the State of Texas is participating in a coalition of local governments and communities of interest to enable an effective response to the Lower Colorado River Authority ("LCRA") effort to transfer, sell and convey water and wastewater utilities, systems and facilities;

Whereas, cities, counties, municipal utility districts, water control and improvement districts, water supply corporations and related entities are joining together to effect an acceptable solution to the LCRA's proposed actions;

Whereas, Hays County, the City of Bee Cave, and the City of Leander, Texas ("Leander") are joining together to serve as the sponsoring local governments and create the Coalition of Central Texas Utilities Development Corporation ("Corporation") to serve as a legal entity to respond to the LCRA , and to function in a manner to enable other local governments to become sponsors of the Corporation and permit local governmental entities and communities to participate by contract; and

Whereas, Hays County, Bee Cave and Leander are entering into an Interlocal Cooperation Agreement Regarding Creation of the Coalition of Central Texas Utilities Development Corporation ("Agreement") as the basis for creating the Corporation to serve multiple local governments;

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

Section 1. Finding of Facts. The above and foregoing recitals are incorporated herein as findings of fact.

Section 2. Approval of Interlocal Agreement. The Interlocal Cooperation Agreement Regarding Creation of the Coalition of Central Texas Utilities Development Corporation is hereby authorized and approved.

Section 3. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution is adopted was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

Section 4. Effective Date. This resolution is effective upon adoption by the Commissioners Court.

PASSED AND ADOPTED this ____ day of April 2011.

Hays County, Texas

Attest:

Dr. Bert Cobb, M.D., Hays County Judge

Liz G. Gonzales, Hays County Clerk

RESOLUTION

A RESOLUTION OF THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, ACCEPTING A PETITION FOR THE CREATION OF THE "COALITION OF CENTRAL TEXAS UTILITIES DEVELOPMENT CORPORATION" ("CORPORATION"); MAKING FINDINGS OF FACT; APPROVING THE ARTICLES OF INCORPORATION AND BYLAWS OF THE CORPORATION; APPROVING THE DIRECTORS NAMED IN THE ARTICLES; AND PROVIDING FOR RELATED MATTERS.

Whereas, Hays County a political subdivision in the State of Texas is participating in a coalition of local governments and communities of interest in response to the Lower Colorado River Authority ("LCRA") effort to transfer, sell and convey the local water and wastewater utilities, systems and facilities that provide water and/or wastewater service to local governments and communities;

Whereas, counties and incorporated cities are authorized to join together to create a development corporation to perform and serve their respective governmental functions and interests;

Whereas, it is reasonable and necessary for counties, having local communities that will be adversely impacted by the action proposed by the LCRA, to sponsor and/or otherwise participate in the Corporation, or consider participation with the Corporation pursuant to interlocal agreements, to limit the adverse impact that will occur if the transfer and conveyance of the water and wastewater utilities, systems and facilities is accomplished as proposed by the LCRA;

Whereas, the Corporation can serve as a vehicle and instrument to acquire the water and wastewater utilities, systems and facilities on behalf of some or all of the sponsoring local governments, and local communities that participate by contract, to preserve local control of vital services; and

Whereas, the Corporation will be governed by a board of directors appointed by the sponsoring local governments, and will not have authority to create any debt or financial obligation for or on behalf of any of the members and of any sponsoring local government;

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

Section 1. Finding of Facts. The above and foregoing recitals are incorporated herein as findings of fact.

Section 2. Acceptance of Application. The Application for the creation of the "Coalition of Central Texas Utilities Development Corporation" is hereby accepted and approved.

Section 3. Articles and Bylaws Approved. The Articles of Incorporation and the Bylaws

of the Coalition of Central Texas Utilities Development Corporation spread on the minutes of this meeting are hereby authorized and approved.

Section 4. Approval of Directors. The directors named in Article VIII of the Articles of Incorporation are hereby approved.

Section 5. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution is adopted was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

Section 6. Effective Date. This resolution is effective upon adoption by the Commissioners Court.

PASSED AND ADOPTED this ____ day of April 2011.

Hays County, Texas

Attest:

Dr. Bert Cobb, M.D., Hays County Judge

Liz G. Gonzales, Hays County Clerk

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Discussion and possible action approve the appointment of Gary Griffin as Reserve Deputy Constable in Precinct 3 to replace Reserve Deputy Constable Travis Brown who has gone to work for Constable David Peterson in Precinct 1.

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Constable Darrell Ayres

SPONSORED BY: Commissioner Will Conley

SUMMARY:

This is a non-paid position of Reserve Deputy Constable.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

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

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

AGENDA ITEM: Discussion and Possible action to approve the Lieutenant's position and its funding for the Hays County Government Center, effective May 1, 2011 and amend the budget accordingly.

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: \$38,635.57 (5 months)

LINE ITEM NUMBER OF FUNDS REQUIRED: to be determined

REQUESTED BY: Sheriff Cutler/Lt. Ronnie Strain

SPONSORED BY: Ingalsbe

SUMMARY: The Sheriff's Office would like to request the Commissioner's Court release the funds for the position of Lieutenant for the new Government Center. This is a new position that will need to be funded.

It is my understanding that Lt. Ronnie Strain will be placed in this position. His current salary is

\$70,418 – 5 month salary: \$29,340.83

Fica and retirement: \$5,301.89

Insurance: \$3,992.85

Total: \$38,635.57

A starting Lieutenant's pay is \$64,717

Agenda Item Routing Form

DESCRIPTION OF Item: Discussion and Possible action to approve the Lieutenant's position and its funding for the Hays County Government Center, effective May 1, 2011 and amend the budget accordingly.

PREFERRED MEETING DATE REQUESTED: April 19, 2011

COUNTY AUDITOR

AMOUNT: \$38,635.57 (5 months)

LINE ITEM NUMBER: to be determined

COUNTY PURCHASING GUIDELINES FOLLOWED:

PAYMENT TERMS ACCEPTABLE:

COMMENTS: The Court will need to determine if the security costs for the Gov't Center will be accounted for separately in the Sheriff's budget. There are funds budgeted in Countywide in the amount of \$158,533 which represents the cost of 19 officers for the last 2 months of the fiscal year. There are also salary savings in the Sheriff's budget.

Bill Herzog

SPECIAL COUNSEL

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

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 Sections 551.071 and 551.076 of the Texas Government Code: Consultation with counsel and deliberation regarding Security Devices and Personnel at the Hays County Government Center. Possible action may follow in open court.

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

PREFERRED MEETING DATE REQUESTED: April 19, 2011

AMOUNT REQUIRED: to be determined

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Sheriff Cutler/Lt. Ronnie Strain

SPONSORED BY: Ingalsbe

SUMMARY: Presentation will be provided in Executive Session.