

Commissioners Court -February 21, 2012  
NOTICE OF A MEETING OF THE  
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS



This Notice is posted pursuant to the Texas Open Meetings Act. (VERNONS TEXAS CODES ANN. GOV. CODE CH.551). The Hays County Commissioners Court will hold a meeting at **9:00 A.M.** on the **21<sup>st</sup> day of February, 2012**, 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	3	Approve and confirm the appointment of Jason Payne, Deputy Constable, Precinct 5. <b>COBB/MANCILLAS</b>
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**PUBLIC COMMENTS**

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

**CONSENT ITEMS**

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

2	4	Approve payments of county invoices. <b>HERZOG</b>
3	5-11	Approve Commissioners Court Minutes of February 14, 2012. <b>COBB/GONZALEZ</b>
4	12-39	Approve utility permits. <b>COBB</b>
5	40-42	Accept the attached fee schedule for Training Academy Courses provided by the Sheriff's Office. <b>COBB/CUTLER</b>
6	43-45	Accept the annual racial profile report from the Sheriff's Office. <b>COBB/CUTLER</b>
7	46-49	Approve agreement with SWICO Auctions for internet auction and removal of dwelling located at 5458 FM 2770, Kyle, Texas and authorize County Judge to execute the agreement. <b>JONES</b>
8	50-52	Authorize the Sheriff's Office to use funds received from unclaimed evidence auction to purchase supplies and amend the budget accordingly. <b>COBB/CUTLER</b>
9	53-58	Approve a letter agreement with LexisNexis for legal content subscription services at the Hays County Jail and authorize the Hays County Sheriff to submit the agreement. <b>COBB/CUTLER</b>

**ACTION ITEMS**

**ROADS**

10	59-60	Discussion and possible action to consider the release of the maintenance bond and accept for maintenance all road and drainage improvements within County ROW for Mustang Valley subdivision, Section 1. <b>CONLEY/BORCHERDING</b>
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**MISCELLANEOUS**

11	61-104	Discussion and possible action to amend the Hays County Animal Control Ordinance. <b>CONLEY</b>
12	105-155	Discussion and possible action to authorize the County Judge to execute a contract between the Hays County Personal Health Department (PHD) and Sendero Health Plan (a Medicaid program). <b>INGALSBE/HARGRAVES</b>
13	156-179	Discussion and possible action to adopt a resolution authorizing the County Judge to submit a grant application to the Office of the Governor -Criminal Justice Division (CJD) for the Hays County Sheriff's Office in the amount of \$28,970.15. <b>INGALSBE/CUTLER/HAUFF</b>

14	180-185	Discussion and possible action to fund \$25,000 for the improvements to the San Marcos Senior Citizens Center, a project of Community Action, Inc. and authorize the County Judge to execute a funding agreement as prepared by legal counsel. <b>INGALSBE</b>
15	186-231	Discussion and possible action to authorize the County Judge to execute the Professional Services Agreement with Brown & Gay Engineers, Inc. <b>INGALSBE</b>
16	232-234	Discussion and possible action to approve a fee schedule for services provided by the Development Services Department. <b>COBB/GARZA</b>

#### **EXECUTIVE SESSIONS**

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

17	235	Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, or value of real property related to the marketing and potential sale of County owned properties. Possible action may follow in open court. <b>COBB</b>
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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.

18	Discussion and possible action related to the burn ban and/or disaster declaration. <b>COBB/CHAMBERS</b>
19	Discussion of issues related to proposed capital construction projects in Hays County, including but not limited to the Government Center; the proposed Precinct 2 office; and the Law Enforcement Center Immediate Needs Project. Possible action may follow. <b>INGALSBE</b>
20	Discussion of issues related to the road bond projects, including updates from Mike Weaver, Prime Strategies and Jeff Curren, HDR. Possible action may follow. <b>COBB</b>
21	Discussion of material relating to the Hays County Water and Sewer Authority and/or the LCRA divestiture. <b>WHISENANT</b>

#### **ADJOURNMENT**

Posted by 5:00 o'clock P.M. on the 17<sup>th</sup> day of February, 2012

**COMMISSIONERS COURT, HAYS COUNTY, TEXAS**

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**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**

**AGENDA ITEM:** Approve and confirm the appointment of Jason Payne, Deputy Constable, Precinct 5.

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

**PREFERRED MEETING DATE REQUESTED:** 2/21/12

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:** MANCILLAS

**SPONSORED BY:** COBB

## *Agenda Item Request Form*

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

9:00 a.m. Every Tuesday

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

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

Phone (512) 393-2205

**AGENDA ITEM: Approve payment of County invoices.**

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

**PREFERRED MEETING DATE REQUESTED: 2/21/12**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: Auditor's Office**

**SPONSORED BY: Bill Herzog**

## *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 FEBRUARY 14, 2012.**

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

**PREFERRED MEETING DATE REQUESTED: FEBRUARY 21, 2012**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: GONZALEZ**

**SPONSORED BY: COBB**

**SUMMARY:**



STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 14<sup>TH</sup> DAY OF FEBRUARY A.D., 2012, 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  
RAY O. WHISENANT JR  
LIZ G. GONZALEZ

COUNTY JUDGE  
COMMISSIONER, PCT. 1  
COMMISSIONER, PCT. 2  
COMMISSIONER, PCT. 3  
COMMISSIONER, PCT. 4  
COUNTY CLERK

AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

Buddy Johnson of First Baptist Church Buda gave the invocation and Judge Cobb led the court in the Pledge of Allegiance to the flags. Judge Cobb called the meeting to order.

#### PUBLIC COMMENTS

Constable Pct 2 James Kohler, Dorman Turner – Wimberley resident, Susan Cook – Driftwood resident made public comments. Commissioner Ingalsbe introduced Sgt. Virgil Verduzdo from the Texas Department of Public Safety. Dee Dee Baen Human Resources Director gave a list of new Hays County employee hires.

#### 27872 APPROVE COUNTY INVOICES

A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to approve payments of county invoices in the amount of \$ 2,355,601.71 as submitted by the County Auditor. All voting "Aye". MOTION PASSED

#### 27873 APPROVE COMMISSIONERS COURT MINUTES OF JANUARY 25 AND 31, 2012

A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to approve Commissioners Court minutes of January 25 and 31, 2012 as presented by the County Clerk. All voting "Aye". MOTION PASSED

#### 27874 APPROVE ON-LINE AUCTION WITH RENE BATES AUCTIONEERS OF (1) NON-REPAIRABLE FREIGHTLINER SEMI TRACTOR (SALVAGE), (1) HYDRAULIC AIR COMPRESSOR, AND (1) FRONT LOADER, WHICH NO LONGER OF US TO THE ROAD DEPARTMENT

A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to approve on-line auction with Rene Bates Auctioneers of non-repairable Freightliner Semi Tractor (salvage), (1) hydraulic air compressor and (1) Frontend Loader, no longer of use for the Road Department. All voting "Aye". MOTION PASSED

#### 27875 AMEND THE GDEM CERT GRANT BUDGET FOR THE PURCHASE OF ONE PROJECTOR FOR \$1,479, TWO PRINTERS FOR \$319 EACH, AND TWO LAPTOPS FOR \$1,367 EACH

The granting agency approved the purchase of one projector, two printers, and two laptops that were part of the original grant application. Each piece of equipment comes with a 3-year warranty expense, which will not be covered by the grant. The cost of the warranties (\$389.00) will come out of the Emergency Management budget and serve as a voluntary match. Amount Required \$4,462.00 (already budgeted in the CERT cost center) \$389 (already budgeted in Emergency Management) Budget amendment; 001-656-00.5201 general supplies (\$389.00), 001-656-99-064.5201 general supplies (\$1,997.00), 001-656-99-064.5211 office and computer supplies (\$359.00), 001-656-99-064.5303 professional and admin fees (\$560.00), 001-656-99-064.5472 office rent (\$1,546.00), 001-656-99.5712\_400 computer equip \$4,851.00. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to amend the GDEM CERT grant budget for the purchase of one projector for \$1,479, two printers for \$319, and two laptops for \$1,367 each. All voting "Aye". MOTION PASSED



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**27876 APPROVE SPECIFICATIONS FOR RFP 2012-P03 BANK DEPOSITORY AND AUTHORIZE PURCHASING TO SOLICIT FOR PROPOSAL AND ADVERTISE**

Bid award is for establishing a four (4) year depository contract for Hays County, in accordance with the requirements specified herein and including all provisions set forth in the accompanying documentation. A motion was made by Commissioner Whisenant, seconded by Commissioner Conley to approve specifications for RFP 2012-P03 Bank Depository and authorize Purchasing to solicit for proposal and advertise. All voting "Aye". MOTION PASSED

**27877 AMEND THE BUDGET OF DEPARTMENT OF PUBLIC SAFETY-LICENSE & WEIGHTS FOR SCALE REPAIR FOR COUNTYWIDE SELF INSURANCE**

Scale repair expense was exhausted by last fall's lightning strike repair; scale control boards were shorted out by recent heavy rains/flooding and repair will require \$2,350. That amount can be transferred from self insurance in Countywide, as that item is intended for such occurrences. Amount required \$2,350.00 from 001-645-00.5342 Self Insurance to 001-651-00.5411 Eqpt Maint. A motion was made by Commissioner Whisenant, seconded by Commissioner Conley to amend the budget of Department of Public Safety-License & Weights for scale repair from Countywide self insurance. All voting "Aye". MOTION PASSED

**27878 ACCEPT THE DELIVERY OF THE INTERNAL EXAMINATION REPORT FOR THE REPORT FOR THE DISTRICT CLERK'S OFFICE**

In accordance with subsection 115.002 of the Texas Local Government Code, the Auditor's Office performed an internal examination of the Hays County District Clerk's Office financial records for the period of May 1, 2010 to September 30, 2011. The internal examination consisted of reviewing disbursements, receipts, deposits, fixed assets, and other supporting documentation. A motion was made by Commissioner Whisenant, seconded by Commissioner Conley to accept the delivery of the Internal Examination Report for the District Clerk's office. All voting "Aye". MOTION PASSED

**27879 ACCEPT DONATED ROAD BUILDING MATERIALS FROM TxDOT WITH A VALUE OF APPROXIMATELY \$60,000**

Jerry Borcharding Director of Transportation gave staff recommendation. TxDOT annually sends out letters to counties regarding surplus materials that can be donated through a request process. Hays County is requesting up to \$60,000 worth of materials ranging from sign posts, to guardrail materials, to road building materials. Availability is first-come-first-serve for the closest maintenance yard in the respective county. If materials are not available at the maintenance yard then the amount of funds allocated to Hays County can be used for new materials. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Whisenant to accept donated road building materials from TxDOT with a value of approximately \$60,000. All voting "Aye". MOTION PASSED

**27880 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A CAPITAL IMPROVEMENTS AGREEMENT WITH THE CITY OF SAN MARCOS AND COTTONWOOD CREEK JDR, LTD IN THE AMOUNT OF \$1,070,000 TO BE PAID FROM THE ROAD DEPT BUDGET OUT OF 3 LINE ITEMS ROW 20-710-00.5386 \$200,000, CONTRACT SERVICES/ROAD WORK #20-710-00.5448\_010 \$800,00, CONTRACT SERVICES/ENGINEERING \$101,000**

Hays County has had a long standing interest in improving traffic safety near San Marcos High School. These efforts envision extending McCarty Lane eastward, around the high school property to intersect with Hwy123. A portion of this extension of McCarty lies in an unincorporated area of Hays County (1,200 LF). It is estimated that the cost of design, right of way, and construction for the County's portion of this roadway is \$1,070,000.00. Cottonwood Creek development and the City of San Marcos are proposing to partner with the County to extend McCarty past this unincorporated section and make the connection with Hwy 123. Today's action would allow the Auditor to transfer current budgeted moneys to the City of San Marcos for their use in accomplishing all aspect of this project. Amount required \$1,070,000.00 (020-710.00.5448\_010). A motion was made by Commissioner Ingalsbe, seconded by Commissioner Whisenant to authorize the County Judge to execute a Capital Improvements Agreement with the City of San Marcos and Cottonwood Creek JDR, Ltd in the amount of \$1,070,000 to be paid from the Road Dept budget out of 3 line items ROW 20-710-00.5386 \$200,000, Contract Services/Road Work #20-710-00.5448\_10 \$800,000, Contract Services/Engineering #20-710-00.5448\_008 \$101,000. All voting "Aye". MOTION PASSED



- 27881 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN HAYS COUNTY, THE WIMBERLEY SPRINGS COMMUNITY ASSOCIATION OF HAYS COUNTY, INC., AND WIMBERLEY SPRINGS PARTNERS, LTD., RELATED TO THE DEDICATION OF ROADWAYS IN THE WOODCREEK NORTH SUBDIVISION WITH ATTACHMENTS IN EXHIBITS A & B IN AN AMOUNT OF \$20,424 TO BE PAID BY DEVELOPER**

Richard Sullivan – Wimberley resident, Sam Brannon – San Marcos resident made public comments. Developer and Community Association each wish to dedicate and convey certain roadways and ROW that they respectively own, and/or possess and maintain, in the Woodcreek North Subdivision. If Hays County receives these roadways, pursuant to the terms of the Agreement, the roadways will become public roadways and will be maintained by the County. Mark Kennedy mentioned that the estimated amount is \$20,424 to be paid by Developer of POA per their Agreement. **A motion was made by Commissioner Conley, seconded by Commissioner Whisenant to authorize the County Judge to execute a Memorandum of Understanding between Hays County, the Wimberley Springs Community Association of Hays County, Inc., Wimberley Springs Partners, Ltd., related to the dedication of roadways in Woodcreek North subdivision with attachments in Exhibits A & B in an amount of \$20,424 to be paid by Developer. All voting "Aye".** MOTION PASSED

- 27882 AVANA PHASE 1 [11-4-17 - 93 LOTS] APPROVE PRELIMINARY PLAN GRANT VARIANCES FROM TABLE 721.02 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS**

Roxie McInnis Subdivision Coordinator gave staff recommendation for preliminary plan. The Avana Phase I Subdivision consists of 115.06 acres (27.27 of which are located in Hays County) along the Hays/Travis border in northern Precinct 2. The proposed division will consist of 271 lots (93 lots in Hays County). Water and wastewater services will be provided by Mid-Tex Utilities, Inc. The preliminary plan meets all of the county's rules with the exception of three variances requested from the Hays County roadway design requirements found in Table 721.02. Variance number one is from the requirement that all roadways classified as "Minor Collector" have a minimum travel way of 22 feet with five feet of shoulder on either side. Based on recommendation from the City of Austin, the developer is requesting that the minor collectors be 28 feet (face of curb to face of curb) with a collective storm sewer. Variance number two is from the requirement that all roadways classified as "Minor Arterial" have a minimum travel way of 48 feet with eight feet of shoulder on either side. The City of Austin's Metropolitan Area Roadway Plan requires that the extension of Escarpment Boulevard shall be consistent with the existing roadway (30 feet of pavement with 18 inch ribbon curbs on each side). Variance number three is from the building setback requirements for urbanized local roadways and minor collectors. The developer is requesting to comply with the SF-2 zoning category requirements in place for the remainder of the subdivision (178 lots) which will allow for 25 foot front yard, 15 foot street side yard, five foot interior side yard, and 10 foot rear yard setbacks. **A motion was made by Commissioner Jones, seconded by Commissioner Jones to approve preliminary plan; consider variances from table 721.02 of the Hays County Development Regulations. All voting "Aye".** MOTION PASSED

- 27883 ACCEPT THE ANNUAL RACIAL PROFILE REPORT FROM CONSTABLE PRECINCT 3**

Constable Pct 3 Darrell Ayers spoke. Since January 1, 2003 the Hays County Constables Office of Precinct 3 in accordance with the Texas Racial Profiling Law (S.B. No. 1074), has been collecting contact data for the purpose of indentifying and responding (if necessary) to concerns regarding racial profiling practices. **A motion was made by Commissioner Conley, seconded by Commissioner Jones to accept the annual racial profile report from Constable Precinct 3. All voting "Aye".** MOTION PASSED

- 27884 AUTHORIZE AN INSTITUTIONAL OSSF PERMIT AND GRANT A VARIANCE TO SECTION 10-M(B) OF THE HAYS COUNTY RULES FOR ON-SITE SEWAGE FACILITIES AT 1401 NORTH IH 35, BUDA, TEXAS**

Clint Garza Director of Development Services gave staff recommendation for all except the variance and then explained the variance. Metalico is proposing an OSSF to serve their American Cat Co. recycling business at 17401 North IH 35 in Precinct 2. This is an existing business with a 15,000 sq ft. proposed addition to the building. This property is 10 acres. Water will be supplied by Public Water Supply. This OSSF is a standard treatment system with a low pressure dosed dispersal system. The system is designed for a maximum of 600 gpd. The system designer, Derrick Lorman, R.S. is requesting a variance to Section 10-M (B) of the Hays County rules for on-site sewage facilities which requires flow equalization. This type of business will not generate high strength wastewater (no food preparation or process wastewater), and he justifies equal protection by over sizing the septic tank column by 100% to account for the flow equalization requirement. The larger tanks by definition allow for increased retention time and consequently act as a baffle to help negate surge loading. **A motion was made by Commissioner Jones, seconded by Commissioner Whisenant to authorize an institutional OSSF permit and grant a variance to Section 10-M(B) of the Hays County Rules for On-Site Sewage Facilities at 17401 North IH 35, Buda, Texas. All voting "Aye".** MOTION PASSED





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**27885      TEMPORARILY ALLOW (2) DISTRICT ATTORNEY'S OFFICE EMPLOYEES TO EXCEED 60 TOTAL HOURS OF COMPENSATORY TIME, AS THEY IMPLEMENT A PLAN TO REDUCE TOTAL HOURS OF COMPENSATORY TIME BY THE END OF FY 2012**

Mark Kennedy Special Counsel explained the overages. Michele Tuttle Hays County Treasurer explained the policy. After the recent transition to a new Office Manager, it was discovered that two administrative assistants, Patty Roten and Maggie Avalos, have exceeded the 60-hour limitation on compensatory time allowed by County Policy. These two administrative assistants have agreed to work toward a reduction of this time between now and the end of FY 2012. A temporary exception to policy would allow the employee's time to implement their plan without requiring the County to pay out the excess compensatory time they have accrued. **A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to temporarily allow 2 D.A.'s Office employees to exceed 60 total hours of compensatory time, as the implement a plan to reduce those hours by the end of FY 2012. All voting "Aye". MOTION PASSED**

**27886      ALLOW THE COUNTY AUDITOR AT HIS OR HER DISCRETION TO MAKE AMENDMENTS THAT ARE LESS THAN \$100; IF THE FUNDS ARE IDENTIFIED WITHIN THE REQUESTING DEPARTMENT'S BUDGET WITHOUT COURT APPROVAL**

County Auditor, Bill Herzog would like to make recommendations to include exceptions to the current budget amendment policy. (1) Commissioner's Court authorizes the County Auditor to process ALL amendments that are less than \$ 100, if the funds are identified within the requesting department's budget. (2) Commissioner's Court authorizes the County Auditor to move funds of any amount into the Capital Outlay Budget Category V, if the requested funds are to replace a piece of existing equipment and are identified within the requesting department's budget. Departments with multiple divisions or cost centers cannot move funds across those budgets without Court approval. **A motion was made by Commissioner Jones, seconded by Commissioner Whisenant to allow the County Auditor at his or her discretion to make amendments that are less than \$100; if the funds are identified within the requesting department's budget without court approval. All voting "Aye". MOTION PASSED**

**27887      PROMOTE AND FUND HEALTH CHECK 2012 FOR HAYS COUNTY EMPLOYEES, ELIGIBLE DEPENDENTS AND RETIREES AN AUTHORIZE PAYROLL DEDUCTION OF ADDITIONAL FEES FOR OPTIONAL SERVICES EMPLOYEES MAY ELECT**

Dee Dee Baen Human Resources Director spoke of the Health Check being a community wide celebration offering health screenings including blood analysis for diabetes, cardiac risk profile (Cholesterol, Triglycerides, HDL, Cholesterol, LDL) and a complete Blood cell count (red, white, hemoglobin, hematocrit and platelets). Per Central Texas Medical Center (CTMC), these tests, valued at hundreds of dollars, are offered for \$45 per person through Health Check (reduced from \$25 in 2011, and \$35 in 2010.) Additionally, CTMC is offering Hays County employees the option of pre-registering which allows for blood draws at our worksite. Thursday, March 22: R&B on Yarrington Rd, Tuesday, March 27: Government Center, Wednesday, April 4: Sheriff's Office. A recap of the last five years of our participation in Health Check is as follows: Hays County paid 100% of the participant's fees. Dependents over the age of 18 that are covered on our health plan were allowed to participate at no cost (with the exception of the additional test). 2007: 150 employees participated, \$3,725. 2008: 187 employees participated, \$ 6,545; Optional EE-paid Test: Thyroid (71); PSA (26). 2009 165 employees participated, \$5775; Optional EE-paid Test: Thyroid (68); PSA (34). 2010: 168 employees participated, \$5,880; Optional EE-paid Test: Thyroid (68); PSA (34). 2011: 155 employees participated, \$3,875; Optional EE-paid Test: Thyroid (46) PSA (27) A1C (45). The requested amount of \$8370 (186 employees x \$45) is an estimate, (20% over last year's participation of 155 employees). In addition to the basic blood screenings, employees can choose to have a thyroid specific hormone (TSH) test (\$15), an A1C test to the optional test for \$15 (used to measure the amount of glucose that attaches to the protein in the red blood cells). Additionally this year a Vitamin D test is added for \$30. Health Check will no longer offer the PSA because it is not recommended test as currently recommended by the US Preventive Services Task Force and that the current evidence for this test is insufficient to qualify it as a screening test. Similar to last year and in order to minimize cash handling, reconciling and balancing, we are requesting the voluntary fees associated with optional test to be payroll deducted. This has been coordinated with the Treasurer's office for payroll purposes and Treasurer Tuttle is supportive of this automation. An option to the County if they do not wish to absorb the entire cost increase could be to offer payroll deduction for a \$5 or \$10 cost sharing. The actual day-long health fair portion of Health Check will be held on Thursday April 26 from 7am to 3pm at Embassy Suites Conference Center. Amount required \$8370.00. **A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to promote and fund Health Check 2012 for Hays County employees, eligible dependents and retirees and authorize deduction of additional fees for optional services employees may elect. All voting "Aye". MOTION PASSED**



**27888 APPROVE EXPENDITURE FOR ROOF REPAIR AND/OR REPLACEMENT AT THE LBJ MUSEUM, A COUNTY OWNED FACILITY**

The interior of the LBJ Museum is now complete, but during the course of construction, it was discovered that the roof was significantly more deteriorated than previously thought. The roof is badly leaking and preventing full usage of the renovated area. To protect our investment, I believe this repair is needed. After speaking with our Auditor, it is recommended the funds come from the General Fund, County-Wide Misc. Capital Improvements line item. This line item is the savings from the Immediate Needs Repair money use for the Jail. Amount required \$ 49,800 # 001-645-00.5741 (Misc. Capital Improvements). A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to approve expenditure for roof replacement at the LBJ Museum, a county owned facility in the amount of \$49,800 coming out of Countywide Capital Improvements line item which is a savings from the immediate needs repair money use from the jail. All voting "Aye". MOTION PASSED

**27889 EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING THE PURCHASE, EXCHANGE, OR REAL VALUE OF REAL PROPERTY RELATED TO A NEW LOCATION FOR THE HAYS COUNTY PRECINCT 2 OFFICES**

Court convened into executive session at 10:45 a.m. and reconvened into open court meeting at 11:10 a.m. In Executive Session were Judge Cobb, Commissioner Ingalsbe, Commissioner Jones, Commissioner Conley, Commissioner Whisenant, Special Counsel Mark Kennedy, Terry Whitman and Jerry Borcharding Transportation Director. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to authorize the County Judge to execute a plat application, a Site Development Permit application, and a business utilities application for the County's prospective Precinct 2 property at 5458 FM 2770, Kyle, Texas. Commissioner Jones, Commissioner Ingalsbe, Commissioner Whisenant and Judge Cobb voting "Aye". Commissioner Conley abstained. MOTION PASSED.

A motion to authorize Lott Brothers and GSC Architects to move forward with additional design and preconstruction services, which will result in additional expenditures totaling a not to exceed amount of \$132,880.00. Commissioner Jones, Commissioner Ingalsbe, Commissioner Whisenant and Judge Cobb voting "Aye". Commissioner Conley abstained. MOTION PASSED.

**27890 EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL, DELIBERATION REGARDING RIGHT OF WAY ACQUISITION, AND CONSIDERATION OF THE USE OF EMINENT DOMAIN TO CONDEMN PROPERTY ALONG FM 1626 IN PRECINCT 2**

Court convened into executive session at 11:48 a.m. and reconvened into open court meeting at 12:00 p.m. In Executive Session were Judge Cobb, Commissioner Ingalsbe, Commissioner Jones, Commissioner Conley, Commissioner Whisenant, Special Counsel Mark Kennedy and Lori Bible. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to accept a negotiated settlement in the amount of \$42,281.00 for the purchase of .645 acres owned by Tim Weisheit on F.M. 1626 in Precinct 2; and authorize the County Judge to execute a purchase agreement pursuant to that settlement. All voting "Aye". MOTION PASSED

A motion was made by Commissioner Jones, seconded by Commissioner Whisenant that the Hays County Commissioner's Court, on behalf of Hays County, Texas authorize the uses of the power of eminent domain to acquire .3 of an acre located on Rim Rock Trail in Hays County for the widening of FM 1626 for the traveling public to use for roadway purpose. All voting "Aye". MOTION PASSED

A motion was made by Commissioner Jones, seconded by Commissioner Whisenant that the Hays County Commissioner's Court, on behalf of Hays County, Texas authorize the use of the power of eminent domain to acquire .53 of an acre located on FM 1626 in Buda, Hays County Texas the widening of FM 1626 for the traveling public to use for roadway purposes. All voting "Aye". MOTION PASSED

**27891 EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING RIGHT OF WAY ACQUISITION ON CYRSTAL MEADOW DRIVE IN PRECINCT 2**

Court convened into executive session at 11:10 a.m. and reconvened into open court meeting at 11:45 a.m. In Executive Session were Judge Cobb, Commissioner Ingalsbe, Commissioner Jones, Commissioner Conley, Commissioner Whisenant, Special Counsel Mark Kennedy, Terry Whitman and Transportation Director Jerry Borcharding. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to authorize legal counsel and Precinct 2 Commissioner to negotiate the dedication of a portion of Crystal Meadow Drive, adjacent to the prospective Precinct 2 property at 5458 Fm 2770, Kyle Texas. Commissioner Jones, Commissioner Ingalsbe, Commissioner Whisenant and Judge Cobb voting "Aye". Commissioner Conley abstained. MOTION PASSED



FEBRUARY 14, 2012

\*\*\*\*\*

VOLUME U PG 789

**EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING RIGHT OF WAY ACQUISITION ALONG RANCH ROAD 12 PRECINCT 3**

Court convened into executive session at 12:00 p.m. and reconvened into open court meeting at 12:17 p.m. In Executive Session were Judge Cobb, Commissioner Ingalsbe, Commissioner Jones, Commissioner Conley, Commissioner Whisenant, Special Counsel Mark Kennedy, and Elle Dietz. No Action Taken.

**EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING THE PURCHASE, EXCHANGE, OR VALUE OF REAL PROPERTY RELATED TO THE MARKETING AND POTENTIAL SALE OF COUNTY OWNED PROPERTIES**

Court convened into executive session at 12:00 p.m. and reconvened into open court meeting at 12:17 p.m. In Executive Session were Judge Cobb, Commissioner Ingalsbe, Commissioner Jones, Commissioner Conley, Commissioner Whisenant, Special Counsel Mark Kennedy, Lon Shell and CBRE Representatives. No Action Taken.

**EXECUTIVE SESSION PURSUANT TO SECTIONS 551.074 OF THE TEXAS GOVERNMENT CODE: TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, OR DISCIPLINE, OR DISMISSAL RELATED TO THE PERSONAL HEALTH DIRECTOR**

Court convened into executive session at 1:00 p.m. and reconvened into open court meeting at 1:30 p.m. In Executive Session were Judge Cobb, Commissioner Ingalsbe, Commissioner Jones, Commissioner Conley, Commissioner Whisenant, Special Counsel Mark Kennedy and Human Resources Director Dee Dee Baen. The County Policy will be follow and which the county will be advertise and posted the job this week.

**ACTION RELATED TO THE BURN BAN AND/OR DISASTER DECLARATION**

Burn Ban will remain lifted.

**County Clerks Note Item #25 RE:** DISCUSSION OF ISSUES RELATED TO PROPOSED CAPITAL CONSTRUCTION PROJECTS IN HAYS COUNTY, INCLUDING BUT NOT LIMITED TO THE GOVERNMENT CENTER: THE PROPOSED PRECINCT 2 OFFICE; AND THE LAW ENFORCEMENT CENTER STRATEGIES AND JEFF CURREN, HDR-was pulled

**County Clerks Note Item #26 RE:** DISCUSSION OF ISSUES RELATED TO THE ROAD BOND PROJECTS, INCLUDING UPDATES FROM MIKE WEAVER, PRIME STRATEGIES AND JEFF CURREN, HDR-was pulled

**County Clerks Note Item #27 RE:** DISCUSSION OF MATERIAL RELATING TO THE HAYS COUNTY WATER AND SEWER AUTHORITY AND/OR THE LCRA DIVESTITURE-was pulled

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

I, LIZ G. 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 February 14, 2012.



LIZ G 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 Utility Permits.**

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

**☐ WORKSHOP    ☐ PROCLAMATION    ☐ PRESENTATION**

**PREFERRED MEETING DATE REQUESTED: 2/21/11**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**SPONSORED BY: COBB**

Permit	Road Name	Type of Utility
842	Scott St. and Stagecoach	Water Line
843	Country Estates Dr. & Mustang Ln.	Electrical Line
844	Yarrington Rd	Electrical Line
845	Shelton Ranch Rd	Telephone

**HAYS COUNTY RESOURCE PROTECTION, TRANSPORTATION and  
PLANNING DEPARTMENT**



**UTILITY PERMIT APPROVAL**

Approval of Utility Permit: 842

Application Date: 12/14/2011

Commissioner Court Approval Date: 2/21/12

Company Name: City of Kyle Public Works Dept.  
Company Address: 520 East Ranch Road 150

Company Phone: 512-262-3024 Ext. 4004  
Company Contact: Warren Christian

Type of Utility: Waterline

Road Name: Scott St. and Stagecoach Road

Subdivision: Pct #: 4

Specs: Scott St: Replace approximately 120' of 2" PVC/Iron with 3" pressure rated PVC Pipe to provide adequate water supply for proposed residences on Scott St. and Stagecoach Road. Work Will be performed on Right-of-way(East side of Scotts Street approx 5' from edge of pavement), no street crossings will be necessary.  
Old Stagecoach Road: Extend existing 2" PVC waterline approx 600' down the right-of-way(approx 5' from edge of pavement) on East side of Old Stagecoach Rd. in order to provide water service/meter to new residence at 1395 S. Old Stagecoach Rd. No Street crossings will be necessary.

County Provisions: Traffic control required; erosion controls may be necessary; min 36" in depth required; trench to be compacted per Hays County Requirements; Notify Hays County 24 hrs prior to construction



Road and Bridge Department  
2171 Yarrington Road  
P O Box 906  
San Marcos, TX 78667-0906  
(512) 393-7385

## Application for Installation

### Utility Line on Hays County Right of Way

Date: 1/12/12

Formal notice is hereby given that City of Kyle Public Works Dept.  
Company proposes to place a 2" x 3" water line  
line within the right-of-way of Scott St. & old Stagercoach Rd  
as follows: (give location, length, general design, etc.)  
\* please see attachments.

If the proposed installation is a parallel installation, then the installation shall be located two feet within the edge of right-of-way unless otherwise approved by the County.

The line will be constructed and maintained on the road right-of-way as directed by the Hays County Road Department (HCRD), an agency of the Commissioners Court of Hays County, in accordance with governing laws, including but not limited to the "Federal Clean Water Act," the "Federal Endangered Species Act," and the "Federal Historic Preservation Act." Upon request by the HCRD, proof of compliance with all governing laws, rules, and regulations will be submitted to HCRD before commencement of construction.

Our firm will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "General Special Provisions."

Our firm will insure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained during this installation.

The location and description of the proposed line and appurtenances is more fully shown by \_\_\_\_\_ complete sets of drawings attached to this notice.

It is expressly understood that Hays County does not purport, hereby, to grant any right, claim, title, or easement in or upon this road; and it is further understood that Hays County may require the owner to relocate this line, subject to provisions of governing laws, by giving thirty (30) days' written notice.

It is understood and agreed that any damages sustained to the appurtenances installed under this proposal as a result of road construction and/or maintenance, including but not limited to mowing, ditch cleaning, culvert repair or replacement, roadway excavation and base work shall be the sole burden and expense of the owner.

Applicant agrees to notify HCRD prior to commencement of any routine or periodic maintenance which requires pruning of trees within the road right-of-way, so that the County may provide specifications for the extent and methods to govern in trimming, topping, tree balance, type of cuts, painting cuts and clean up.

The installation shall not damage any part of the road and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. In the event the Applicant fails to comply with any or all of the requirements as set forth herein, Hays County may take such action as it deems appropriate to compel compliance.

Construction of this line will begin on or after the 23<sup>rd</sup> day of January, 2012.

General Special Provisions:

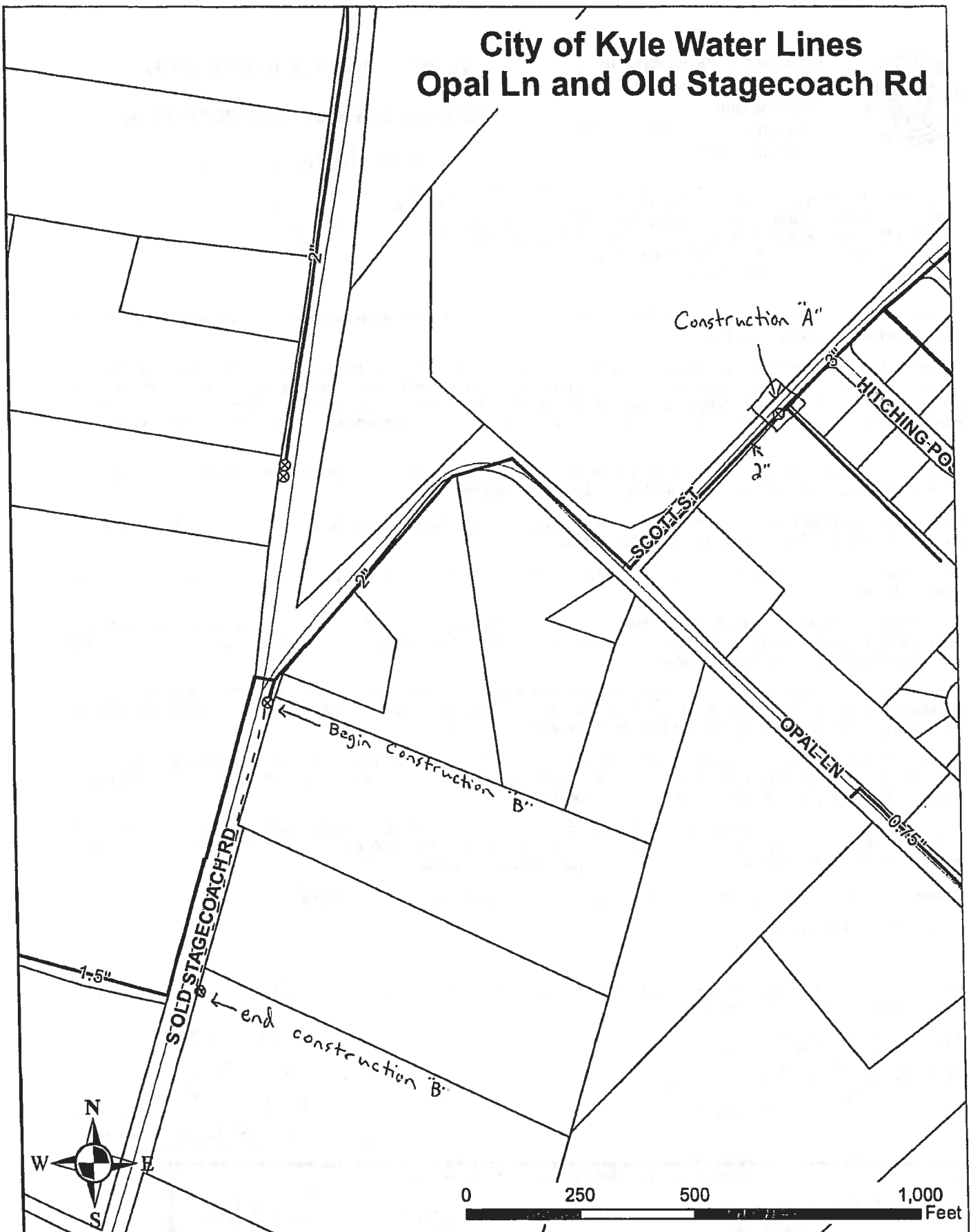
By signing below, I certify that I am authorized to represent the Firm listed below, and that the Firm agrees to the conditions/provisions included in this permit.

Firm City of Kyle  
By (Print) Warren Christian  
Signature [Signature]

Title Superintendent  
Address 520 E RR 150  
Kyle, TX 78640  
Phone 512-262-3024 ex 4004

Approved by Hays County Road & Bridge Department		
<u>[Signature]</u> Signature	<u>Inspector</u> Title	<u>2/13/12</u> Date

# City of Kyle Water Lines Opal Ln and Old Stagecoach Rd





### **Construction "A"**

Replace approximately 120' of 2" PVC/Iron Pipe with new 3" Pressure Rated PVC Pipe to provide adequate water supply for proposed residences on Scott St and Stagecoach Rd. Work will be performed on Right of Way (East side of Scott St and approx 5' from edge of pavement), and no street crossings will be necessary.

### **Construction "B"**

Extend existing 2" PVC water line approx 600' down the Right of Way (approx 5' from edge of pavement) on the East side of Old Stagecoach Rd in order to provide water service/meter to new residence at 1395 S Old Stagecoach Rd. No street crossings will be necessary.

**HAYS COUNTY RESOURCE PROTECTION, TRANSPORTATION and  
PLANNING DEPARTMENT**



**UTILITY PERMIT APPROVAL**

Approval of Utility Permit: 843

Application Date: 12/14/2011

Commissioner Court Approval Date: 2/21/12

Company Name: PEC

Company Address: P.O. Box 100 Kyle TX, 78640

Company Phone: 800-868-4791 Ext 7525

Company Contact: George Esqueda

Type of Utility: Electrical line

Road Name: Country Estates Drive & Mustang Lane

Subdivision: Pct #: 3

Specs: Upgrading existing power line installing additional poles

County Provisions: Poles to be place to be 10'+ from travel way

Variance Requested: None



Road and Bridge Department  
2171 Yarrington Road  
P O Box 906  
San Marcos, TX 78667-0906  
(512) 393-7385

## Application for Installation

### Utility Line on Hays County Right of Way

Date: 12/27/2011

Formal notice is hereby given that Pedernales Electric Cooperative Inc. (PEC)  
Company proposes to place a overhead electric power line  
line within the right-of way of Country Estates Drive & Mustang Drive  
as follows: (give location, length, general design, etc.)  
see attached information

If the proposed installation is a parallel installation, then the installation shall be located two feet within the edge of right-of-way unless otherwise approved by the County.

The line will be constructed and maintained on the road right-of-way as directed by the Hays County Road Department (HCRD), an agency of the Commissioners Court of Hays County, in accordance with governing laws, including but not limited to the "Federal Clean Water Act," the "Federal Endangered Species Act," and the "Federal Historic Preservation Act." Upon request by the HCRD, proof of compliance with all governing laws, rules, and regulations will be submitted to HCRD before commencement of construction.

Our firm will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "General Special Provisions."

Our firm will insure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained during this installation.

The location and description of the proposed line and appurtenances is more fully shown by 2 complete sets of drawings attached to this notice.

It is expressly understood that Hays County does not purport, hereby, to grant any right, claim, title, or easement in or upon this road: and it is further understood that Hays County may require the owner to relocate this line, subject to provisions of governing laws, by giving thirty (30) days' written notice.

It is understood and agreed that any damages sustained to the appurtenances installed under this proposal as a result of road construction and/or maintenance, including but not limited to mowing, ditch cleaning, culvert repair or replacement, roadway excavation and base work shall be the sole burden and expense of the owner.

Applicant agrees to notify HCRD prior to commencement of any routine of periodic maintenance which requires pruning of trees within the road right-of-way, so that the County may provide specifications for the extent and methods to govern in trimming, topping, tree balance, type of cuts, painting cuts and clean up.

The installation shall not damage any part of the road and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. In the event the Applicant fails to comply with any or all of the requirements as set forth herein, Hays County may take such action as it deems appropriate to compel compliance.

Construction of this line will begin on or after the 23 day of January, 2012.

General Special Provisions:

By signing below, I certify that I am authorized to represent the Firm listed below, and that the Firm agrees to the conditions/provisions included in this permit.

Firm Pedernales Electric Cooperative Inc.

Title District Engineering Supervisor

By (Print) George Esqueda

Address 1810 FM 150 West

Signature George Esqueda

Kyle, TX

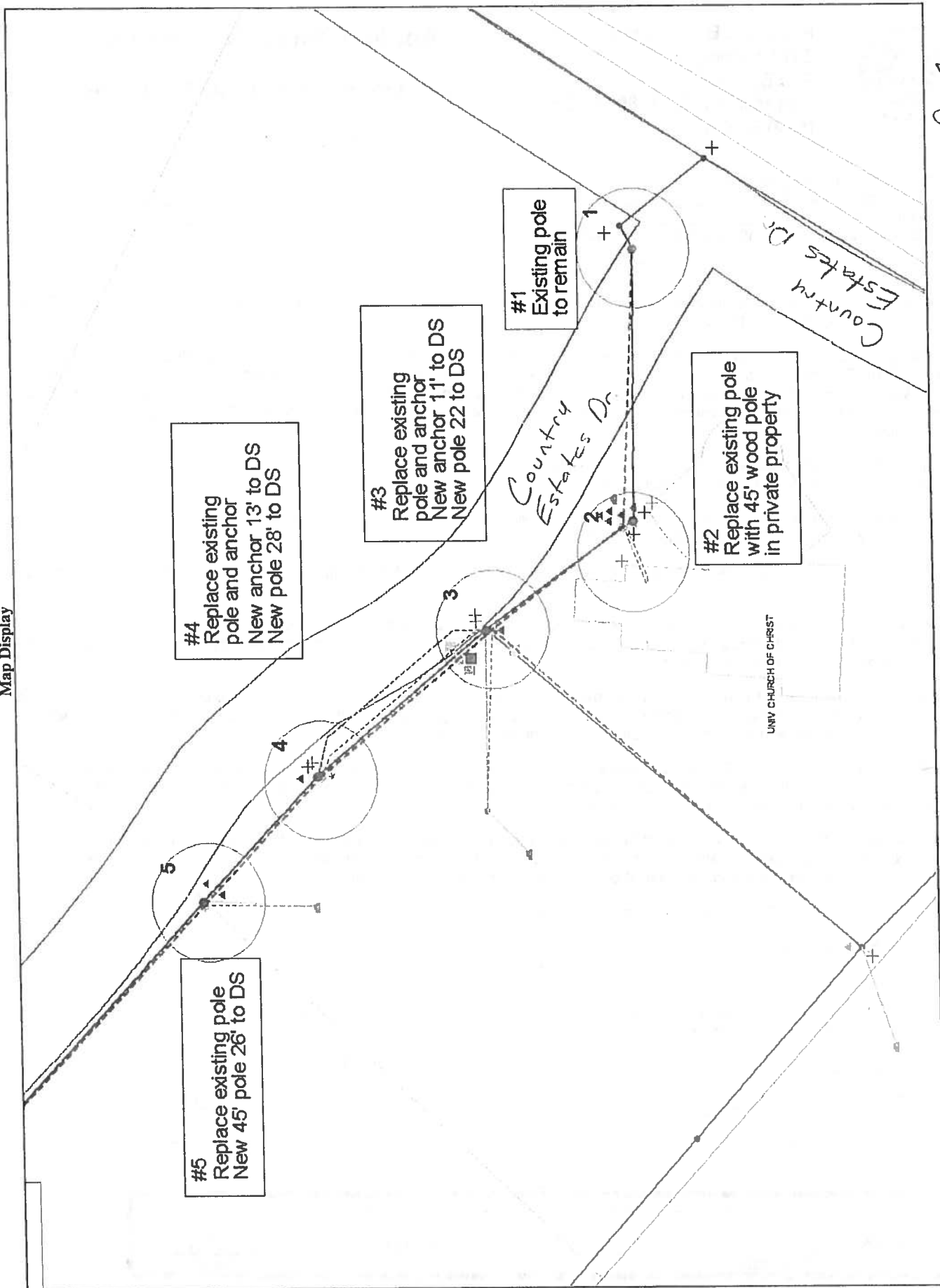
Phone (512) 262-2161 ext 7526

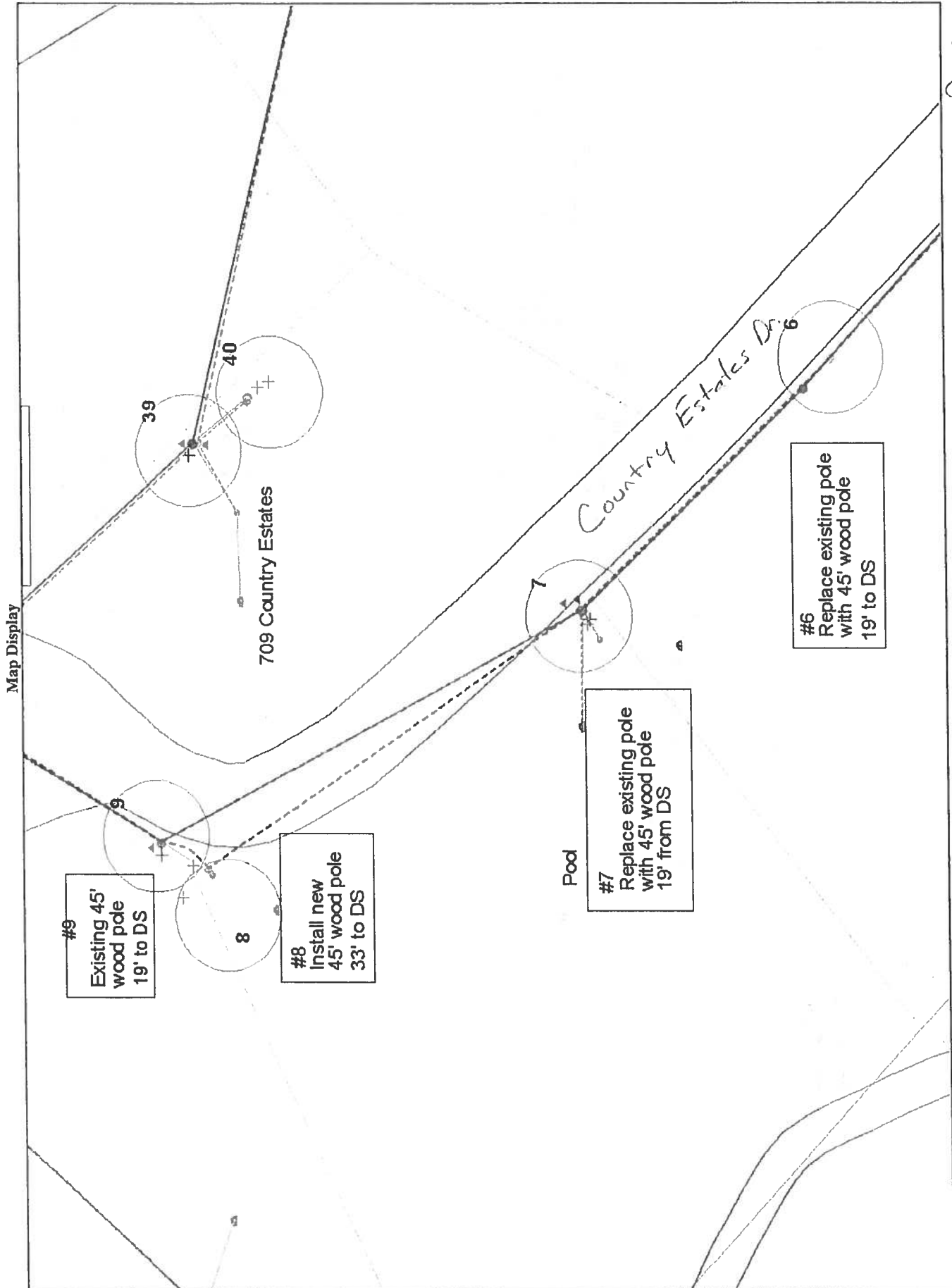
Approved by Hays County Road & Bridge Department

Signature

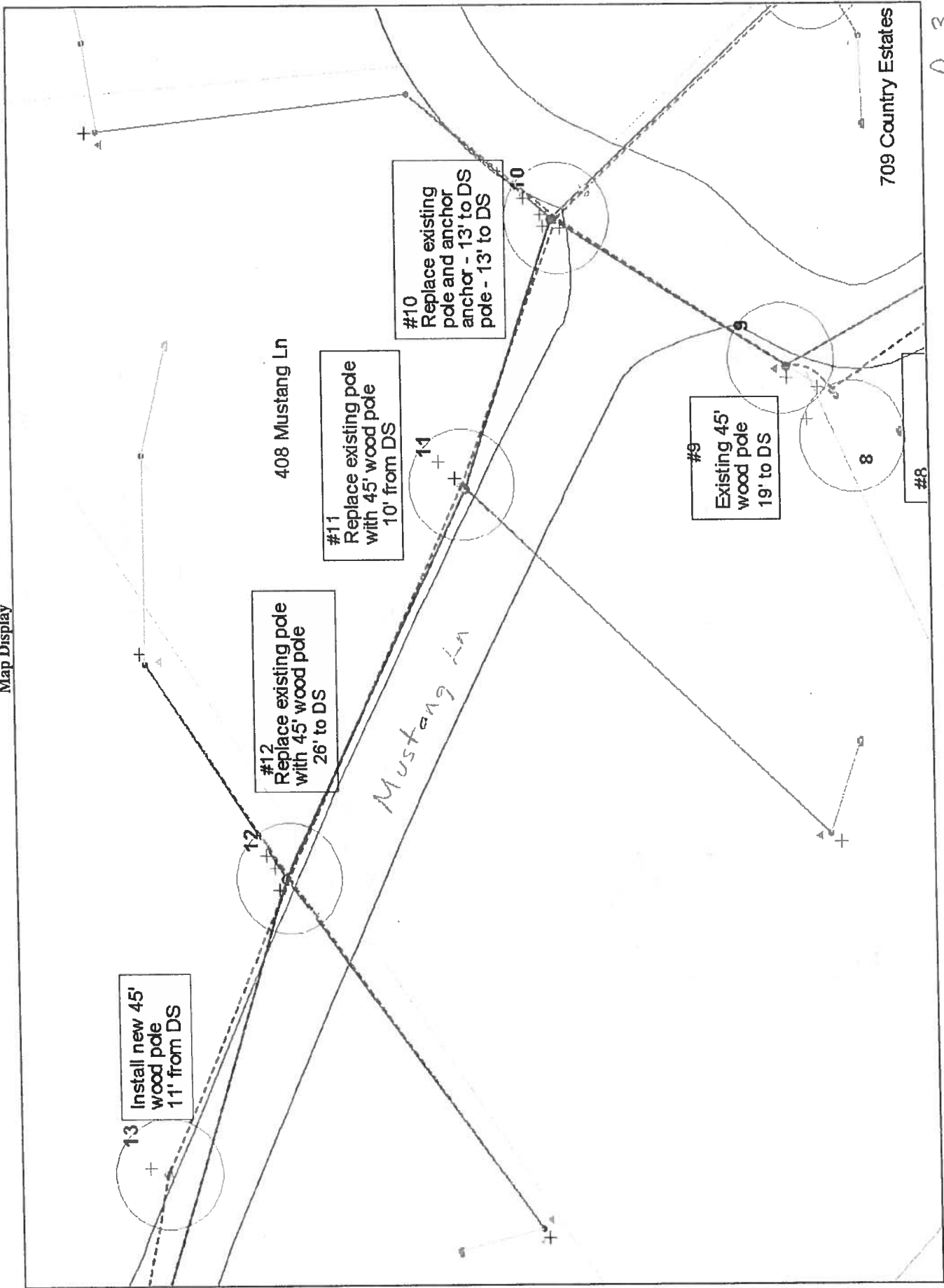
Title

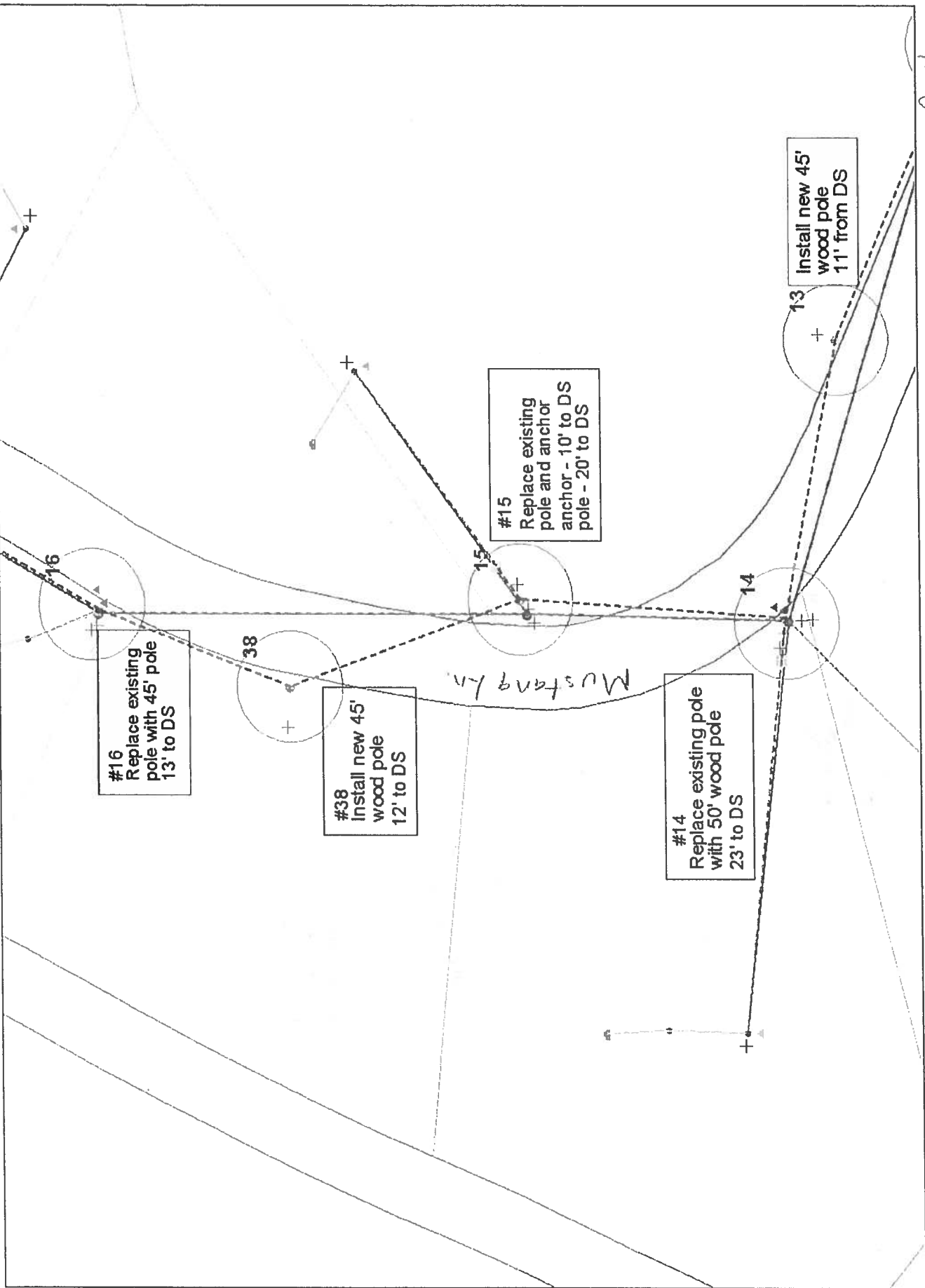
Date



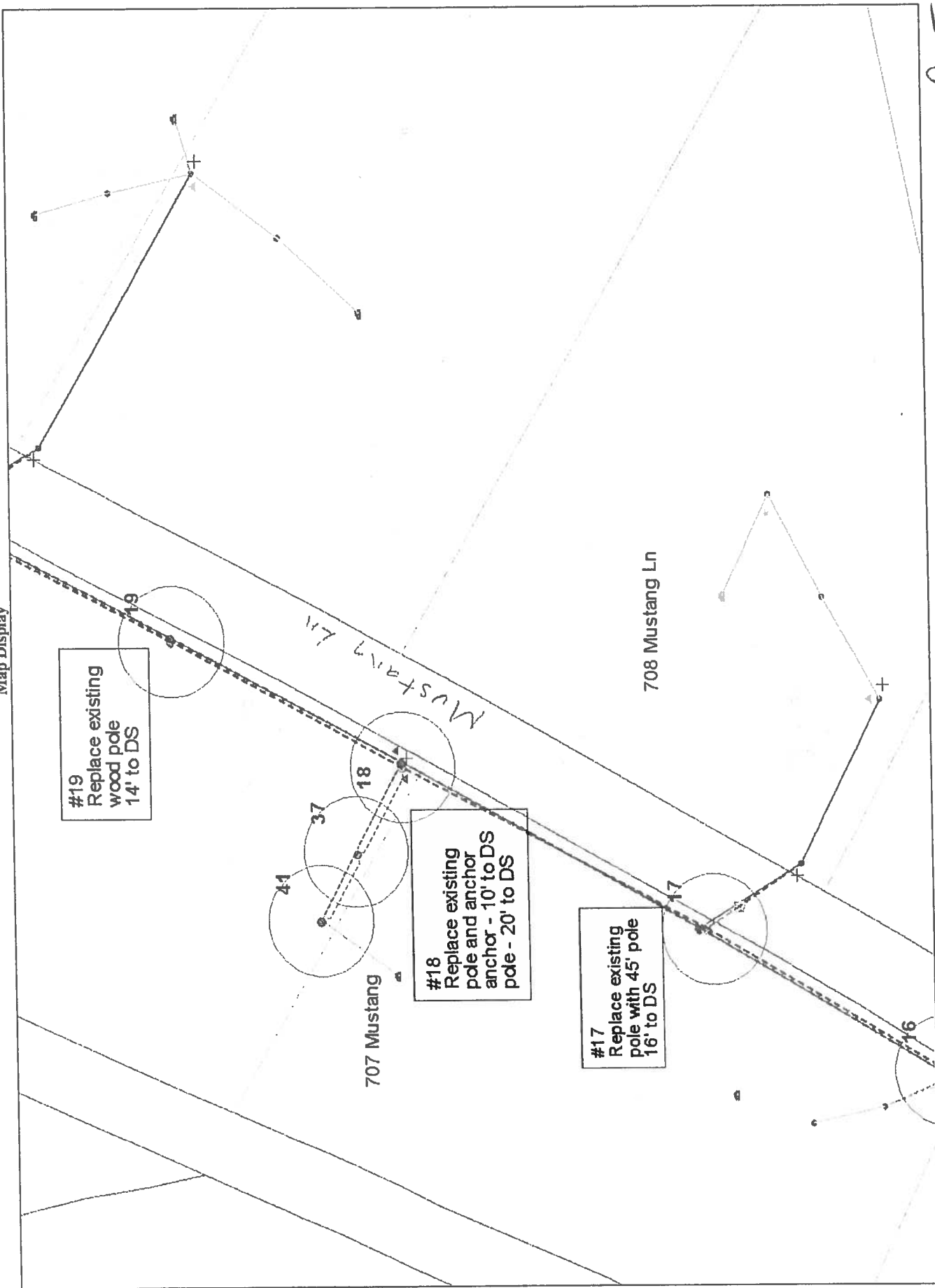


Pg 2





Map Display





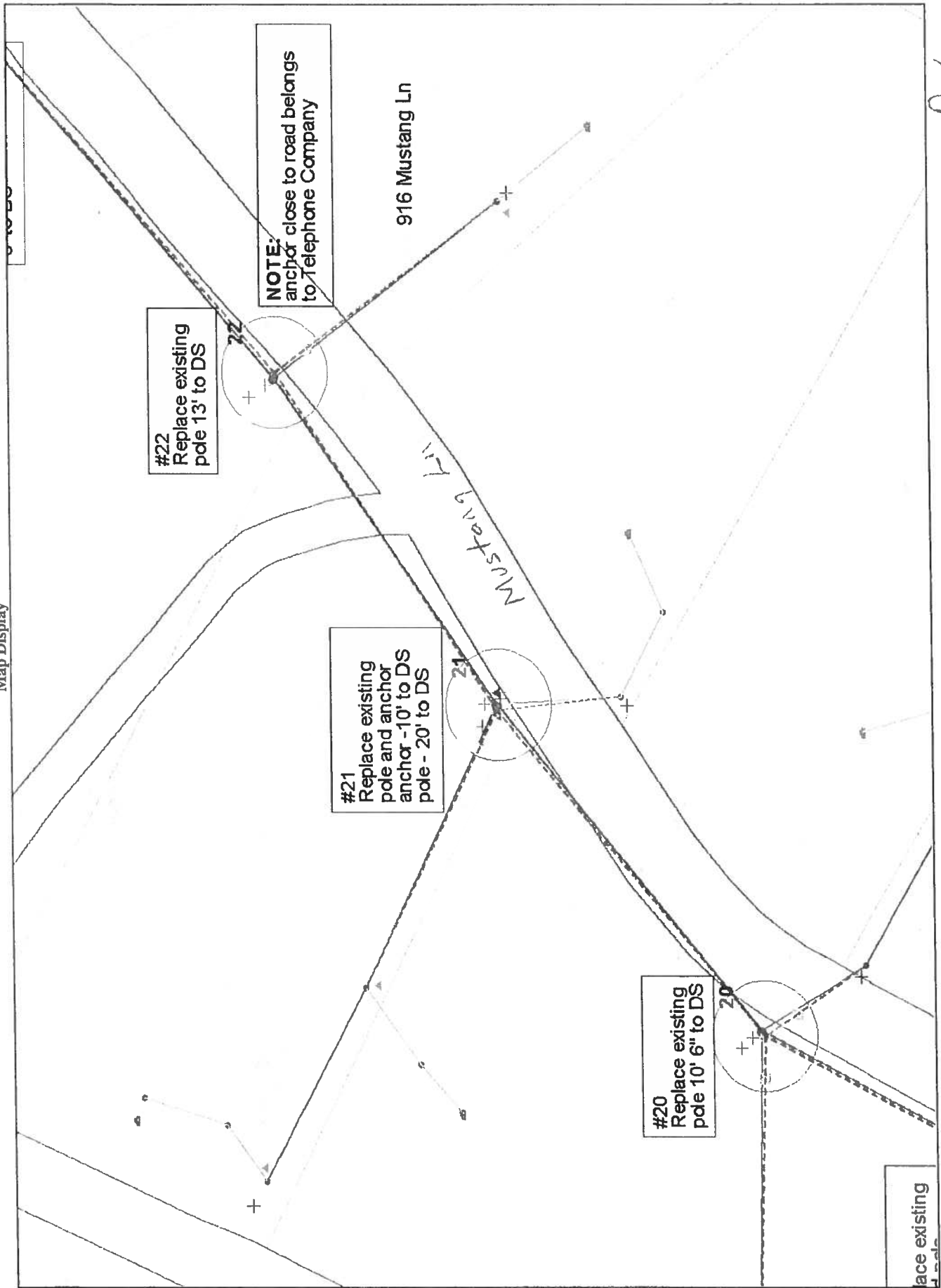
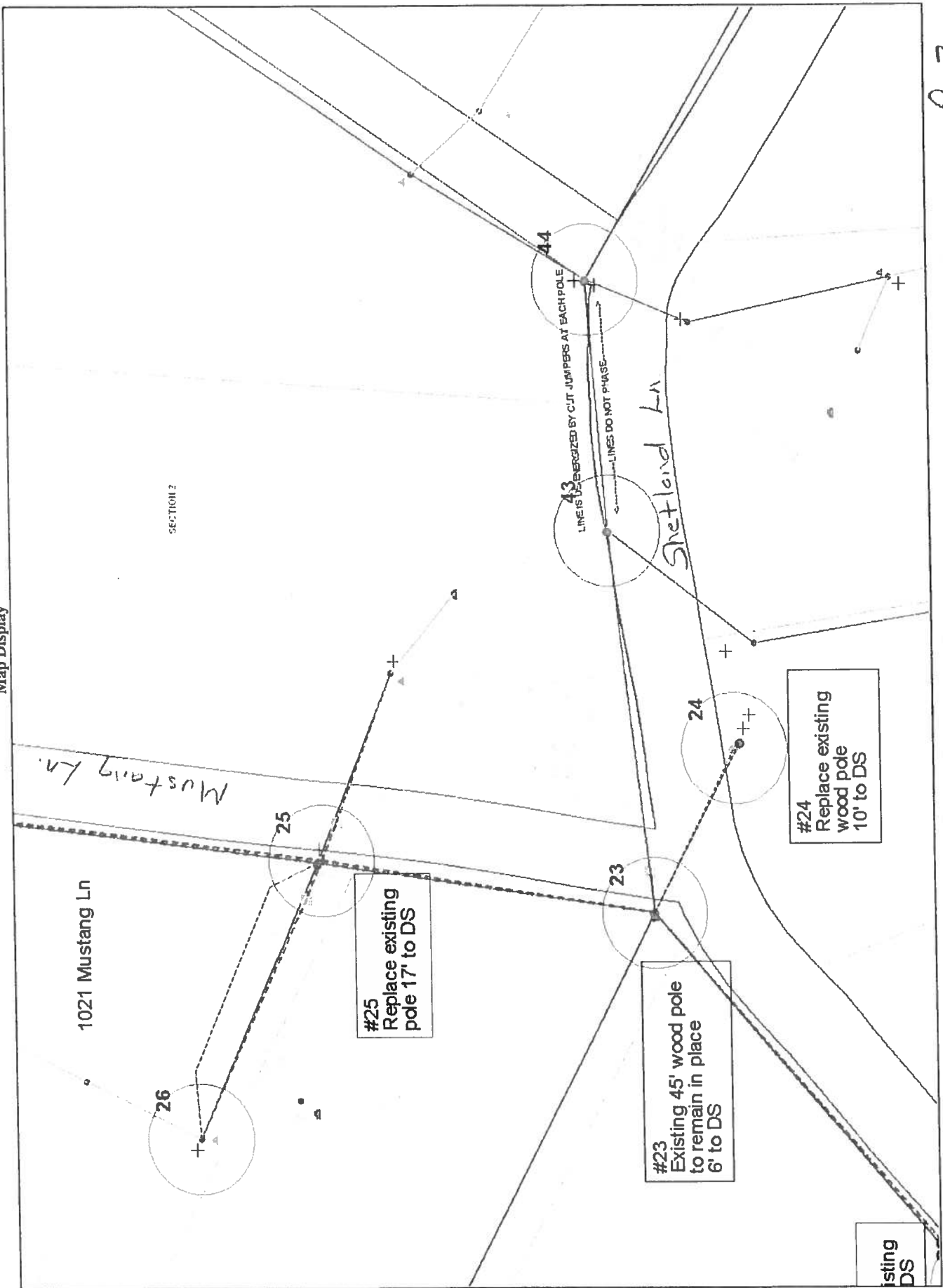
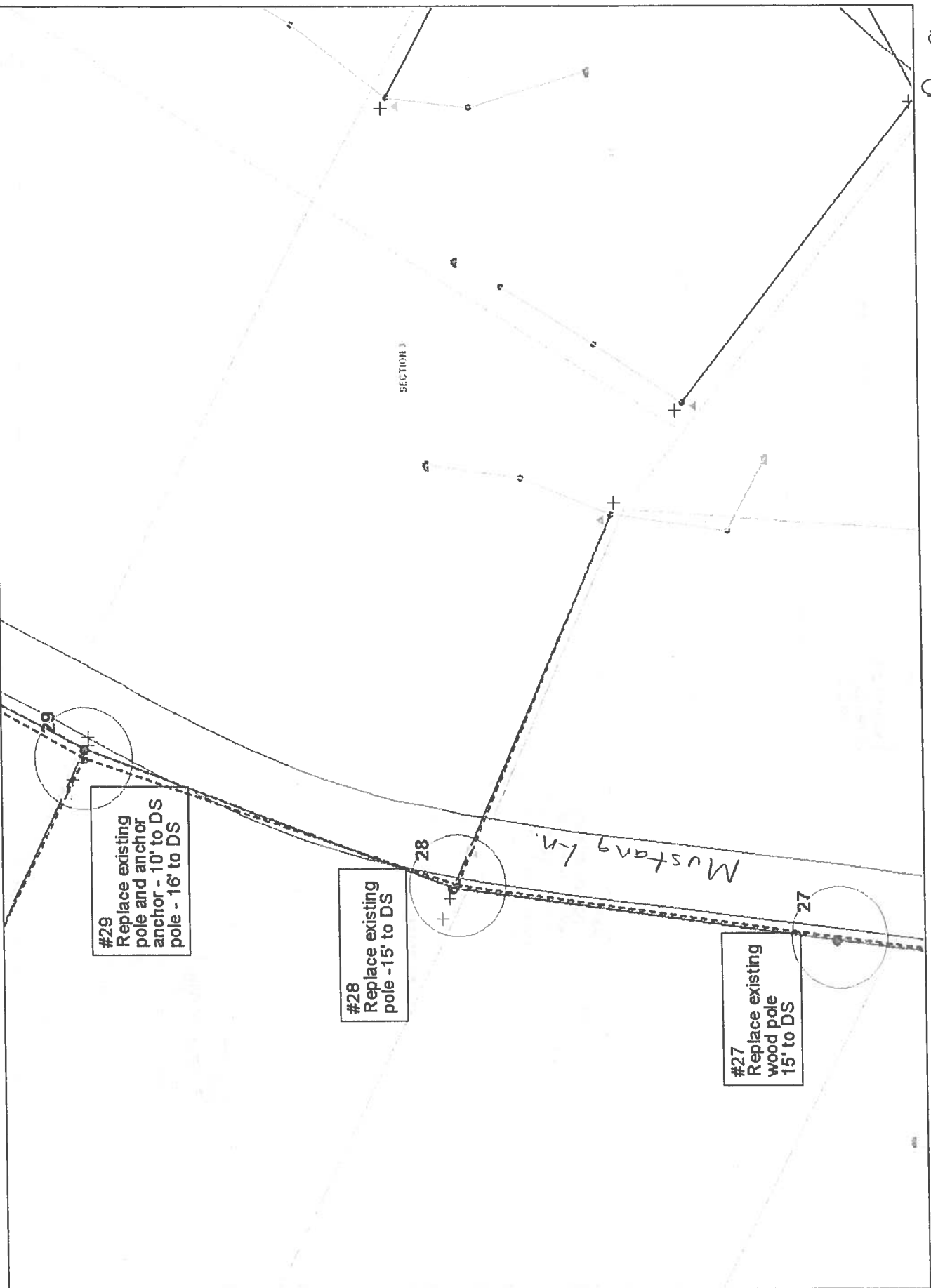


Fig 6





Map Display

#32  
Existing pole  
to remain  
10' to DS

#31  
Replace existing  
pole and anchor  
pole - 10' to DS  
pole - 16' to pole

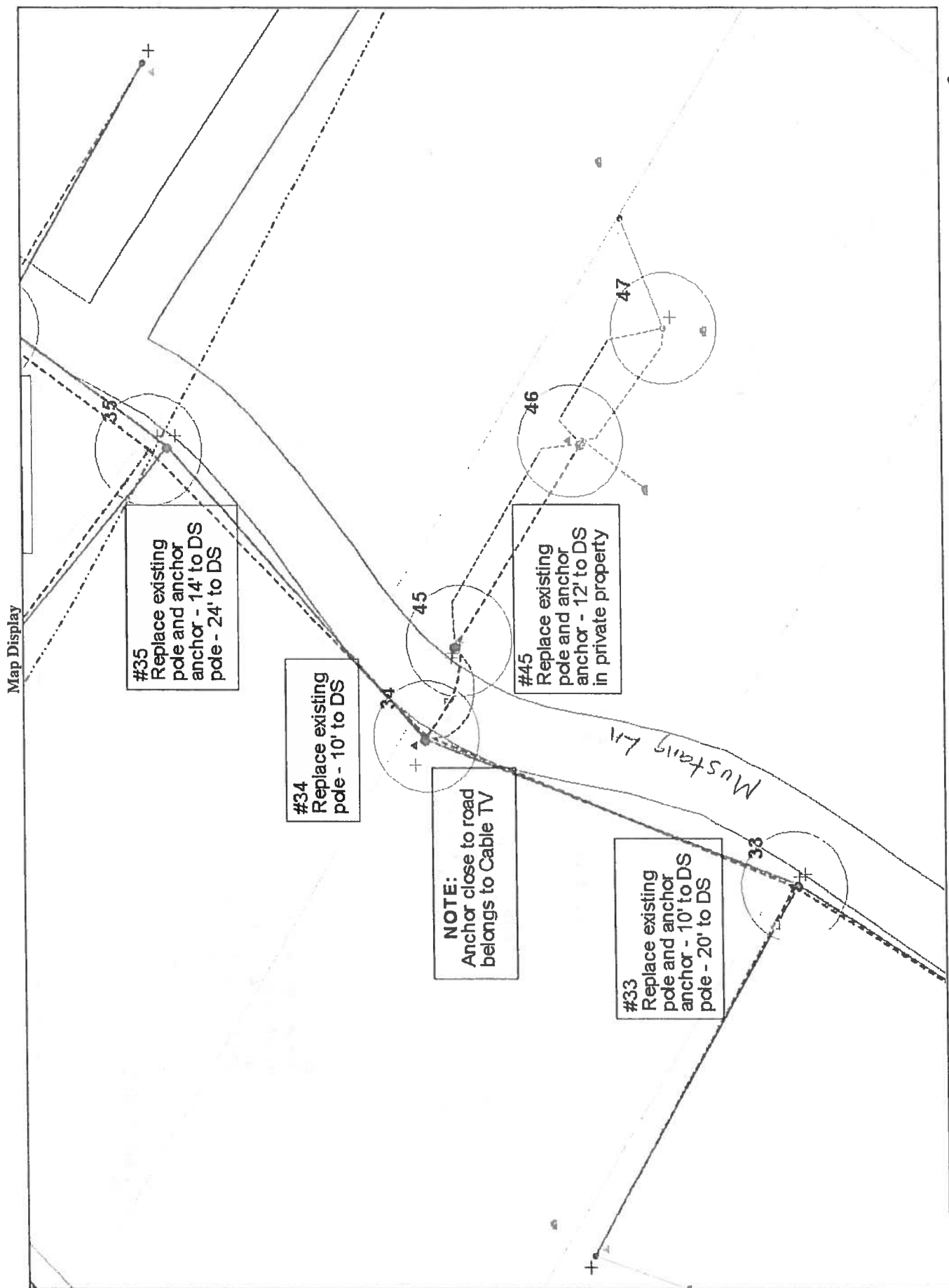
#30  
Replace existing  
pole - 12' to DS

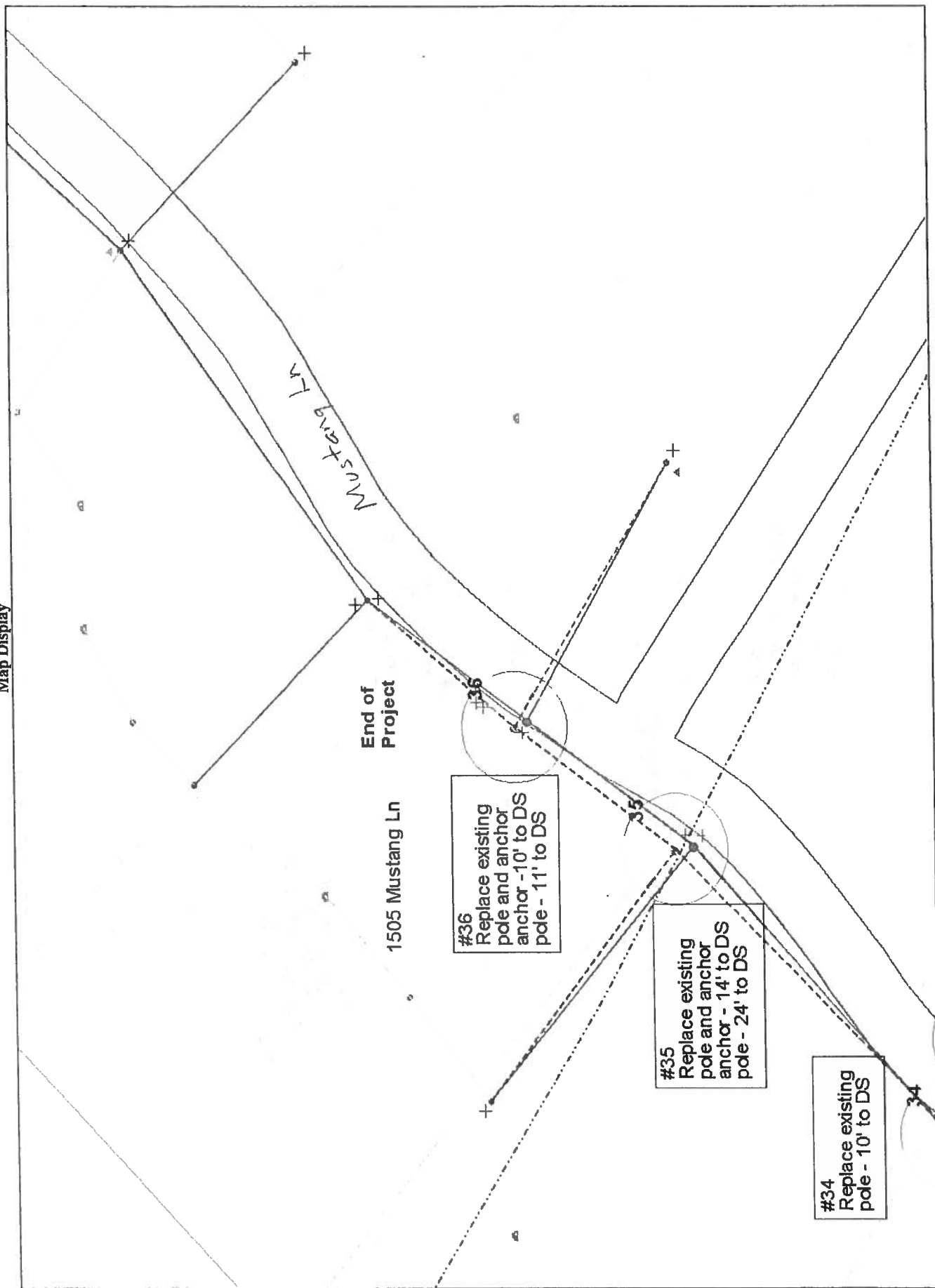
1322 Mustang Ln

1219 Mustang Ln

Mustang Ln

SECTION 3





**HAYS COUNTY RESOURCE PROTECTION, TRANSPORTATION and  
PLANNING DEPARTMENT**



**UTILITY PERMIT APPROVAL**

Approval of Utility Permit: 844

Application Date: 12/14/2011

Commissioner Court Approval Date: 2/21/12

Company Name: PEC

Company Address: P.O. Box 100 Kyle TX, 78640

Company Phone: 800-868-4791 Ext 7525

Company Contact: George Esqueda

Type of Utility: Electrical line

Road Name: Yarrington Road

Subdivision: Pct #: 1

Specs: Upgrading existing power line installing additional poles

County Provisions: Poles to be place to be 10'+ from travel way

Variance Requested: None

**Notice of Proposed Installation  
Utility Line on Hays County Right of Way**

Date: 12/14/2011

TO: The Hays County Road Department  
c/o Permits and Inspections  
2171 Yarrington Rd  
P.O. Box 906  
San Marcos, Texas 78667-0906

Formal notice is hereby given that Pedernales Electric Cooperative  
Company proposes to place a Three phase power line  
line within the right-of-way of Yarrington Rd  
as follows: (give location, length, general design, etc.)  
7 poles three phase construction along Yarrington Rd (see attached drawing)

If the proposed installation is a parallel installation, then the installation shall be located two feet within the edge of right-of-way unless otherwise approved by the County.

The line will be constructed and maintained on the road right-of-way as directed by the Hays County Road Department (HCRD), an agency of the Commissioners Court of Hays County, in accordance with governing laws, including but not limited to the "Federal Clean Water Act", the "Federal Endangered Species Act", and the "Federal Historic Preservation Act". Upon request by the HCRD, proof of compliance with all governing laws, rules, and regulations will be submitted to HCRD before commencement of construction.

Our firm will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "General Special Provisions".

Our firm will insure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained during this installation.

The location and description of the proposed line and appurtenances is more fully shown by 2 complete sets of drawings attached to this notice.

It is expressly understood that Hays County does not purport, hereby, to grant any right, claim, title, or easement in or upon this road; and it is further understood that Hays County may require the owner to relocate this line, subject to provisions of governing laws, by giving thirty (30) days written notice.

It is understood and agreed that any damages sustained to the appurtenances installed under this proposal as a result of road construction and/or maintenance, including but not limited to mowing, ditch cleaning, culvert repair or replacement, roadway excavation and base work shall be the sole burden and expense of the owner.

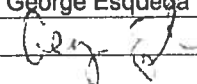
Applicant agrees to notify HCRD prior to commencement of any routine of periodic maintenance which requires pruning of trees within the road right-of-way, so that the County may provide specifications for the extent and methods to govern in trimming, topping, tree balance, type of cuts, painting cuts and clean up.

The installation shall not damage any part of the road and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. In the event the Applicant fails to comply with any or all of the requirements as set forth herein, Hays County may take such action as it deems appropriate to compel compliance.

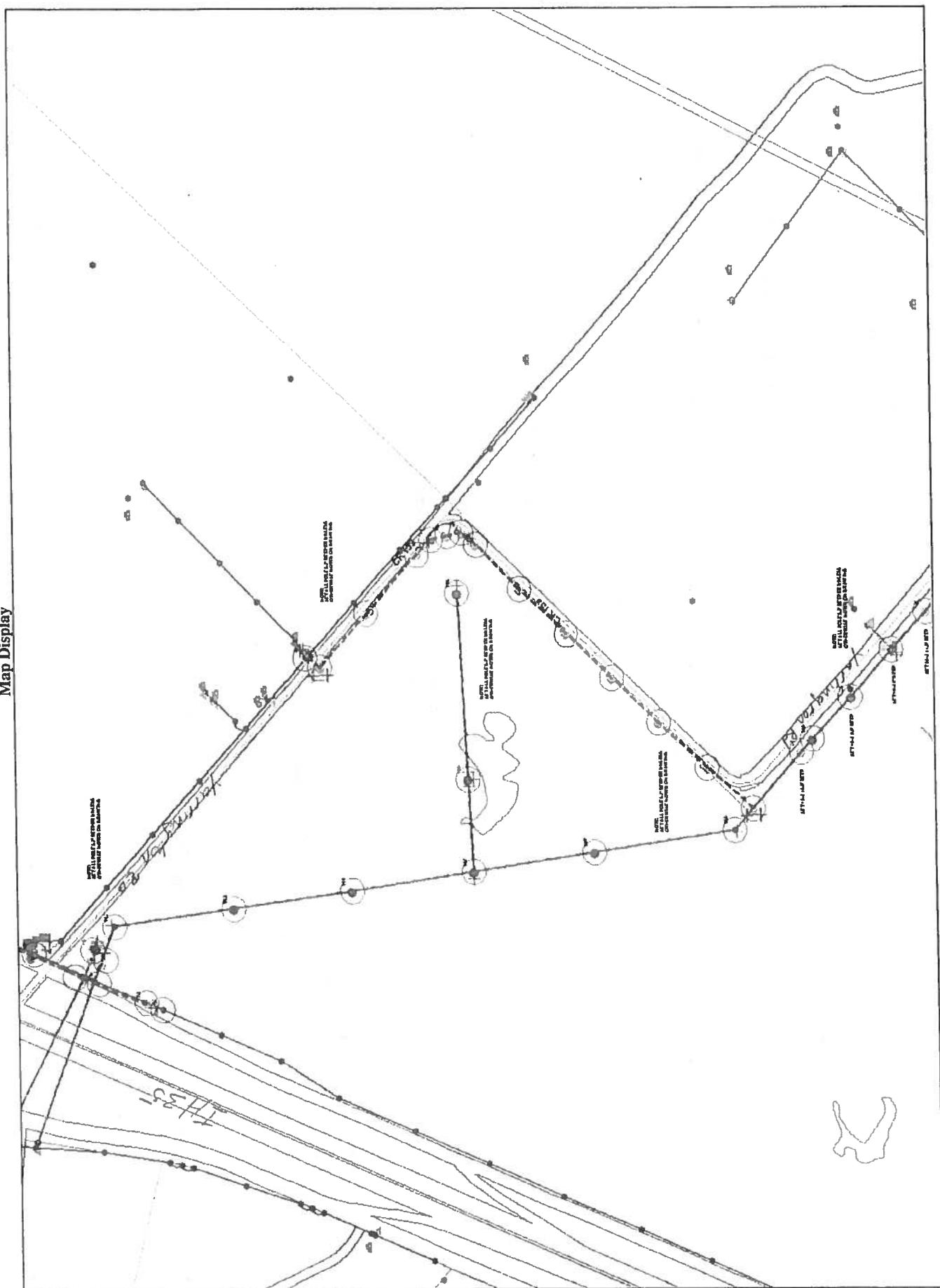
Construction of this line will begin on or after the 1 day of March, 2012.

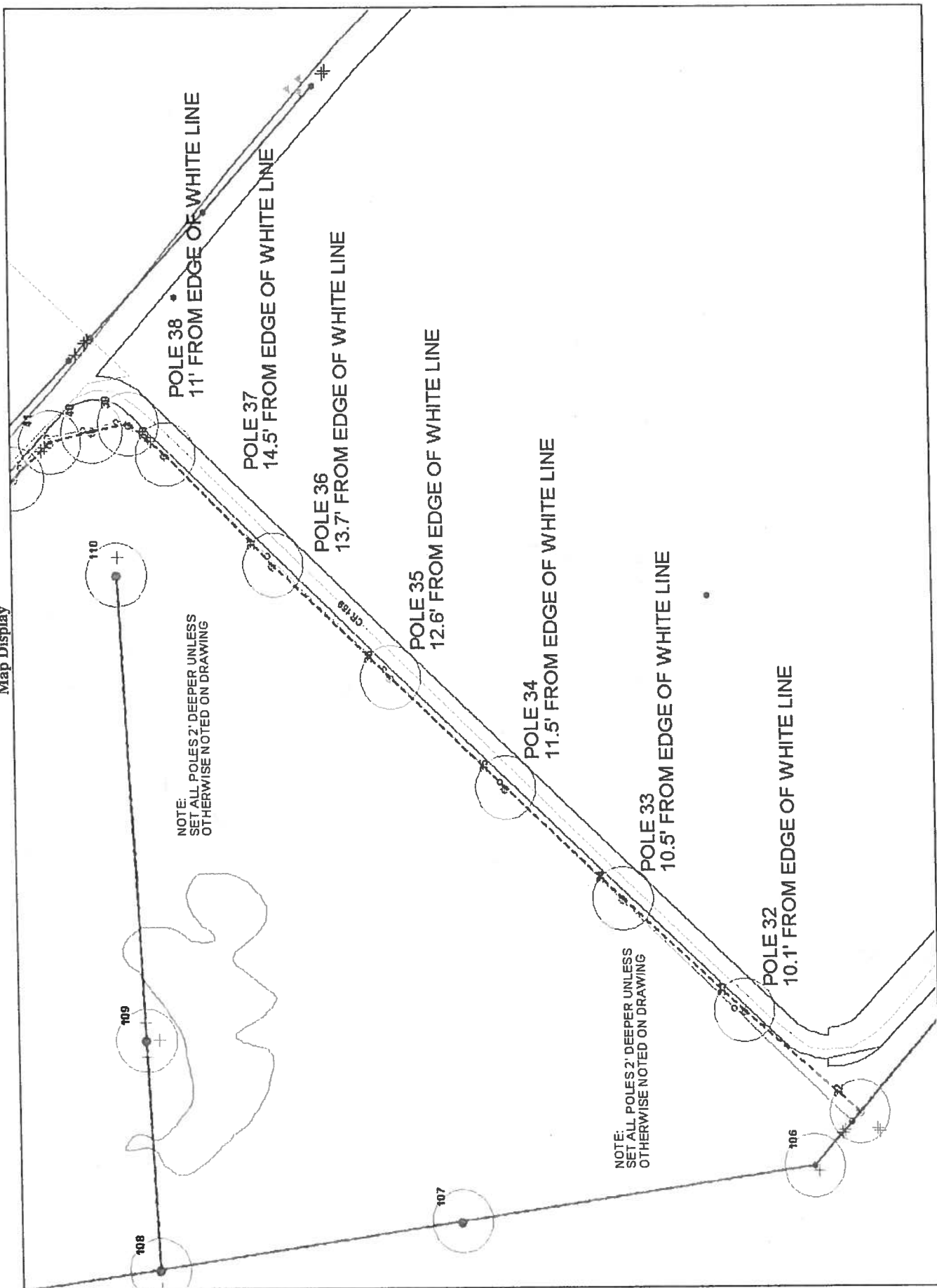
**General Special Provisions:**

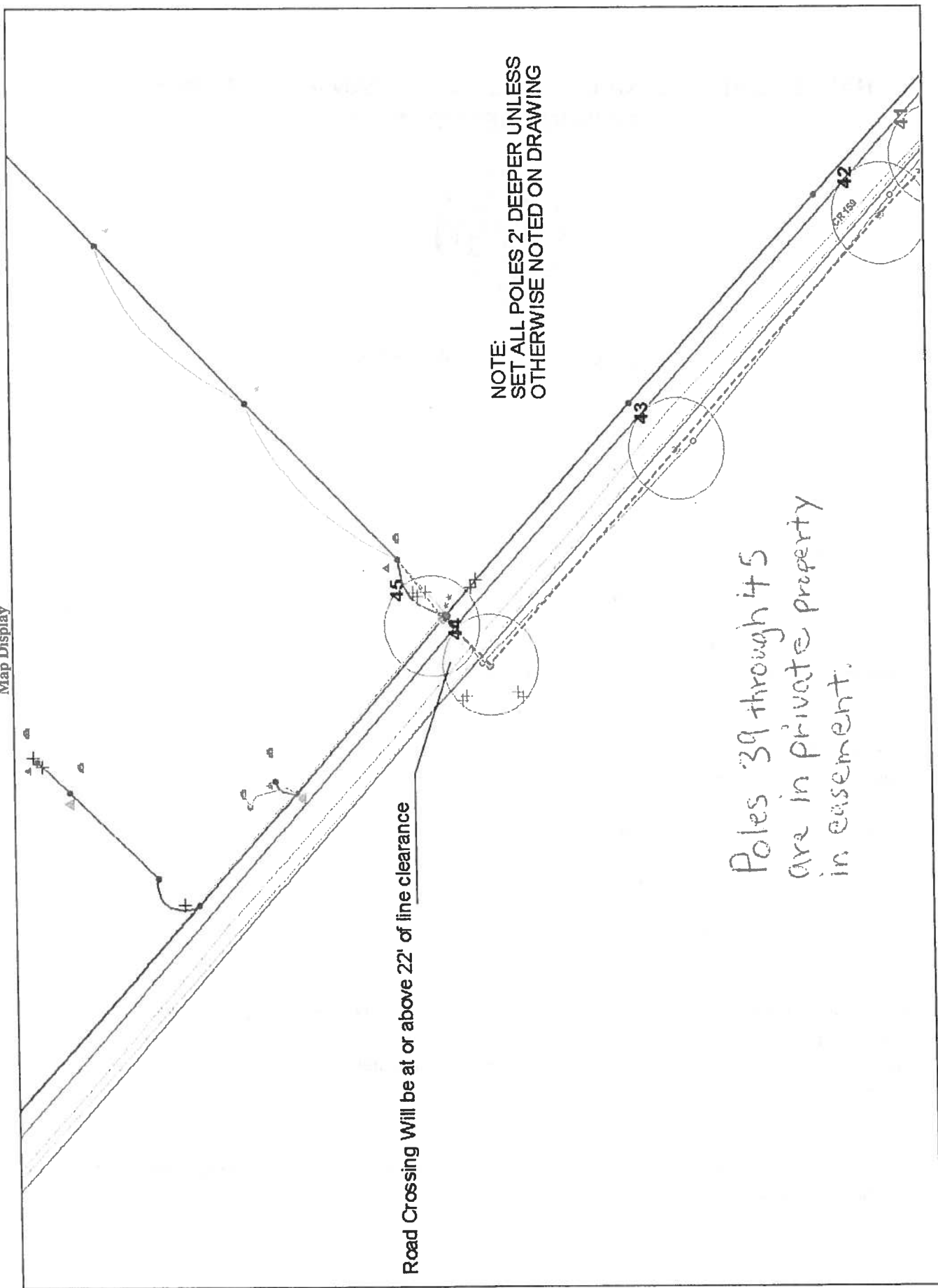
By signing below, I certify that I am authorized to represent the Firm listed below, and that the Firm agrees to the conditions/provisions included in this permit.

Firm <u>Pedernales Electric Cooperative</u>	Title <u>District Engineering Supervisor</u>
By (Print) <u>George Esqueda</u>	Address <u>1810 FM 150 West</u>
Signature <u></u>	Phone <u>(888) 554-4732</u> Ext <u>7520</u>









**HAYS COUNTY RESOURCE PROTECTION, TRANSPORTATION and  
PLANNING DEPARTMENT**



**UTILITY PERMIT APPROVAL**

Approval of Utility Permit: 845

Application Date: 2/06/12

Commissioner Court Approval Date: 2/21/12

Company Name: Verizon Southwest

Company Address: 109 South Llano Fredericksburg, TX 78624

Company Phone: 830-997-9002

Company Contact: Randy Roberts

Type of Utility: Telephone (Buried Drop)

Road Name: Shelton Ranch Road

Subdivision:           Pct #: 4

Specs: Beginning at existing PEC pole in the South Right-of-way of Shelton Ranch Rd across from the wet edge of the driveway to 150 Shelton Ranch Road Verizon proposes to bore said roadway to north right-of-way and exiting onto private easement as shown on attached drawing

County Provisions: Traffic control required; bore and case required; min 36" in depth required; notify Hays County 24 hrs prior to construction

845



Road and Bridge Department  
2171 Yarrington Road  
P O Box 906  
San Marcos, TX 78667-0906  
(512) 393-7385

## Application for Installation

### Utility Line on Hays County Right of Way

Date: 02/06/2012

Formal notice is hereby given that Verizon Southwest  
Company proposes to place a buried drop  
line within the right-of way of Shelton Ranch Rd  
as follows: (give location, length, general design, etc.)

Beginning at an existing PEC pole in the south ROW of Shelton Ranch Rd, across from the west edge of the driveway to 150 Shelton Ranch Rd, Verizon proposes to bore said roadway to the north ROW and exiting onto private easement as shown in the attached drawing.

If the proposed installation is a parallel installation, then the installation shall be located two feet within the edge of right-of-way unless otherwise approved by the County.

The line will be constructed and maintained on the road right-of-way as directed by the Hays County Road Department (HCRD), an agency of the Commissioners Court of Hays County. In accordance with governing laws, including but not limited to the "Federal Clean Water Act," the "Federal Endangered Species Act," and the "Federal Historic Preservation Act." Upon request by the HCRD, proof of compliance with all governing laws, rules, and regulations will be submitted to HCRD before commencement of construction.

Our firm will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "General Special Provisions."

Our firm will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during this installation.

The location and description of the proposed line and appurtenances is more fully shown by \_\_\_\_\_, 1  
attached to this notice.

It is expressly understood that Hays County does not purport, hereby, to grant any right, claim, title, or easement in or upon this road; and it is further understood that Hays County may require the owner to relocate this line, subject to provisions of governing laws, by giving thirty (30) days' written notice.

It is understood and agreed that any damages sustained to the appurtenances installed under this proposal as a result of road construction and/or maintenance, including but not limited to mowing, ditch cleaning, culvert repair or replacement, roadway excavation and base work shall be the sole burden and expense of the owner.

Applicant agrees to notify HCRD prior to commencement of any routine or periodic maintenance which requires pruning of trees within the road right-of-way, so that the County may provide specifications for the extent and methods to govern in trimming, topping, tree balance, type of cuts, painting cuts and clean up.

The installation shall not damage any part of the road and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. In the event the Applicant fails to comply with any or all of the requirements as set forth herein, Hays County may take such action as it deems appropriate to compel compliance.

Construction of this line will begin on or after the 27th day of February 2012.

#### General Special Provisions:

By signing below, I certify that I am authorized to represent the Firm listed below, and that the Firm agrees to the conditions/provisions included in this permit.

Firm Verizon Southwest

Title OPT, Network Engineering

By (Print) Randy Roberts

Address 109 S. Llano

Signature

*Randy Roberts*

Fredericksburg, Texas 78624  
Phone 830-997-9002

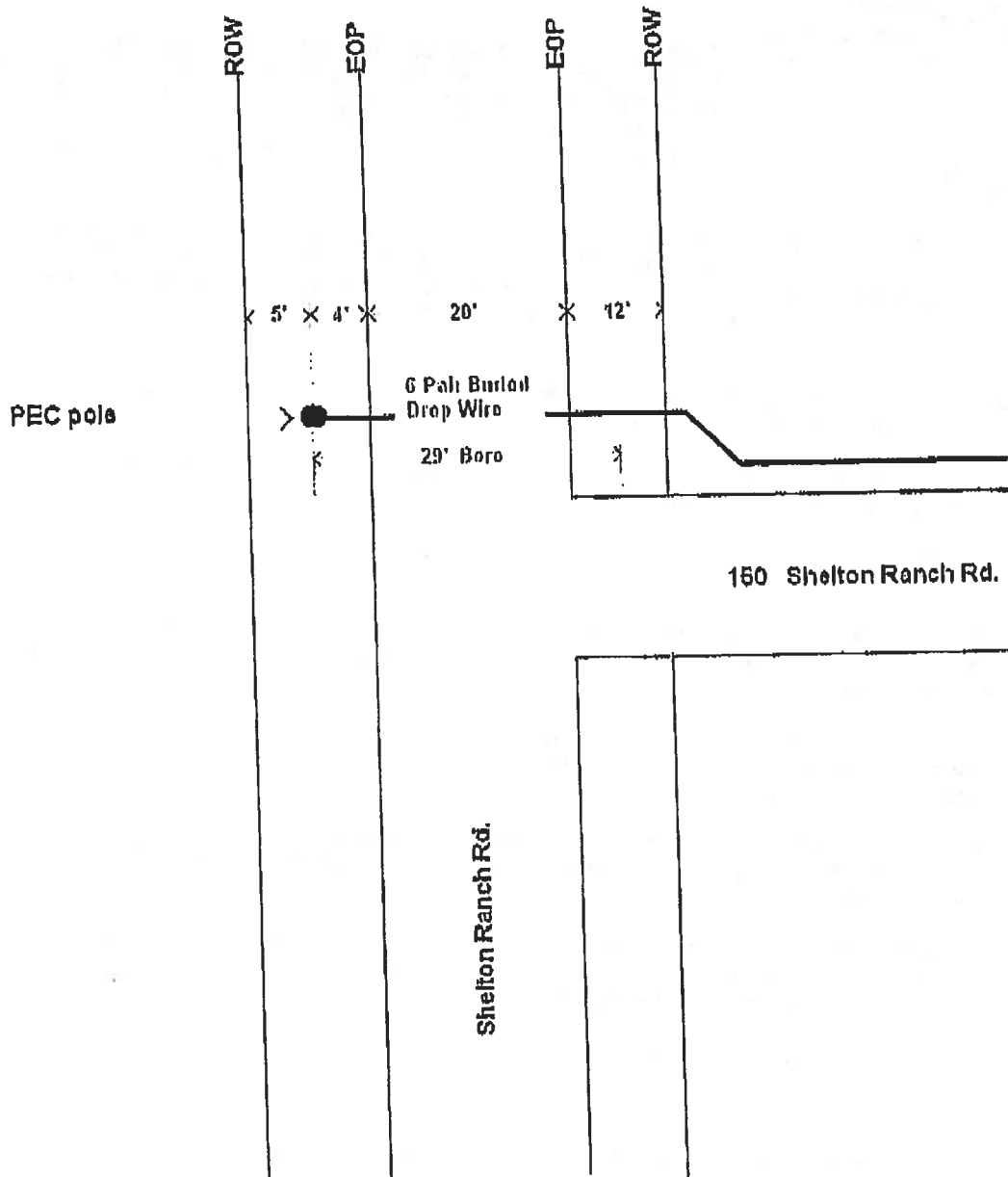
Approved by Hays County Road & Bridge Department		
<i>[Signature]</i>	Inspector	2/12/12
Signature	Title	Date

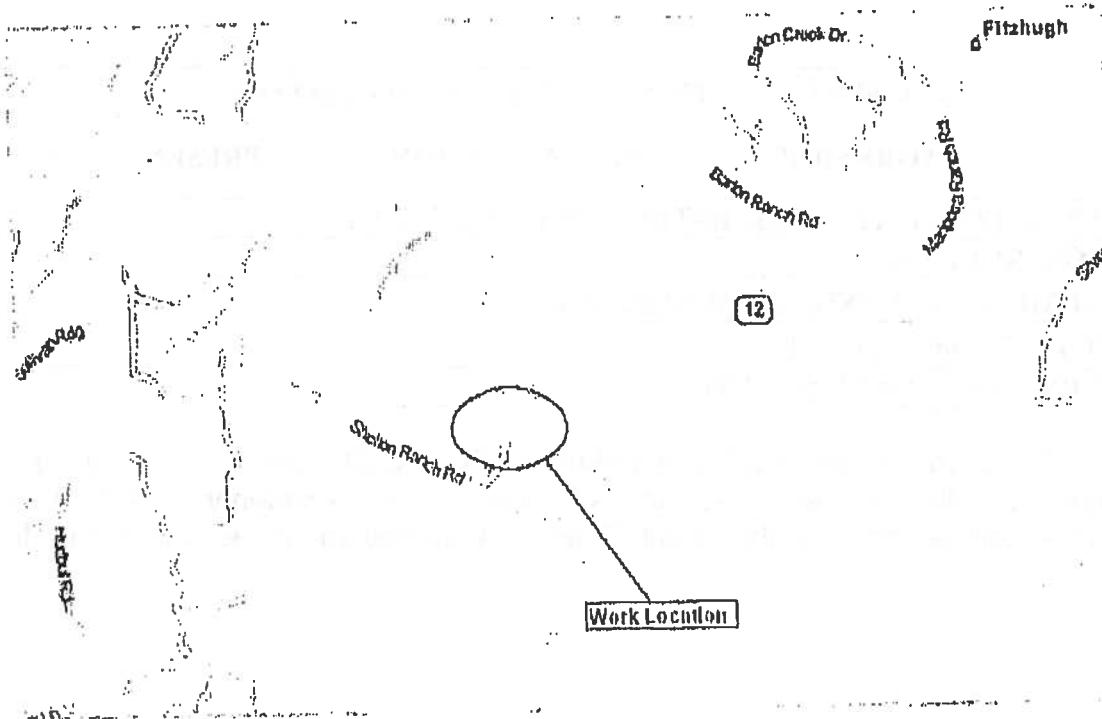
June 28, 2004

Replace Defective Aerial Wire  
Ray Underwood  
150 Shelton Ranch Rd

Feb.06,2012

No Scale





## *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:** Recognize the attached fee schedule for Training Academy Courses provided by the Sheriff's Office.

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

**PREFERRED MEETING DATE REQUESTED:** February 21, 2012

**AMOUNT REQUIRED:** N/A

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

**REQUESTED BY:** Sheriff Gary Cutler

**SPONSORED BY:** Judge Bert Cobb, MD

**SUMMARY:**

On December 6<sup>th</sup>, the Commissioner's Court authorized the Sheriff's Office to amend the operating budget for tuition and related expenses for their Training Academy. Attached is a list of courses that will be offered at the Sheriff Training Academy and a fee schedule for those courses.



## 2012 Training

Code	Course name	Fee
25	TCLEOSE PO or CO testing	\$25.00
1000	Basic Peace Officer Academy	\$1,800.00
1007	Basic Corrections Academy	\$300.00
1014	Basic Instructor	\$150.00
1017	Advanced Instructor Course	\$150.00
2015	ICC Child Abuse Detection and Prevention	\$90.00
2067	SFST Practitioner	\$90.00
2106	ICC Crime Scene Investigations	\$150.00
2107	ICC Use of Force	\$60.00
2108	ICC Arrest Search and Seizure	\$60.00
2109	ICC Spanish for LE/Corrections/Dispatch	\$90.00
2120	Crisis Communications	\$90.00
2222	Firearms Instructor School	\$150.00
3031	Background Investigator Course	\$30.00
3232	Special Investigative Topics	\$30.00
3277	Identity Crimes	\$30.00
3501	ICC Suicide Detection and Prevention	\$30.00
3502	ICC Inmate Rights and Privileges	\$60.00
3503	ICC Interpersonal Communications	\$60.00
3504	ICC Use of Force in Jail Setting	\$60.00
3506	Legal Issues for Correction Personnel	\$30.00
3802	TCIC/NCIC FA	\$60.00
3807	TCIC/NCIC LTFA	\$30.00
3841	Crisis Intervention Training	\$60.00
3843	CIT Update	\$30.00
3845	CPR/First Aid/AED	\$30.00
3920	Ethics	\$30.00
3939	Cultural Diversity	\$30.00
4001	Mental Health Peace Officer Course	\$150.00
38705	Powerpoint	\$30.00
38706	Advanced Powerpoint	\$60.00
1000app	BPOC Application Fee	\$25.00

HAYS COUNTY COMMISSIONERS' COURT MINUTES



VOLUME U PG 742  
2011

\*\*\*\*\*

DECEMBER 6,

**28621      AMEND THE SHERIFF OPERATING BUDGET TO IDENTIFY EXPENSES  
RELATED TO TUITION GENERATED FROM COURSES CONDUCTED AT THE  
HAYS COUNTY SHERIFF'S OFFICE TRAINING ACADEMY**

Captain Mark Cumberland gave a brief overview of the training academy. During the FY2012 budget process, a total of \$3,000 in revenue was budget for training academy fees. The expenses for the academy have historically been paid out of the continuing education line item. The Sheriff's Office would like to create an Academy Training line item and move the \$3,000 into this account to track all expenses related to the academy. Once they have exceeded the budgeted revenue, the Sheriff's Office will be requesting to use any additional fees collected for improvements and expanding the current capabilities of the Sheriff's Office training division. This would include but not limited to; up keep of the current training facilities, expand on the current training facilities, replacing aging training equipment, and pay instructor fees. This will be brought back to Commissioners Court as additional revenue is received. Amount required is \$3,000.00 Increase Academy Training Expense 001-618-00.5333 \$ 3,000.00, Decrease Continuing Education 001-618-00.5551 (\$3,000). **A motion was made by Commissioner Conley, seconded by Commissioner Whisenant to amend the Sheriff Operating budget to identify expenses related to tuition generated from courses conducted at the Hays County Sheriff's Office Training Academy. All voting "Aye". MOTION PASSED**

## *Agenda Item Request Form*

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

9:00 a.m. Every Tuesday

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

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

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

**AGENDA ITEM: Accept the annual racial profile report from the Sheriff's Office.**

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

**PREFERRED MEETING DATE REQUESTED: February 21, 2012**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: Cutler**

**SPONSORED BY: Cobb**

**SUMMARY:**



JAMIE R. PAGE  
Chief Deputy

MARK CUMBERLAND  
Captain- Support Service Bureau

**GARY CUTLER**  
**HAYS COUNTY SHERIFF**

1307 Uhland Road  
San Marcos, Texas 78666  
512.393.7800  
[www.sheriff.co.hays.tx.us](http://www.sheriff.co.hays.tx.us)

BRAD ROBINSON  
Captain- Corrections

MIKE DAVENPORT  
Captain- Law Enforcement

February 9, 2012

The Honorable Bert Cobb  
County Judge  
Hays County Commissioners Court

The Honorable Bert Cobb,

In accordance with state law and specific to the Texas Code of Criminal Procedure, Chapter 2.132(b)(6) & (7), the following report has been prepared and is being respectfully submitted. The report consists of statistical data collected by the Hays County Sheriff's Office as prescribed by statute for the calendar year of 2011. It is important to note that reporting requirements under the Texas CCP Chapter 2.134 have been exempted due to compliance with the provisions of the Texas CCP Chapter 2.135(a). In addition, the Hays County Sheriff's Office has adopted a policy concerning Racial Profiling (see attached). The policy is within the requisite standards as have been set forth by statute and recommended by the legislature.

Respectfully,

Gary Cutler  
Sheriff, Hays County

**Partial Exemption Racial Profiling Report  
(Tier 1)**

(This is the TCLEOSE recommended form. The form is not mandatory. The information contained in this form, however, is mandatory. You may use your form, but all information must be provided.)

**If you claim a partial exemption you must submit a report that contains the following data or use this format to report the data.**

**Instructions: Please fill out all boxes. If zero, use 0.**

**1. Total on lines 4, 11, 14, and 17 Must be equal**

**2. Total on line 20 Must equal line 15**

**Number of motor vehicle stops:**

Mark only 1 category per vehicle stop

- 1. 3157 Citation Only
- 2. 32 Arrest Only
- 3. 0 Both

**4. 3189 Total**

**Race or Ethnicity:**

- 5. 104 African
- 6. 14 Asian
- 7. 1847 Caucasian
- 8. 1224 Hispanic
- 9. 0 Middle Eastern
- 10. 0 Native American

**11. 3189 Total**

**Race or Ethnicity known prior to stop?**

- 12. 76 Yes
- 13. 3113 No

**14. 3189 Total**

**Search conducted?**

- 15. 66 Yes
- 16. 3123 No

**17. 3189 Total**

**Was search consented?**

- 18. 28 Yes
- 19. 38 No

**20. 3189 Total Must equal #15**

## *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 agreement with SWICO Auctions for internet auction of removal of dwelling located at 5458 FM 2770, Kyle, Texas and authorize County Judge to execute same.**

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

**PREFERRED MEETING DATE REQUESTED: February 21, 2012**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY: Terry Whitman/Broadus Associates**

**SPONSORED BY: JONES**

**SUMMARY: For removal of building located on property that was acquired by Hays County for new location of the Precinct 2 offices.**

**SWICO AUCTIONS**  
**2130 CR 100, CALDWELL, TEXAS 77836**  
**979-224-2861**  
**AGREEMENT TO SELL BY INTERNET AUCTION**

I, Bert Cobb, MD, County Judge, hereinafter referred to as SELLER, or the authorized agent for Hays County, warrants by signature that he/she has full authority to sell the property described herein and hereafter, and does hereby request that SWICO Auctions sell by public auction to be held on the Internet web site of www.swicoauctions.com for the following items briefly described as: removal of dwelling at 5458 FM 2770, Kyle, TX and further described in the schedule of property as presented thru the web site and is incorporated into and made a part of this agreement. Term of this agreement is one year from signing and renewed for additional terms until written notice is provided by either party with a 30 day notice of cancellation.

1. SELLER warrants the items to be free and clear of all liens, or the lien holders are here listed for notification and joint payment by SWICO Auctions: NA and SELLER

will provide all required titles, clear and transferable, to SWICO Auctions prior to start of the auction.

2. SELLER agrees this AUCTION WILL BE HELD ABSOLUTE, without prices reserves or "buy backs", and all items are to be sold to the highest bidder. All items are to be advertised and sold with no warranty expressed or implied to the buyers by the Seller or SWICO Auctions.

3. SELLER agrees to pay SWICO Auctions for the service rendered a commission fee of 15 % on the proceeds plus the \$ cost of the required advertising. SWICO Auctions will provide for the acceptance of major credit cards from buyers and will collect a buyer's premium of 5% of each purchase from the buyer, which will be retained by SWICO Auctions.

4. SWICO Auctions will make payment to the SELLER and /or jointly to any lien holder for goods sold and moneys collected, less all herein listed expenses and fees on the first day of the month for all items sold in the preceding month.

5. Should SELLER elect to terminate or breach any terms of this agreement, or if this sale is canceled for any reason other than an act of God, SELLER agrees to pay SWICO Auctions all costs and reasonable expenses incurred plus \$1,000.00 as liquidated damages, and any reasonable attorney fees arising from such termination. The removal of any item from this sale by the SELLER after advertising has been placed shall be subject to the commission payment listed above at an appraised value determined by SWICO Auctions.

6. SELLER assumes ALL risk and liability which may arise from the failure of Seller to comply with any Federal, State or regulatory agency requirements, including environmental pollutants and shall pay all costs for the clean up of such pollutants and any fines or legal action arising from any such liability.

7. SELLER warrants that there are no known defects the items being sold, or will provide a written listing of any exceptions to SWICO Auctions at least three days prior to the sale for public disclosure, and agrees to hold SWICO Auctions harmless should any legal action come forth from such known defects.

8. Special Conditions: none at signing time or expected

This Agreement is entered into on February, 2012 by and between:

James I. Swigert, Auctioneer  
SWICO Auctions

SELLER or Agent for  
Judge, Hays County  
712 S. Stagecoach Trail  
San Marcos, TX 78666  
Payment to County Auditor, Ste 1071

James I. Swigert holds Texas Auctioneer License No. 9214 issued by The Department of Licensing & Regulation, which can be reached at PO Box 12157, Austin, Texas 78711, (512)-463-7331.

## BUILDING REMOVAL

### INSURANCE REQUIREMENTS

The Contractor, before starting work for the Seller, HAYS COUNTY, must furnish the Seller with a Certificate of Insurance or other acceptable evidence from a reputable insurance company or companies with an A.M. Best rating of "A" (such companies to be acceptable to the Seller) licensed to write insurance in the State of Texas, showing that the Contractor is covered by the insurance as follows:

Commercial General Liability Insurance with a \$500,000 Combined Single Limit. The policy shall be on the Comprehensive General Liability 1986/90 occurrence form, and shall include coverage for acts of independent contractors, and shall name the Seller, HAYS COUNTY, as an additional insured. Waiver of subrogation is required. No "claims made" policies are acceptable without prior approval by the Seller.

Automobile Public Liability Insurance with a \$1,000,000 Combined Single Limit on all self-propelled vehicles used in connection with the contract, whether owned, non-owned or hired.

The Certificates of Insurance furnished to the Seller, HAYS COUNTY, shall contain a provision that coverage under such policies shall not be cancelled or materially changed until at least 30 days prior written notice has been given the Seller, HAYS COUNTY.

The Seller, HAYS COUNTY, reserves the right to require additional lines of insurance on a case-by-case basis, depending upon the subject matter of the contract and the attendant risks involved in the completion of the contractual work.



## BUILDING REMOVAL

### RELEASE AND INDEMNITY AGREEMENT

The undersigned (hereinafter "The Releasing and Indemnifying Party") agrees fully to release, indemnify, defend, and hold harmless HAYS COUNTY and all employees and SWICO Auctions and all employees from and against all claims, judgments, and actions, and all expenses incidental to the defense of any such claims or actions, based upon or arising out of injuries (including death) to persons (including the undersigned) or damage to property (including property of the undersigned) occurring in connection with the undersigned's presence on the premises of the property 5458 FM 2770, Kyle, TX. during the undersigned's removal, loading or unloading of a two story dwelling and associated debris from said premises including such as may be caused by the negligence of HAYS COUNTY and SWICO Auctions, etal. In the event of any accident or claim, the Releasing and Indemnifying Party shall give immediate notice to HAYS COUNTY and SWICO Auctions. This agreement does not limit, and is in addition to, any other rights and remedies held by the HAYS COUNTY and SWICO Auctions.

#### RELEASING AND INDEMNIFYING PARTY

\_\_\_\_\_

By: \_\_\_\_\_

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

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

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

## *Agenda Item Request Form*

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

9:00 a.m. Every Tuesday

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

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

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

**AGENDA ITEM:** Authorize the Sheriff's Office to use funds received from unclaimed evidence auction to purchase supplies and amend the budget accordingly.

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

**PREFERRED MEETING DATE REQUESTED:** February 21, 2012

**AMOUNT REQUIRED:** \$1,010.80

**LINE ITEM NUMBER OF FUNDS REQUIRED:** 001-618-00.5362

**REQUESTED BY:** Sheriff Gary Cutler

**SPONSORED BY:** Judge Bert Cobb, M.D.

**SUMMARY:**

The Sheriff's Office has received funds from PropertyRoom.com for auctioned items of unclaimed evidence. These funds will be used to purchase supplies needed for the evidence room.

Budget Amendment:

Increase Revenue: 001-618-00-.4635 – auction sales: (1,010.80)

Budget Expense: 001-618-00.5362 – criminal investigation: 1,010.80

**DESCRIPTION OF Item:** Authorize the Sheriff's Office to use funds received from unclaimed evidence auction to purchase supplies and amend the budget accordingly.

**PREFERRED MEETING DATE REQUESTED:** February 21, 2011

**COUNTY AUDITOR**

**AMOUNT:** \$1,010.80

**LINE ITEM NUMBER:** 001-618-00.5362

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

AMENDMENT  
NO.FY2012-015 CC  
FY2012 Budget  
02/21/2012

FUND NO. 001  
FUND TITLE: GENERAL FUND

<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>Sheriff Office (618):</u>					
001-618-00.5362	C.I.D.	18,000	1,011		19,011
	<u>Revenue</u>		<u>Decreases</u>	<u>Increases</u>	
001-618-00.4635	Auction Sales	0		1,011	1,011

Budget evidence auction proceeds received for evidence room expense

## *Agenda Item Request Form*

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

9:00 a.m. Every Tuesday

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

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

**Phone (512) 393-2205**

**AGENDA ITEM:** Approve a letter agreement with LexisNexis for legal content subscription services at the Hays County Jail and authorize the Hays County Sheriff to submit the agreement.

<b>CHECK ONE:</b>	<input checked="" type="checkbox"/> <b>CONSENT</b>	<input type="checkbox"/> <b>ACTION</b>	<input type="checkbox"/> <b>EXECUTIVE SESSION</b>
	<input type="checkbox"/> <b>WORKSHOP</b>	<input type="checkbox"/> <b>PROCLAMATION</b>	<input type="checkbox"/> <b>PRESENTATION</b>

**PREFERRED MEETING DATE REQUESTED:** 2/21/12

**AMOUNT REQUIRED:** \$749/month

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:** CUTLER

**SPONSORED BY:** COBB

An extension to the LexisNexis monthly legal content subscription service agreement is required at this time. The rate will increase from \$700/month per terminal to \$749/month per terminal. The Hays County Jail utilizes (1) terminal. A copy of the extension (letter agreement) and the original service agreement is attached.

**RENEW YOUR LEXISNEXIS® PRISON SOLUTION  
ORDER NOW BY SIGNING THIS LETTER AGREEMENT**

Thank you for using LexisNexis as your provider of legal research materials for correctional facilities. We are dedicated to giving you efficient and cost-effective solutions, including the *Shepard's®* Citations Service.

Currently you are using the LexisNexis services pursuant to the Prison Solution Order (the "Order") that allows you to use selected information relevant to your needs in exchange for a fixed monthly commitment. The Order offers you access to comprehensive content and ease-of-use. However, your LexisNexis service under this Order will expire soon.

By signing below, you may extend the term for the following period at the monthly commitment rate indicated below:

<b>Customer Name:</b>	HAYS COUNTY SHERIFF'S OFFICE	<b>Account Number:</b>	0099572404
-----------------------	------------------------------	------------------------	------------

Extension Period				Monthly Commitment	
Beginning	2/1/2012	to	1/31/2013	\$	749.00
Beginning		to		\$	
Beginning		to		\$	

Customer hereby certifies that they have \_\_\_\_\_ number of terminals

This letter agreement shall also serve as your acceptance of the new General Terms & Conditions for Use of the Online Services effective September 1, 2010 set forth at [www.lexisnexis.com/terms/general](http://www.lexisnexis.com/terms/general).

These changes will be effective on 2/1/2012. Except as expressly stated above, all other terms of the Order will remain unchanged and unaffected by this letter agreement.

If you have any questions about your new rate or would like to see a comparison of other pricing options, please contact me, your account representative, at:

Kevin M. Taylor, Esq.  
National Account Manager  
Office: 513.360.7548  
Mobile: 513.252.7851  
Fax: 866.960.2897  
[kevin.taylor@lexisnexis.com](mailto:kevin.taylor@lexisnexis.com)

If you agree with the new monthly commitment and extended term, then please print this message, provide the information requested for the total number of terminals/licenses/locations then sign and date. Upon completion, return the signed letter agreement to me at the fax number listed above. In order for these changes to be effective on the date listed above, please sign and return this letter agreement no later than the 20th of January.

If you do not respond to this letter, please be advised that the Order will expire at the end of the current commitment period and you will no longer receive updated materials.

**Customer Name:** HAYS COUNTY SHERIFF'S OFFICE

**Authorized Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

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

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

**HAYS COUNTY SHERIFF'S OFFICE  
MONTHLY LEGAL CONTENT SUBSCRIPTION SERVICES AGREEMENT**

THIS AGREEMENT made effective as of the 1st day of February, 2011, by and between the Hays County Sheriff's Office, located at 1307 Old Uhland Road, San Marcos, TX 78666, hereinafter referred to as the "Subscriber" and Touch Legal, Inc. DBA Touch Sonic Technologies, located at 2630 Mendocino Avenue, Santa Rosa, CA 95403, hereinafter referred to as the "Provider."

Provider desires to provide Monthly Legal Content Subscription Services to Subscriber, and Subscriber desires to subscribe to Monthly Legal Content Subscription Services as provided by LexisNexis a Mathew Bender Company.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

**SECTION I - SERVICES OF THE LEGAL CONTENT PROVIDER**

The Provider hereby agrees to provide Subscriber, and Subscriber hereby agrees to provision of Monthly Legal Content Subscription Services with legal content updates four (4) times per year as provided by LexisNexis a Mathew Bender Company, the following described TEXAS LEGAL LIBRARY content:

***Federal Primary Sources***

- U.S. Supreme Court Cases
- Federal Cases (all circuit and district court cases)
- United States Code Service, Annotated
- Federal Court Rules (includes the Federal Rules of Criminal and Civil Procedure)
- United States Constitution

***Texas Primary Sources***

- Texas Statutes
- Texas Court Rules
- Texas State Cases

***Analysis and Practice Guides\*\****

- Moore's Federal Practice – Criminal
- Federal Habeas Corpus Practice and Procedure
- Constitutional Rights of Prisoners
- Criminal Defense Techniques
- Criminal Law Deskbook
- Texas Criminal Practice Guide
- Texas Sentencing
- Immigration Law and Procedure (desk edition)

***Citators and References***

- Shepard's – Federal and U.S. Citations
- Shepard's - Texas Citations

- Ballentine's Law Dictionary, 3rd ed.

\*\* - subject to change

## **SECTION II - TERM**

The term of this Agreement shall commence on February 1, 2011 and shall expire on January 31, 2011.

## **SECTION III - SHIPPING**

Provider shall be responsible for shipping of Legal Content and updates to Subscriber's premises.

## **SECTION IV - PAYMENT AND FEE SCHEDULE**

It is understood and agreed by and between the parties hereto, that the Subscriber shall pay the Provider for services furnished. The total monthly rent for Monthly Legal Content Subscription Services, with legal content updates four (4) times per year, shall be paid in installments as follows:

A. Year 1 paid at \$700.00 per month for one (1) Kiosk.

Payments shall commence on February 1, 2011 and on the first day of each succeeding month throughout the term hereof, at Touch Legal, Inc., 2630 Mendocino Avenue, Santa Rosa CA 95403, or at such other place as Provider may designate from time to time. Any installment payment not made by the tenth (10th) day of the month shall be considered overdue and in addition to Provider's other remedies, Provider may levy a late payment charge equal to three percent (3%) per month on any overdue amount. Rent for any partial month shall be prorated.

## **SECTION V - USE**

Subscriber shall use the Monthly Legal Content Subscription Services for delivery of legal content via one (1) Touch Legal, Inc. electronic library kiosks ("Equipment"), in a careful and proper manner and shall comply with and conform to all national, state, municipal, police and other laws, ordinances and regulations.

## **SECTION VI - LEGAL CONTENT UPDATES**

Subscriber shall be responsible for performing installation of legal content updates, which will be provided to Subscriber by Provider via electronic hard drive approximately four (4) times per year or as said content updates are released by LexisNexis a Mathew Bender Company. Provider to provide training and telephone support as required, ensuring proper installation of said updates.

## **SECTION VII - RIGHT TO LEASE**

Provider warrants that provider has the right to provide monthly legal content subscription services by LexisNexis, a Mathew Bender Company, as provided in this agreement.

## **SECTION VIII - REPAIRS**

Provider, at its own cost and expense, shall keep the Equipment in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the



Equipment in good mechanical working order during the first twelve (12) months of ownership. Subscriber shall provide Provider with facility clearance and access, as required to repair equipment.

#### **SECTION IX - LOSS AND DAMAGE**

Subscriber hereby assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall impair any obligation of Subscriber under this agreement, which shall continue in full force and effect through the term of this agreement ending August 31, 2013.

#### **SECTION X - INDEMNIFY AND HOLD HARMLESS PROVISION**

Subscriber shall indemnify Provider against, and hold Provider harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney's fees and costs, arising out of, connected with, or resulting from Subscriber's use of the Monthly Legal Content Subscription Services and Equipment including without limitation the manufacture, selection, delivery, possession, use, operation, or return thereof.

#### **SECTION XI - TERMINATION OF LEASE**

Either party may terminate this Contract at any time by giving written notice of such termination within 90 calendar days of the date of notice and specifying the effective date thereof. If the Contract is terminated by the County; the County will pay the Provider for rent due to the date of termination. If written notice is sent to the Subscriber it must be sent to the Hays County Sheriff's Office.

#### **SECTION XII - DEFAULT**

If Subscriber fails to pay any rent or other amount herein provided within ten (10) days after the same is due and payable, or if Subscriber fails to observe, keep or perform any other provision of this Agreement required to be observed, kept or performed by Subscriber, Provider shall have the right to exercise any one or more of the following remedies:

- A. To sue for and recover all payments then accrued.
- B. To terminate this Agreement.
- C. To pursue any other remedy at law or in equity.

Notwithstanding any other action which Provider may take, Subscriber shall be and remain liable for the full performance of all obligations on the part of the Subscriber to be performed under this Agreement. All of Provider's remedies are cumulative, and may be exercised concurrently or separately.

#### **SECTION XIII - BANKRUPTCY**

Neither this Agreement nor any interest therein is assignable or transferable by operation of law. If any proceeding under the Bankruptcy Act, as amended, is commenced by or against the Subscriber, or if the Subscriber is adjudged insolvent, or if Subscriber makes any assignment for the benefit of his creditors, or if a writ of attachment or execution is levied on the Equipment and is not released or satisfied within ten (10) days thereafter, Provider shall have and may exercise any one or more of the remedies set forth in Section XII hereof; and this Agreement shall, at the

option of the Provider, without notice, immediately terminate the subject Agreement and shall not be deemed an asset of the Subscriber after the exercise of said option.

#### SECTION XIV - SPECIAL CONDITIONS

This instrument constitutes the entire agreement between the parties on the subject matter hereof and it shall not be amended, altered or changed except by a further writing signed by the parties hereto.

#### SECTION XV - NOTICES

Service of all notices under this Agreement shall be sufficient if given personally or mailed certified, return receipt requested, postage prepaid, at the address hereinafter set forth, or to such address as such party may provide in writing from time to time.

If to Provider:

Touch Legal, Inc.  
2630 Mendocino Avenue  
Santa Rosa CA 95448

If to Subscriber:

Hays County Sheriff's Office  
1307 Old Uhland Road  
San Marcos, TX 78666

#### SECTION XVI - ASSIGNMENT

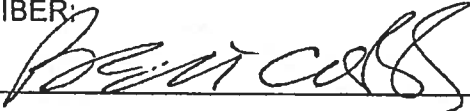
Subscriber shall not assign this agreement without the prior written consent of Provider.

#### XVII - HEADINGS

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

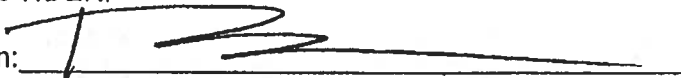
Signed the 5<sup>th</sup> day of JANUARY, 2011, effective as of February 1, 2011.

SUBSCRIBER:

Sign: 

Print: ALBERT H. COBB, JR., HAYS COUNTY JUDGE

PROVIDER:

Sign: 

Print: BRADLEY J. PLASCIKE

Date: 01-10-11

***Subdivision/Road/Staff Review Agenda Item Request Form***

**Hays County Commissioners' Court**

9:00 a.m. Every Tuesday

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

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

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

**AGENDA ITEM:** Discussion and possible action to consider the release of the maintenance bond and accept for maintenance all road and drainage improvements within County ROW for Mustang Valley subdivision, Section 1.

<b>TYPE OF AGENDA ITEM</b>	<b>Subdivision</b>	<b>Road</b>	<b>Staff Recommendation</b>
----------------------------	--------------------	-------------	-----------------------------

**PREFERRED MEETING DATE REQUESTED:** February 21, 2012

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:** Jerry Borcharding

**SPONSORED BY:** Commissioner Will Conley

**SUMMARY:** The Transportation Department has inspected and recommends its acceptance for maintenance.

**STAFF REVIEW/COMMENTS**

**ENVIRONMENTAL HEALTH DIRECTOR:**

**ROAD DIRECTOR:**

**STAFF RECOMMENDATIONS:**



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

---

2/13/12

Honorable Bert Cobb, M.D.  
111 E. San Antonio Street  
San Marcos, Texas 78666

RE: Mustang Valley Section 1

Dear Commissioners and Judge:

Russell Hinds, Owner, is requesting that Hays County release the maintenance bond and accept the maintenance of roads in Mustang Valley Section 1. I have reviewed the file on this subdivision and find that all the requirements have been met per Hays County Subdivision Regulations. Matt McCormick, P.E. has submitted a concurrence letter and as-built plans as required by Hays County.

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

Respectfully,

A handwritten signature in cursive script that reads "Jerry Borcharding".

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

## *Agenda Item Request Form*

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

9:00 a.m. Every Tuesday

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

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

Phone (512) 393-2205

**AGENDA ITEM:** Discussion and possible action to amend the Hays County Animal Control Ordinance.

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

**PREFERRED MEETING DATE REQUESTED:** 2/21/12

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:**

**SPONSORED BY:** CONLEY

The current Hays County Animal Control Policy and CH. 822 of the State Health and Safety Code are attached. Counsel will present proposed changes to the County Policy during Court.



**FOURTH AMENDED**

**HAYS COUNTY ANIMAL CONTROL ORDINANCE  
NO. 20893**

**AN ORDINANCE OF THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, TO ESTABLISH A RABIES CONTROL PROGRAM, REQUIRE THE LICENSING AND RESTRAINT OF CERTAIN ANIMALS, DESIGNATE A LOCAL ANIMAL CONTROL AUTHORITY, REGULATE DANGEROUS DOGS, DECLARE A PUBLIC NUISANCE AND PROVIDE PENALTIES PURSUANT TO CHAPTERS 822 AND 826 OF THE TEXAS HEALTH & SAFETY CODE.**

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**WHEREAS**, the Commissioners' Court of Hays County is authorized by Chapter 822 of the Texas Health & Safety Code to enact a local ordinance to regulate the registration and restraint of animals; and

**WHEREAS**, the Commissioners' Court of Hays County is authorized by Chapter 826 of the Texas Health & Safety Code to enact a local ordinance to require rabies vaccinations and other measures as a means to prevent the dangerous spread of rabies; and

**WHEREAS**, it is the intent of the Commissioners' Court to enact this animal control ordinance in an effort to protect the public health and safety of Hays County residents and encourage the humane treatment of animals;

**NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, THAT:** The following provisions were adopted the 18<sup>th</sup> day of MARCH, 2003.

**SECTION 1. INTENT AND AUTHORITY**

**Section 1.1. Authority.** These regulations are adopted by the Commissioners' Court of Hays County, Texas, acting in its capacity as the governing body of Hays County, Texas as authorized by Chapters 822 and 826 of the Texas Health & Safety Code.

**Section 1.2. Intent.** It is the intent of the Commissioners' Court of Hays County, Texas, to enact this ordinance in order to protect the public health and safety of the citizens of Hays County and the Commissioner's Court hereby declares that this ordinance is necessary for the immediate preservation of the public peace, health and safety. This ordinance is further intended to encourage the humane treatment of animals and prevent cruelty to animals.

**Section 1.3. Strict Liability.** Unless otherwise indicated, any person who violates a section of this ordinance shall be strictly liable for such violation and shall be subject to the penalties herein established.

**Section 1.4. Municipal Ordinances to Supersede.** This ordinance shall not prevent a corporate municipality within the county from establishing any rules and regulations to control animals within its corporate limits. Any such ordinance established by said corporate municipalities shall supersede this ordinance thereby preventing dual enforcement. In such cases, this ordinance will not be enforced within the corporate limits of any municipality.

## **SECTION 2. DEFINITIONS**

As used in this ordinance, the following words and phrases shall have the following meanings:

**Section 2.1. Animal Control Officer.** Any person designated by the Hays County Sheriff or his designee to perform the duties outlined in this ordinance.

**Section 2.2. Animal Owner.** Any person who owns, keeps, or has custody or control of an animal for a period of ten (10) days or more.

**Section 2.3. Bite.** Any puncturing, tearing, or scratching of the skin caused by an animal's teeth.

**Section 2.4. Cat.** Felis Catus.

**Section 2.5. Dangerous Dog.** A dog is dangerous if it:

- a) makes an unprovoked attack on a person causing bodily injury and the attack occurs in a place other than an enclosure in which the dog is being kept; or
- b) commits unprovoked acts in a place other than an enclosure in which the dog is being kept and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

**Section 2.6. Dog.** Canis Familiaris.

**Section 2.7 Domestic Animal.** Any animal that is owned, kept or controlled by a person.

**Section 2.8. Holiday.** Those days designated as official holidays by the Hays County Commissioners' Court.

**Section 2.9. Inhumane Treatment.** Any treatment of an animal which deprives the animal of necessary sustenance, including necessary food, clean water and adequate shelter for protection from weather, or any treatment which constitutes torment, physical abuse, mutilation, or lack of proper veterinary care.

**Section 2.10. Public Nuisance.** Any animal or animals that unreasonably annoy humans, endanger the life or health of other animals or persons, or substantially interfere with the rights of citizens, other than their owners, to the enjoyment of life or property. The term public nuisance shall mean and include, but not be limited to, any animal that:

- a) repeatedly is at large or stray;
- b) damages the property of anyone other than its owner;
- c) molests or intimidates pedestrians or passersby;
- d) chases vehicles or bicycles;
- e) excessively and repeatedly makes unprovoked disturbing noises including, but not limited to, continuous and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to the neighbors or others in close proximity to the premises where the animal is kept or harbored;
- f) attacks other domestic animals;

**Section 2.11. Restraint.** An animal shall be deemed to be under restraint if it is:

- a) tied in such a way as to prevent it from leaving the owner's premises and from being within ten (10) feet of any public right-of-way;
- b) totally enclosed in a fence constructed in such a way as to prevent it from leaving the owner's premises. The use of a wireless fence which transmits either a high frequency sound or a pulse stimulus shock and that is intended to train the dog to stay on the premises will not be considered a means of restraint; or
- c) accompanied by a responsible person who is able to control it with a leash.

**Section 2.12. Running At Large.** Not completely confined by a building, wall, or fence of sufficient strength or construction to restrain the animal except when a dog subject to these regulations is under the direct supervision of the owner and is:

- a) on a leash;
- b) held in the hands/arms of the owner or within the limits of the owner's private property and is obedient to that owner's verbal commands;
- c) within an automobile or vehicle of its owners and properly restrained; or
- d) participating in a field trial, dog show, or obedience classes.

**Section 2.13. Secure Enclosure.** A fenced area or structure that is:

- a) locked;
- b) capable of preventing the entry of the general public including children;
- c) capable of preventing the escape or release of a dangerous dog;
- d) clearly marked as containing a dangerous dog; and
- e) conforms to the requirements for enclosures established by the Animal Control Authority.



**Section 2.14. Serious Bodily Injury.** An injury characterized by severe bite wounds or severe ripping and tearing of muscle or tissue that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

**Section 2.15. Stray.** Any animal subject to these regulations that is roaming without physical restraint and whose ownership is not readily ascertainable shall be deemed a stray and a nuisance. Absence of a current rabies tab and/or a tag identifying the owner on any animal subject to these regulations is evidence of its status as a stray.

**Section 2.16. Vaccinated.** An animal which has been currently and properly injected with a rabies vaccine, licensed for use in that species by the United States Department of Agriculture and administered by a veterinarian licensed by the State of Texas.

**Section 2.17. Wild Animal.** All species of animals that naturally exist in an unconfined state and are usually not domesticated shall be deemed wild. This definition shall apply whether or not the wild animal has been confined for any duration in any fashion.

### **SECTION 3.** **LOCAL ANIMAL CONTROL AUTHORITY**

**Section 3.1. Designation of Animal Control Officer.** The Commissioners' Court of Hays County, Texas, hereby designates the Hays County Sheriff as the local health authority and creates the position of Animal Control Officer within the Sheriff's Department to assist with the following:

- a) formulation of rules and procedures to be approved by Commissioners' Court for the enforcement of this ordinance;
- b) supervising the implementation, administration and enforcement of this ordinance.

**Section 3.2. Duties of Animal Control Officer.** The Animal Control Officer or his authorized designee will be responsible for, but not limited to, the following duties as set forth in this ordinance and to carry out provisions of the State laws pertaining to control and eradication of rabies.

- a) Animal bites – receive and investigate reports or animal bites within Hays County in a timely manner. Bites occurring within municipalities having animal control ordinances will be referred to the proper municipal authority.
- b) Quarantine – perform immediate and proper quarantine procedures for animals suspected of having rabies. Animals may be placed in approved animal shelters, approved veterinary hospitals or owners' approved premises.
- c) Impoundment – the Animal Control Officer or his authorized designee will humanely capture and transport an animal to the County's designated animal shelter or kennel for violations set forth in this ordinance.
- d) Destruction – perform immediate, if warranted, proper and humane destruction of certain animals described in this ordinance.
- e) Citations – Issuance of citations for various violations and offenses set forth.
- f) Records – Provide necessary data and reports on a periodic basis as required by the Commissioners' Court.

**Section 3.3. Interference with the Animal Control Officer and Penalty.** It shall be unlawful for any person to intentionally or knowingly, by act or omission, physically interfere with, molest, hinder, or prevent the Animal Control Officer from the official discharge of the duties herein prescribed. Any person who violates a provision of Section 3 shall be guilty of a Class C misdemeanor.

#### **SECTION 4.** **LICENSING AND REGISTRATION**

**Section 4.1 Animals Required to be Licensed.** All dogs older than three (3) months which are kept, possessed, or controlled within Hays County shall be licensed at a rate of \$7.50 per year. If the animal has been spayed or neutered the owner shall be required to pay a one-time license fee of \$7.50. No person may use a license for any dog other than the dog for which it was issued.

**Section 4.2 Cooperation with Local Veterinarians.** In an effort to encourage the registration of dogs, licenses veterinarians who register any Hays County animal are authorized to retain \$2.50 for every \$7.50 collected in an effort to offset any expense incurred in registering the animal. Any fees collected by the County relating to the registration of dogs shall be used to administer the animal control program for the County.

**Section 4.3 Exceptions.** Owners of the following categories of dogs are not required to obtain a license.

- a) dogs possessed by animal breeders operating under a business name and possessing a sales tax permit.
- b) sheltered and impounded animals housed by licensed veterinarians.
- c) dogs certified and trained to assist the physically handicapped.
- d) dogs trained to assist law enforcement.
- e) dogs with a valid license from a municipality within Hays County in which the animal resides.
- f) Non-resident dogs remaining within Hays County for less than sixty (60) days.

**Section 4.4. Penalty.** Any person who violates a provision of Section 4 shall be guilty of a Class C misdemeanor.

#### **SECTION 5.** **RABIES CONTROL PROGRAM**

**Section 5.1. Rabies Vaccination.** No person shall own, keep, or harbor within the county any dog or cat over the age of three (3) months unless such dog or cat has a current rabies vaccination. Every domestic dog or cat must be revaccinated against rabies at a minimum of at least once every three years. Any person moving into the county shall comply with this section within ten (10) days after having moved into the county.

**Section 5.2. Certificate of Vaccination.** Upon vaccination, the veterinarian shall execute and furnish to the owner of the dog or cat a certificate using a form furnished by the veterinarian. The veterinarian shall retain a duplicate copy. Such certificate shall contain the following information.

- a) the name, address and telephone number of the owner of the vaccinated dog or cat;
- b) the date of vaccination;
- c) the type of rabies vaccine used;
- d) the year and number of rabies tag; and
- e) the breed, age, color, and sex of the vaccinated dog or cat.

**Section 5.3. Rabies Tag.** Concurrent with the issuance and delivery of the certificate of vaccination, the veterinarian shall furnish to the owner of the vaccinated dog or cat a metal tag. The owner of the dog or cat shall attach the metal tag to the collar or harness of the vaccinated dog or cat, serial numbered to correspond with the vaccination certificate number, and bearing the year of issuance and the name of the issuing veterinarian and his/her address. The owner shall have the collar or harness, with the metal tag attached, on his/her dog or cat at all times. Any other methodology approved and accepted by the Texas Department of Health for identification purposes will be considered by the Animal Control Officer.

**Section 5.4. Duplicate Tags.** In the event of loss or destruction of the original tag provided in Section 5.3, the owner of the animal shall obtain a duplicate tag. Vaccination certificates and tags shall be valid only for the animal for which it was originally issued. Duplicate tags may be purchased from any practicing veterinarian in Hays County.

**Section 5.5. Proof.** It shall be unlawful for any person who owns a vaccinated dog or cat to fail or refuse to exhibit his copy of the certificate of vaccination upon demand to any person charged with the enforcement of this order.

**Section 5.6. Unvaccinated Animal.** It shall be unlawful for any person to own a dog or cat which has not been vaccinated against rabies, as provided herein, which cannot be identified as having a current vaccination certificate.

**Section 5.7. Animals Exposed to Rabies.**

- a) Any person who has reason to believe that any animal, whether or not currently vaccinated, has been exposed to rabies must immediately report the incident to the Animal Control Authority.
- b) Any such animal shall be impounded and placed in isolation in a facility approved by the Animal Control Authority, for such time as is necessary, depending upon all relevant circumstances, for a licensed veterinarian to determine that the animal has not contracted rabies.
- c) If the owner of the animal cannot provide an approved isolation facility or does not agree to pay for the facility, the animal shall be humanely destroyed at the owner's expense.
- d) If the animal's owner cannot be identified or located within seventy-two (72) hours from the time of impoundment, not counting weekends and holidays, the animal shall be humanely destroyed.
- e) In addition to any impound fees, any costs directly associated with the examination, treatment, and/or vaccination of the animal shall be due prior to release of the animal.

**Section 5.8. Penalty for Violation.**

- a) Any person who violates a provision of Section 5 shall be guilty of a Class C misdemeanor.
- b) It is a defense to prosecution under this section that the person charged produces proof of vaccination that was valid at the time the offense is alleged to have occurred.

**SECTION 6.**  
**REPORTING BITES FROM ANIMALS SUSCEPTIBLE TO RABIES**

**Section 6.1. Report Required.** Any person having knowledge of a bite to a human by any warm-blooded animal shall report the incident to the Animal Control Officer as soon as possible.

**Section 6.2. Quarantine Required.** The owner, if any, of the biting animal shall place the animal in quarantine as prescribed in Section 7 under the supervision of the Animal Control Officer.

**Section 6.3. Investigation.** The Animal Control Officer shall investigate each bite incident reported.

**SECTION 7.**  
**QUARANTINE PROCEDURES**

**Section 7.1. Rabies Quarantine.**

- a) When an Animal Control Officer has probable cause to believe that the owner of an animal that has bitten a human has been identified, the owner, if any, will be required to produce the animal for ten (10) days confinement at the owner's expense.
- b) Refusal to produce said animal constitutes a violation of this section.
- c) The ten (10) day observation period begins on the day the animal is produced for quarantine.
- d) The animal must be placed in an animal control facility or a veterinary hospital approved for that purpose by the Texas Department of Health.

**Section 7.2. Owner Refuses Quarantine.** If the biting animal cannot be maintained in a secure quarantine or if the owner chooses not to pay for the quarantine, the animal shall be humanely destroyed, and the brain shall be submitted to a Texas Department of Health (TDH) certified laboratory for rabies diagnosis, at the owner's expense.

**Section 7.3. Wild Animals.** No wild animals will be placed in quarantine. All wild animals involved in biting incidents shall be humanely killed in such a manner that the brain is not mutilated and the brain shall be submitted to a TDH-certified laboratory for rabies diagnosis.

**Section 7.4. *Penalty for Violation.***

- a) Any person who violates a provision of Section 7 shall be guilty of a Class C misdemeanor.
- b) If it is shown on trial that a person has been previously convicted under this section, no portion of a fine imposed for subsequent violations may be deferred, suspended or probated.
- c) Each day an animal is not produced for quarantine shall constitute a separate offense.

**SECTION 8.**  
**PROHIBITION OF A NUISANCE**

**Section 8.1. *Dogs Prohibited from Running at Large.***

- a) When the owner of a dog running at large is determined and the owner can be located, the animal shall be returned to its owner and the owner shall be cited for violation of this order.
- b) If ownership is in question or if the animal is a stray, the animal shall be impounded for seventy-two (72) hours, not counting weekends and holidays.
- c) An owner may claim the animal within this time period after paying all incurred costs and impoundment fees.
- d) Upon failure of the owner to claim the animal during that period, the Animal Control Officer may order the animal destroyed without compensation to the owner.

**Section 8.2. *Elimination of Stray Animals.***

- a) When practical, the Animal Control Officer shall impound any animal subject to these regulations which is found to be a stray.
- b) The animal may be impounded for seventy-two (72) hours, not counting weekends and holidays.
- c) Subject to citation for violation of this order, an owner may claim the animal within this time period after paying all incurred costs and impoundment fees.
- d) Upon failure of the owner to claim the animal during that period, the Animal Control Officer may order the animal destroyed without compensation to the owner.

**Section 8.3. *Prohibition of Inhumane Treatment.***

- a) Any inhumane treatment of any type of animal shall be deemed a nuisance.
- b) It shall be unlawful for a person to intentionally, knowingly, recklessly or with criminal negligence, by act or omission, treat an animal inhumanely.

**Section 8.4. *Animals Creating a Public Nuisance.***

- a) In addition to the items contained in Section 2.10 hereof, It shall be a public nuisance and unlawful for an owner to intentionally, knowingly or recklessly keep, possess, or control any animal that:

- 1) Excessively makes disturbing noises, including, but not limited to continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance, or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.
- 2) Causes fouling of the air by odor and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.
- 3) Causes unsanitary conditions in enclosures or surroundings in which the animal is kept or harbored.
- 4) Damages the personal or real property of anyone other than its owner.
- 5) Attacks or worries other domestic animals.
- b) Any animal that is a public nuisance may be confiscated and impounded by the Animal Control Officer for seventy-two (72) hours, not counting weekends and holiday.
- c) Subject to citation for violation of this order and approval by the Animal Control Officer of a plan to eliminate the public nuisance caused by the animal, an owner may claim the animal within the 72 hour time period after paying in full all incurred costs and impoundment fees.
- d) Upon failure of the owner to contact the Animal Control Officer during the 72 hour time period, the Animal Control Officer may order the animal destroyed without compensation to the owner.
- e) Upon contact with the Animal Control Officer within the 72 hour time period, reasonable arrangements may be made to continue to impound the animal, at the owner's sole expense, while a plan to eliminate the public nuisance caused by the animal is devised by the owner and approved by the Animal Control Officer.
- f) If a plan to eliminate the public nuisance caused by the animal is not submitted within the 72 hour time period, or once submitted, is not approved by the Animal Control Officer, the Animal Control Officer may order the animal destroyed without compensation to the owner.

**Section 8.5. *Penalty for Violation.*** Any person who violates a provision of Section 8 shall be guilty of a Class C misdemeanor.

## **SECTION 9.** **OWNERSHIP OF DANGEROUS DOGS**

**Section 9.1. *Requirements for Ownership of a Dangerous Dog.*** An owner of a dangerous dog must:

- a) Register the dangerous dog with the Hays County Animal Control Officer for the area in which the dog is kept.
- b) Pay an annual fee of \$100.00 to the Animal Control Officer.
- c) Restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure which has been approved by the Animal Control Officer.
- d) Post a sign on his/her premises warning that there is a dangerous dog on the property. This sign shall be visible and be capable of being read from a public street or highway.
- e) Spay or neuter the dangerous dog.

- f) Obtain necessary insurance or show financial responsibility in the amount of at least \$100,000 to cover damages to persons and property resulting from a dog attack.

***Section 9.2. Limitation of Ownership of Dangerous Dogs.***

- a) Only one dangerous dog may be owned per household.
- b) No more than two dangerous dogs may remain at any residence for more than seven days.

***Section 9.3. Declaration of a Dangerous Dog.***

- a) Animal Control may find and declare a dog to be dangerous or potentially dangerous if Animal Control has probable cause to believe that a dog committed any acts described in the definition of Dangerous Dog (Section 2.5) or that the dog repeatedly bit or vigorously shook its victim and the victim, or a person intervening, had difficulty terminating the attack; or
- b) Upon receipt of an affidavit of complaint signed by one or more individuals, made under oath before an individual authorized by law to take sworn statements or made at the Animal Control Office, setting forth the nature and the date of the act, the location of the event, the name of the owner of the dog, the address of the owner, and the description of the dog doing such act, Animal Control shall investigate the complaint and determine if a dog is dangerous.

***Section 9.4. Notification of Declaration of Dangerous Dog.***

- a) Within five (5) working days of declaring any dog dangerous or potentially dangerous, Animal Control will notify, by regular mail and by certified mail, return-receipt requested, the owner of the dog(s) designated as a dangerous dog. Animal Control shall also post a written notice at the entrance of the premises where the dog is harbored.
- b) Receipt of said notice shall be presumed upon proof of either of the following occurrences:
  - 1) Return of an executed return-receipt;
  - 2) Affidavit by Animal Control of deposit of a correctly addressed notice into United States mail; or
  - 3) Affidavit by Animal Control of posting of the notice at the premises where the dog was harbored.
- c) An owner may appeal this declaration to a justice court of competent jurisdiction. If the dog is declared to be dangerous, the notice shall inform the owner of the dog that a determination hearing may be requested to contest the declaration. The request for a determination hearing must be in writing and must be received by the appropriate Justice of the Peace no later than ten (10) working days from receipt of notice by the owner of the dog. Failure to appeal the declaration within ten (10) working days shall result in Animal control's decision becoming final.

**Section 9.5. Determination Hearing.**

- a) Upon written request for a determination hearing by the owner of a dog declared dangerous, the dog in question will be subject to any behavior assessment test or any other means available to Animal Control. The results of any tests will be presented at the determination hearing and be taken into consideration for the final determination. The owner shall be responsible for any costs incurred for the test or tests to be conducted and fees of the animal behaviorist to analyze the video test or tests.
- b) The owner shall be notified of the hearing by placing the notice in the United States mail addressed to the owner. Failure of the owner of the dog to appear at the determination hearing shall result in the Animal Control's declaration becoming final. Pending the outcome of the determination hearing, the dog must be securely confined in a humane manner at a licensed veterinarian facility or in an animal shelter. The costs of securing the dog pending the determination hearing shall be borne by the owner.
- c) The court shall determine by a preponderance of the evidence whether the declaration that the dog is dangerous is proper based upon the evidence, affidavits, and testimony presented at the hearing.

**Section 9.6. Defense to Declaration of Dangerous Dog.** It is a defense to the determination of any dog as dangerous and to the prosecution of the owner of the dog:

- a) If the threat, injury, or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the dog;
- b) If the person was teasing, tormenting, abusing, or assaulting the dog;
- c) If the person was committing or attempting to commit a crime;
- d) If the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault; or
- e) If the dog was injured and responding to pain.

**Section 9.7. Exemptions.** It is a defense to prosecution that a person is:

- a) A veterinarian, a peace officer, a person employed by a recognized animal shelter or a person employed by the state or a political subdivision of the State to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position;
- b) An employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes; or
- c) A dog trainer or an employee of a guard dog company under the Private Investigators and Private Security Agencies, Tex. Rev. Civ. Stat. Art. 4412 (29BB).

**Section 9.8. Confiscation.**

- a) Until the owner of a dog determined to be dangerous has met the requirements placed on that owner by Section 822.042, Texas Health & Safety Code and this order, the Animal



- Control Officer or his designee shall confiscate the dog whether it be found on public or private property.
- b) The Animal Control Officer shall have no authority to confiscate any dog unless he has first delivered to the owner of the dog, a written notice of the determination that the dog is a dangerous dog. The notice may be delivered either in person or by certified mail, return receipt requested, directed to the last known mailing address of the owner.
  - c) The Animal Control Officer shall be required to obtain a search and seizure warrant only if the dangerous dog is located within a residence.
  - d) If an attempt is made by the Animal Control Officer to impound a dangerous dog and the impoundment cannot be made safely, the owner shall be notified and given twenty-four (24) hours to surrender the dog to the Animal Control Officer. The notice shall include a warning that failure to surrender the dog may result in destruction of the dog if it cannot be safely impounded on any subsequent attempt;
  - e) The dog thus confiscated shall be ordered sheltered by the Animal Control Officer for a period of seventh-two (72) hours, not counting weekends and holidays, to allow the owner to claim the dog upon satisfaction of the provisions of Section 822.042 and 822.042 of the Texas Health & Safety code and this ordinance. Upon failure of the owner to reclaim the dog during that period, the Animal Control Officer may humanely destroy the dog without compensation to the owner.
  - f) In addition to the fees required for registration of the dog, the owner must prior to the dog's release, satisfy all above-referenced provisions.

***Section 9.9. Penalty for Violation.***

- a) Any person who violates a provision of Section 9 shall be guilty of a Class C misdemeanor.
- b) If it is shown on trial that a person has been previously convicted under this Section, no portion of a fine imposed for subsequent violations may be deferred, suspended or probated.
- c) Each day that a person owns a dangerous dog in violation of this section shall constitute a separate offense.
- d) An offense under this section is a Class B misdemeanor if the defendant has previously been convicted under this section.
- e) If a person is found guilty of an offense under this section, and the offending dog caused death or serious bodily injury, the Court may order the dangerous dog destroyed by Animal Control in a humane manner.
- f) In addition to criminal prosecution, a person who commits an offense under this section is liable for a civil penalty not to exceed \$10,000. The Hays County Criminal District Attorney or Special Counsel to the Hays County Commissioners' Court under the direction of the Hays County Criminal District Attorney may file suit in a court of competent jurisdiction to collect the penalty. Penalties collected under this subsection shall be retained by the county to be used to defray the cost of administering this ordinance.

**SECTION 10.**  
**ATTACKING DOMESTIC ANIMALS**

***Section 10.1 Dogs That Attack Domestic Animals.***

- a) A dog that is attacking, is about to attack, or has recently attacked sheeps, goats, calves, or other domestic animals or fowls may be killed by any person witnessing or having knowledge of the attack.
- b) A person who kills a dog as provided by this section is not liable for damages to the Owner of the dog.
- c) A dog known or suspected of having killed sheep, goats, calves, or other domestic animals or fowls is a public nuisance. Any person may detain or impound the dog until the dog's owner is notified and all damage done by the dog has been determined and paid to the property persons.
- d) The owner of a dog that is known to have attacked sheep, goats, calves, or other domestic animals or fowls shall kill the dog. A sheriff, deputy sheriff, constable, police officer or magistrate may enter the premises of the owner of the dog and kill the dog if the owner fails to do so.

***Section 10.2 Protection of Domestic Animals.***

- a) The owner of any sheep, goats, calves, or other domestic animals that are subject to the ravages of sheep-killing dogs may place poison on the premises where the animals are kept.
- b) The owner must post notice of the poison at each entrance to the premises before placing the poison.

***Section 10.3 Criminal Penalty***

- a) A person commits an offense if the person intentionally:
  - (1) fails or refuses to allow a dog to be killed when ordered by the proper authorities to do so, under Section 10.
- b) An offense under the above Section 10 is a class B misdemeanor punishable by a fine of not more than \$100, confinement in the county jail for not more than 30 days, or both.

**SECTION 11.**  
**IMPOUNDMENT FACILITIES AND FEES**

***Section 11.1. Animal Facilities.*** The Hays County Commissioners' Court may enter into contracts or agreements with public, private entities, or animal shelters to provide for the impoundment of animals under this ordinance or to carry out other activities required or authorized by this ordinance. Any animal adopted from an animal facility that has entered into a contract with Hays County shall require that all animals adopted be spayed or neutered within forty-five (45) days of the adoption.

***Section 11.2 Impoundment Fees.*** An owner of an animal that has been impounded under any section of this ordinance shall pay all applicable impoundment fees, as established by the animal facility and approved by the Animal Control Officer, before retrieving the animal.

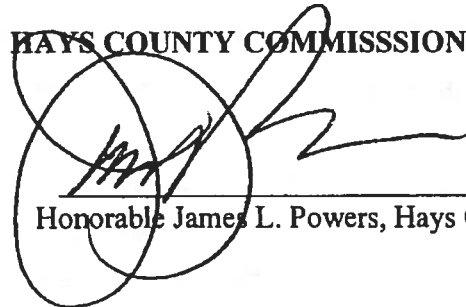
**Section 11.3 Severance Clause.** If any section, sentence, or clause of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 11.4 Repealer.** This ordinance is intended to repeal and replace Animal Control Ordinance No. 10429 enacted by the Hays County Commissioners' Court on September 24, 1990 and all other orders and ordinances in conflict with this ordinance are hereby repealed.

**Section 11.5 Effective Date.** This ordinance shall become effective upon passage by a majority vote of the Hays County Commissioners' Court.

**PASSED AND APPROVED** this the 18<sup>TH</sup> day of MARCH, 2003.

HAYS COUNTY COMMISSIONERS' COURT



Honorable James L. Powers, Hays County Judge

ATTEST:

  
Lee Carlisle, Hays County Clerk

## HEALTH AND SAFETY CODE

## TITLE 10. HEALTH AND SAFETY OF ANIMALS

## CHAPTER 822. REGULATION OF ANIMALS

## SUBCHAPTER A. GENERAL PROVISIONS; DOGS THAT ATTACK PERSONS OR

## ARE A DANGER TO PERSONS

Sec. 822.001. DEFINITIONS. In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office.

(2) "Serious bodily injury" means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

(3) "Dangerous dog," "dog," "owner," and "secure enclosure" have the meanings assigned by Section 822.041.

(4) "Secure" means to take steps that a reasonable person would take to ensure a dog remains on the owner's property, including confining the dog in an enclosure that is capable of preventing the escape or release of the dog.

Amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 3, eff. September 1, 2007.

Sec. 822.0011. APPLICATION TO CERTAIN PROPERTY. For purposes of this subchapter, a person's property includes property the person is entitled to possess or occupy under a lease or other agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 4, eff. September 1, 2007.

Sec. 822.002. SEIZURE OF A DOG CAUSING DEATH OF OR SERIOUS BODILY INJURY TO A PERSON. (a) A justice court, county court, or municipal court shall order the animal control authority to seize a dog and shall issue a warrant authorizing the seizure:

(1) on the sworn complaint of any person, including the county attorney, the city attorney, or a peace officer, that the dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person; and

(2) on a showing of probable cause to believe that the dog caused the death of or serious bodily injury to the person as stated in the complaint.

(b) The animal control authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 822.001 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.003. HEARING. (a) The court shall set a time for a hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. The hearing must be held not later than the 10th day after the date on which the warrant is issued.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county attorney or city attorney, is entitled to present evidence at the hearing.

(d) The court shall order the dog destroyed if the court finds that the dog caused the death of a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;  
(2) the person from whom the dog was seized; or  
(3) any other person authorized to take possession of the dog.

(e) The court may order the dog destroyed if the court finds that the dog caused serious bodily injury to a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;  
(2) the person from whom the dog was seized; or  
(3) any other person authorized to take possession of the dog.

(f) The court may not order the dog destroyed if the court finds that the dog caused the serious bodily injury to a person by attacking, biting, or mauling the person and:

(1) the dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and:

(A) the enclosure was reasonably certain to prevent the dog from leaving the enclosure on its own and provided notice of the presence of a dog; and

(B) the injured person was at least eight years of age, and was trespassing in the enclosure when the attack, bite, or mauling occurred;

(2) the dog was not being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the injured person was at least eight years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;

(3) the attack, bite, or mauling occurred during an arrest or other action of a peace officer while the peace officer was using the dog for law enforcement purposes;

(4) the dog was defending a person from an assault or person's property from damage or theft by the injured person; or

(5) the injured person was younger than eight years of age, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the enclosure was reasonably certain to keep a person younger than eight years of age from entering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 822.002 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.004. DESTRUCTION OF DOG. The destruction of a dog under this subchapter must be performed by:

- (1) a licensed veterinarian;
- (2) personnel of a recognized animal shelter or humane society who are trained in the humane destruction of animals; or
- (3) personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 822.003 by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.005. ATTACK BY DOG. (a) A person commits an offense if the person is the owner of a dog and the person:

- (1) with criminal negligence, as defined by Section 6.03, Penal Code, fails to secure the dog and the dog makes an unprovoked attack on another person that occurs at a location other than the owner's real property or in or on the owner's motor vehicle or boat and that causes serious bodily injury, as defined by Section 1.07, Penal Code, or death to the other person; or

- (2) knows the dog is a dangerous dog by learning in a manner described by Section 822.042(g) that the person is the owner of a dangerous dog, and the dangerous dog makes an unprovoked attack on another person that occurs at a location other than a secure enclosure in which the dog is restrained in accordance with Subchapter D and that causes serious bodily injury, as defined by Section 822.001, or death to the other person.

(b) An offense under this section is a felony of the third degree unless the attack causes death, in which event the offense is a felony of the second degree.

(c) If a person is found guilty of an offense under this section, the court may order the dog destroyed by a person listed in Section 822.004.

(d) A person who is subject to prosecution under this section and under any other law may be prosecuted under this section, the other law, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 822.004 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 5, eff. September 1, 2007.

Sec. 822.006. DEFENSES. (a) It is a defense to prosecution under Section 822.005(a) that the person is a veterinarian, a veterinary clinic employee, a peace officer, a person employed by a recognized animal shelter, or a person employed by this state or a political subdivision of this state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.005(a) that the person is an employee of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes and is training or using the dog in connection with the person's official capacity.

(c) It is a defense to prosecution under Section 822.005(a) that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code, and has temporary ownership, custody, or control of the dog in connection with that position.

(d) It is a defense to prosecution under Section 822.005(a) that the person is disabled and uses the dog to provide assistance, the dog is trained to provide assistance to a person with a disability, and the person is using the dog to provide assistance in connection with the person's disability.

(e) It is a defense to prosecution under Section 822.005(a) that the person attacked by the dog was at the time of the attack engaged in conduct prohibited by Chapters 19, 20, 21, 22, 28, 29, and 30, Penal Code.

(f) It is an affirmative defense to prosecution under Section



822.005(a) that, at the time of the conduct charged, the person and the dog are participating in an organized search and rescue effort at the request of law enforcement.

(g) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are participating in an organized dog show or event sponsored by a nationally recognized or state-recognized kennel club.

(h) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are engaged in:

- (1) a lawful hunting activity; or
- (2) a farming or ranching activity, including herding livestock, typically performed by a working dog on a farm or ranch.

(i) It is a defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person's dog was on a leash and the person:

- (1) was in immediate control of the dog; or
- (2) if the person was not in control of the dog, the person was making immediate and reasonable attempts to regain control of the dog.

Added by Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 6, eff. September 1, 2007.

Sec. 822.007. LOCAL REGULATION OF DOGS. This subchapter does not prohibit a municipality or county from adopting leash or registration requirements applicable to dogs.

Added by Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 6, eff. September 1, 2007.

#### SUBCHAPTER B. DOGS AND COYOTES THAT ARE A DANGER TO ANIMALS

Sec. 822.011. DEFINITIONS. In this subchapter:

- (1) "Dog or coyote" includes a crossbreed between a dog and a coyote.
- (2) "Livestock" includes exotic livestock as defined by Section 161.001, Agriculture Code.

Added by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

Sec. 822.012. CERTAIN DOGS AND COYOTES PROHIBITED FROM RUNNING AT LARGE; CRIMINAL PENALTY. (a) The owner, keeper, or person in control of a dog or coyote that the owner, keeper, or person knows is accustomed to run, worry, or kill livestock, domestic animals, or fowls may not permit the dog or coyote to run at large.

(b) A person who violates this section commits an offense. An offense under this subsection is punishable by a fine of not more than \$100.

(c) Each time a dog or coyote runs at large in violation of this section constitutes a separate offense.

Added by Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Health & Safety Code Sec. 822.011 and amended by  
Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

Sec. 822.013. DOGS OR COYOTES THAT ATTACK ANIMALS. (a) A dog or coyote that is attacking, is about to attack, or has recently attacked livestock, domestic animals, or fowls may be killed by:

(1) any person witnessing the attack; or

(2) the attacked animal's owner or a person acting on behalf of the owner if the owner or person has knowledge of the attack.

(b) A person who kills a dog or coyote as provided by this section is not liable for damages to the owner, keeper, or person in control of the dog or coyote.

(c) A person who discovers on the person's property a dog or coyote known or suspected of having killed livestock, domestic animals, or fowls may detain or impound the dog or coyote and return it to its owner or deliver the dog or coyote to the local animal control authority. The owner of the dog or coyote is liable for all costs incurred in the capture and care of the dog or coyote and all damage done by the dog or coyote.

(d) The owner, keeper, or person in control of a dog or coyote that is known to have attacked livestock, domestic animals, or fowls shall control the dog or coyote in a manner approved by the local

animal control authority.

(e) A person is not required to acquire a hunting license under Section 42.002, Parks and Wildlife Code, to kill a dog or coyote under this section.

Added by Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Health & Safety Code Sec. 822.033 and amended by  
Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

#### SUBCHAPTER C. COUNTY REGISTRATION AND REGULATION OF DOGS

Sec. 822.021. APPLICATION TO COUNTIES THAT ADOPT SUBCHAPTER. This subchapter applies only to a county that adopts this subchapter by a majority vote of the qualified voters of the county voting at an election held under this subchapter. This subchapter shall not apply to any county or municipality that enacts or has enacted registration or restraint laws pursuant to Chapter 826 (Rabies Control Act of 1981).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 489, Sec. 1, eff. Aug. 28, 1995.

Sec. 822.022. PETITION FOR ELECTION. (a) On receiving a petition signed by at least 100 qualified property taxpaying voters of the county or a majority of the qualified property taxpaying voters of the county, whichever is less, the commissioners court of a county shall order an election to determine whether the registration of and registration fee for dogs will be required in the county.

(b) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.023. NOTICE. In addition to the notice required by Section 4.003, Election Code, notice of an election under this subchapter shall be published at least once in an English language

newspaper of general circulation in the county. If there is no English language newspaper of general circulation in the county, the notice shall be posted at the courthouse door for at least one week before the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.024. BALLOT PROPOSITION. The ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "Registration of and registration fee for dogs."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.025. ELECTION RESULT. (a) If a majority of those voting at the election vote in favor of the measure, the requirement that dogs be registered takes effect in the county on the 10th day after the date on which the result of the election is declared.

(b) The county judge shall issue a proclamation declaring the result of the election if the vote is in favor of the measure. The proclamation shall be published at least once in an English language newspaper of general circulation in the county or, if there is no English language newspaper of general circulation in the county, the proclamation shall be posted at the courthouse door.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.026. INTERVAL BETWEEN ELECTIONS. (a) If the result of an election is against the registration of and registration fee for dogs, another election on that subject may not be held for six months after the date of the election.

(b) If the result of an election is for the registration of and registration fee for dogs, an election to repeal the registration and fee may not be held for two years from the date of the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.027. REGISTRATION TAGS AND CERTIFICATE. (a) The commissioners court of a county shall furnish the county treasurer the necessary dog identification tags.

(b) The tags must be numbered consecutively and must be printed or impressed with the name of the county issuing the tags.

(c) The county treasurer shall assign a registration number to each dog registered with the county and shall give the owner or person having control of the dog the identification tag and a registration certificate.

(d) The county treasurer shall record the registration of a dog, including the age, breed, color, sex, and registration date of the dog. If the registration information is not recorded on microfilm, as may be permitted under other law, it shall be recorded in a book kept for that purpose.

(e) If the ownership of a dog is transferred, the dog's registration certificate shall be transferred to the new owner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.028. REGISTRATION FEE. (a) An owner of a dog registered under this subchapter must pay a registration fee of \$1. However, the commissioners court of the county may set the fee in an amount of more than \$1 but not more than \$5, and if the court sets the amount of the fee the owner must pay that amount.

(b) Registration is valid for one year from the date of registration.

(c) If a dog is moved to another county, the owner may present the registration certificate to the county treasurer of the county to which the dog is moved and receive without additional cost a registration certificate. The new registration certificate is valid for one year from the date of registration in the county from which the dog was moved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 870, Sec. 1, eff. June 14, 2001.

Sec. 822.029. DISPOSITION OF FEE. (a) The fee collected for the registration of a dog shall be deposited to the credit of a

special fund of the county and used only to:

(1) defray the cost of administering this subchapter in the county, including the costs of registration and the identification tags; and

(2) reimburse the owner of any sheep, goats, calves, or other domestic animals or fowls killed in the county by a dog not owned by the person seeking reimbursement.

(b) Reimbursement under Subsection (a)(2) shall be made on the order of the commissioners court only on satisfactory proof of the killing.

(c) The commissioners court shall determine the amount and time of reimbursement. If there is insufficient money in the fund to reimburse all injured persons in full, reimbursement shall be made on a pro rata basis.

(d) The county treasurer shall keep an accurate record showing all amounts received into and paid from the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.030. REGISTRATION REQUIRED; EXCEPTION FOR TEMPORARY VISITS. (a) The owner or person having control of a dog six months of age or older in a county that has adopted this subchapter must register the dog not later than the 30th day after the date on which the proclamation is published or adopted.

(b) A dog brought into a county for not more than 10 days for breeding purposes, trial, or show is not required to be registered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.031. UNREGISTERED DOGS PROHIBITED FROM RUNNING AT LARGE. The owner or person having control of a dog at least six months of age in a county adopting this subchapter may not allow the dog to run at large unless the dog:

(1) is registered under this subchapter with the county in which the dog runs at large; and

(2) has fastened about its neck a dog identification tag issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.035. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

- (1) fails or refuses to register a dog required to be registered under this subchapter;
- (2) fails or refuses to allow a dog to be killed when ordered by the proper authorities to do so; or
- (3) violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$100, confinement in the county jail for not more than 30 days, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER D. DANGEROUS DOGS

Sec. 822.041. DEFINITIONS. In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area where the dog is kept or a county sheriff in an area with no animal control office.

(2) "Dangerous dog" means a dog that:

(A) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or

(B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

(3) "Dog" means a domesticated animal that is a member of the canine family.

(4) "Secure enclosure" means a fenced area or structure that is:

(A) locked;

(B) capable of preventing the entry of the general

public, including children;

(C) capable of preventing the escape or release of a dog;

(D) clearly marked as containing a dangerous dog; and

(E) in conformance with the requirements for enclosures established by the local animal control authority.

(5) "Owner" means a person who owns or has custody or control of the dog.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Sec. 822.042. REQUIREMENTS FOR OWNER OF DANGEROUS DOG. (a) Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:

(1) register the dangerous dog with the animal control authority for the area in which the dog is kept;

(2) restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure;

(3) obtain liability insurance coverage or show financial responsibility in an amount of at least \$100,000 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority for the area in which the dog is kept; and

(4) comply with an applicable municipal or county regulation, requirement, or restriction on dangerous dogs.

(b) The owner of a dangerous dog who does not comply with Subsection (a) shall deliver the dog to the animal control authority not later than the 30th day after the owner learns that the dog is a dangerous dog.

(c) If, on application of any person, a justice court, county court, or municipal court finds, after notice and hearing as provided by Section 822.0423, that the owner of a dangerous dog has failed to comply with Subsection (a) or (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the



dog in secure and humane conditions.

(d) The owner shall pay any cost or fee assessed by the municipality or county related to the seizure, acceptance, impoundment, or destruction of the dog. The governing body of the municipality or county may prescribe the amount of the fees.

(e) The court shall order the animal control authority to humanely destroy the dog if the owner has not complied with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority. The court shall order the authority to return the dog to the owner if the owner complies with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority.

(f) The court may order the humane destruction of a dog if the owner of the dog has not been located before the 15th day after the seizure and impoundment of the dog.

(g) For purposes of this section, a person learns that the person is the owner of a dangerous dog when:

(1) the owner knows of an attack described in Section 822.041(2) (A) or (B);

(2) the owner receives notice that a justice court, county court, or municipal court has found that the dog is a dangerous dog under Section 822.0423; or

(3) the owner is informed by the animal control authority that the dog is a dangerous dog under Section 822.0421.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.  
Amended by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 96, Sec. 1, eff. May 17, 1999.

Sec. 822.0421. DETERMINATION THAT DOG IS DANGEROUS. (a) If a person reports an incident described by Section 822.041(2), the animal control authority may investigate the incident. If, after receiving the sworn statements of any witnesses, the animal control authority determines the dog is a dangerous dog, it shall notify the owner of that fact.

(b) An owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control authority to a

justice, county, or municipal court of competent jurisdiction. An owner may appeal the decision of the justice, county, or municipal court in the same manner as appeal for other cases from the justice, county, or municipal court.

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Sec. 822.0422. REPORTING OF INCIDENT IN CERTAIN COUNTIES AND MUNICIPALITIES. (a) This section applies only to a county with a population of more than 2,800,000, to a county in which the commissioners court has entered an order electing to be governed by this section, and to a municipality in which the governing body has adopted an ordinance electing to be governed by this section.

(b) A person may report an incident described by Section 822.041(2) to a municipal court, a justice court, or a county court. The owner of the dog shall deliver the dog to the animal control authority not later than the fifth day after the date on which the owner receives notice that the report has been filed. The authority may provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

(c) If the owner fails to deliver the dog as required by Subsection (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog. The owner shall pay any cost incurred in seizing the dog.

(d) The court shall determine, after notice and hearing as provided in Section 822.0423, whether the dog is a dangerous dog.

(e) The court, after determining that the dog is a dangerous dog, may order the animal control authority to continue to impound the dangerous dog in secure and humane conditions until the court orders disposition of the dog under Section 822.042 and the dog is returned to the owner or destroyed.

(f) The owner shall pay a cost or fee assessed under Section 822.042(d).

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 96, Sec. 2, eff. May 17, 1999.

Sec. 822.0423. HEARING. (a) The court, on receiving a report of an incident under Section 822.0422 or on application under Section 822.042(c), shall set a time for a hearing to determine whether the dog is a dangerous dog or whether the owner of the dog has complied with Section 822.042. The hearing must be held not later than the 10th day after the date on which the dog is seized or delivered.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.

(d) An owner or person filing the action may appeal the decision of the municipal court, justice court, or county court in the manner provided for the appeal of cases from the municipal, justice, or county court.

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Sec. 822.043. REGISTRATION. (a) An animal control authority for the area in which the dog is kept shall annually register a dangerous dog if the owner:

(1) presents proof of:

(A) liability insurance or financial responsibility, as required by Section 822.042;

(B) current rabies vaccination of the dangerous dog; and

(C) the secure enclosure in which the dangerous dog will be kept; and

(2) pays an annual registration fee of \$50.

(b) The animal control authority shall provide to the owner registering a dangerous dog a registration tag. The owner must place the tag on the dog's collar.

(c) If an owner of a registered dangerous dog sells or moves the dog to a new address, the owner, not later than the 14th day after the date of the sale or move, shall notify the animal control authority for the area in which the new address is located. On presentation by the current owner of the dangerous dog's prior registration tag and payment of a fee of \$25, the animal control authority shall issue a new registration tag to be placed on the dangerous dog's collar.

(d) An owner of a registered dangerous dog shall notify the office in which the dangerous dog was registered of any attacks the dangerous dog makes on people.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Sec. 822.044. ATTACK BY DANGEROUS DOG. (a) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to the other person.

(b) An offense under this section is a Class C misdemeanor.

(c) If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed by a person listed in Section 822.004.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 8, eff. September 1, 2007.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 7, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 8, eff. September 1, 2007.

Sec. 822.045. VIOLATIONS. (a) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with Section 822.042 or Section 822.0422(b) or an applicable municipal or county regulation relating to dangerous dogs.

(b) Except as provided by Subsection (c), an offense under

this section is a Class C misdemeanor.

(c) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Sec. 822.046. DEFENSE. (a) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.

(c) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.809, eff. Sept. 1, 2001.

Sec. 822.047. LOCAL REGULATION OF DANGEROUS DOGS. A county or municipality may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions:

(1) are not specific to one breed or several breeds of dogs; and

(2) are more stringent than restrictions provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

## SUBCHAPTER E. DANGEROUS WILD ANIMALS

Sec. 822.101. DEFINITIONS. In this subchapter:

(1) "Animal registration agency" means the municipal or county animal control office with authority over the area where a dangerous wild animal is kept or a county sheriff in an area that does not have an animal control office.

(2) "Board" means the Texas Board of Health.

(3) "Commercial activity" means:

(A) an activity involving a dangerous wild animal conducted for profit that is not inherent to the animal's nature;

(B) an activity for which a fee is charged and that is entertainment using or an exhibition of the animal; or

(C) the selling, trading, bartering, or auctioning of a dangerous wild animal or a dangerous wild animal's body parts.

(4) "Dangerous wild animal" means:

(A) a lion;

(B) a tiger;

(C) an ocelot;

(D) a cougar;

(E) a leopard;

(F) a cheetah;

(G) a jaguar;

(H) a bobcat;

(I) a lynx;

(J) a serval;

(K) a caracal;

(L) a hyena;

(M) a bear;

(N) a coyote;

(O) a jackal;

(P) a baboon;

(Q) a chimpanzee;

(R) an orangutan;

(S) a gorilla; or

(T) any hybrid of an animal listed in this subdivision.

(5) "Owner" means any person who owns, harbors, or has

custody or control of a dangerous wild animal.

(6) "Person" means an individual, partnership, corporation, trust, estate, joint stock company, foundation, or association of individuals.

(7) "Primary enclosure" means any structure used to immediately restrict an animal to a limited amount of space, including a cage, pen, run, room, compartment, or hutch.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.102. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the American Zoo and Aquarium Association;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) an injured, infirm, orphaned, or abandoned dangerous wild animal while being rehabilitated, treated, or cared for by a licensed veterinarian, an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary

custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments;

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the American Zoo and Aquarium Association for that species; and

(B) an integral part of that species survival plan; and

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity.

(b) This subchapter does not require a municipality that does not have an animal control office to create that office.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 992, Sec. 31, eff. June 18, 2005.

Sec. 822.103. CERTIFICATE OF REGISTRATION; FEES. (a) A person may not own, harbor, or have custody or control of a dangerous wild animal for any purpose unless the person holds a



certificate of registration for that animal issued by an animal registration agency.

(b) A certificate of registration issued under this subchapter is not transferrable and is valid for one year after its date of issuance or renewal unless revoked.

(c) The animal registration agency may establish and charge reasonable fees for application, issuance, and renewal of a certificate of registration in order to recover the costs associated with the administration and enforcement of this subchapter. The fee charged to an applicant may not exceed \$50 for each animal registered and may not exceed \$500 for each person registering animals, regardless of the number of animals owned by the person. The fees collected under this section may be used only to administer and enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.104. CERTIFICATE OF REGISTRATION APPLICATION. (a)

An applicant for an original or renewal certificate of registration for a dangerous wild animal must file an application with an animal registration agency on a form provided by the animal registration agency.

(b) The application must include:

(1) the name, address, and telephone number of the applicant;

(2) a complete identification of each animal, including species, sex, age, if known, and any distinguishing marks or coloration that would aid in the identification of the animal;

(3) the exact location where each animal is to be kept;

(4) a sworn statement that:

(A) all information in the application is complete and accurate; and

(B) the applicant has read this subchapter and that all facilities used by the applicant to confine or enclose the animal comply with the requirements of this subchapter; and

(5) any other information the animal registration agency may require.

(c) An applicant shall include with each application:

- (1) the nonrefundable fee;
- (2) proof, in a form acceptable by the animal registration agency, that the applicant has liability insurance, as required by Section 822.107;
- (3) a color photograph of each animal being registered taken not earlier than the 30th day before the date the application is filed;
- (4) a photograph and a statement of the dimensions of the primary enclosure in which each animal is to be kept and a scale diagram of the premises where each animal will be kept, including the location of any perimeter fencing and any residence on the premises; and
- (5) if an applicant holds a Class "A" or Class "B" dealer's license or Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments, a clear and legible photocopy of the license.

(d) In addition to the items required under Subsection (c), an application for renewal must include a statement signed by a veterinarian licensed to practice in this state stating that the veterinarian:

- (1) inspected each animal being registered not earlier than the 30th day before the date of the filing of the renewal application; and
- (2) finds that the care and treatment of each animal by the owner meets or exceeds the standards prescribed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.105. DENIAL OR REVOCATION OF CERTIFICATE OF REGISTRATION; APPEAL. (a) If the animal registration agency finds that an application for an original or renewal certificate of registration under this subchapter does not meet the requirements of Section 822.104 or, after inspection, that an applicant has not complied with this subchapter, the animal registration agency shall deny the applicant a certificate of registration and give the applicant written notice of the denial and the reasons for the

denial.

(b) If the animal registration agency finds, after inspection, that a registered owner provided false information in or in connection with the application or has not complied with this subchapter, the animal registration agency shall revoke the certificate of registration and give the owner written notice of the revocation and the reasons for the revocation.

(c) A person may appeal the denial of an original or renewal certificate of registration or the revocation of a certificate of registration to the justice court for the precinct in which the animal is located or the municipal court in the municipality in which the animal is located not later than the 15th day after the date the certificate of registration is denied or revoked. Either party may appeal the decision of the justice or municipal court to a county court or county court at law in the county in which the justice or municipal court is located. The decision of the county court or county court at law may not be appealed.

(d) The filing of an appeal of the denial or revocation of a certificate of registration under Subsection (c) stays the denial or revocation until the court rules on the appeal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.106. DISPLAY OF CERTIFICATE OF REGISTRATION. (a) A holder of a certificate of registration shall prominently display the certificate at the premises where each animal that is the subject of the certificate of registration is kept.

(b) Not later than the 10th day after the date a person receives a certificate of registration, the person shall file a clear and legible copy of the certificate of registration with the Texas Department of Health. The department shall establish a procedure for filing a certificate of registration and shall charge a reasonable fee in an amount sufficient to recover the cost associated with filing a certificate of registration under this subsection.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.107. LIABILITY INSURANCE. An owner of a dangerous wild animal shall maintain liability insurance coverage in an amount of not less than \$100,000 for each occurrence for liability for damages for destruction of or damage to property and death or bodily injury to a person caused by the dangerous wild animal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.108. INSPECTION. An owner of a dangerous wild animal, at all reasonable times, shall allow the animal registration agency, its staff, its agents, or a designated licensed veterinarian to enter the premises where the animal is kept and to inspect the animal, the primary enclosure for the animal, and the owner's records relating to the animal to ensure compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.109. RELOCATION OR DISPOSITION OF ANIMAL. (a) An owner of a dangerous wild animal may not permanently relocate the animal unless the owner first notifies the animal registration agency in writing of the exact location to which the animal will be relocated and provides the animal registration agency, with respect to the new location, the information required by Section 822.104.

(b) Within 10 days after the death, sale, or other disposition of the animal, the owner of the animal shall notify the animal registration agency in writing of the death, sale, or other disposition.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.110. ATTACK BY ANIMAL; ESCAPE OF ANIMAL; LIABILITY. (a) An owner of a dangerous wild animal shall notify the animal registration agency of any attack of a human by the animal within 48 hours of the attack.

(b) An owner of a dangerous wild animal shall immediately notify the animal registration agency and the local law enforcement agency of any escape of the animal.

(c) An owner of a dangerous wild animal that escapes is liable for all costs incurred in apprehending and confining the animal.

(d) An animal registration agency, a law enforcement agency, or an employee of an animal registration agency or law enforcement agency is not liable to an owner of a dangerous wild animal for damages arising in connection with the escape of a dangerous wild animal, including liability for damage, injury, or death caused by the animal during or after the animal's escape, or for injury to or death of the animal as a result of apprehension or confinement of the animal after escape.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.111. POWERS AND DUTIES OF BOARD; CAGING REQUIREMENTS AND STANDARDS. (a) The board by rule shall establish caging requirements and standards for the keeping and confinement of a dangerous wild animal to ensure that the animal is kept in a manner and confined in a primary enclosure that:

- (1) protects and enhances the public's health and safety;
- (2) prevents escape by the animal; and
- (3) provides a safe, healthy, and humane environment for the animal.

(b) An owner of a dangerous wild animal shall keep and confine the animal in accordance with the caging requirements and standards established by the board.

(c) An animal registration agency may approve a deviation from the caging requirements and standards established by the board, only if:

- (1) the animal registration agency has good cause for the deviation; and
- (2) the deviation:
  - (A) does not compromise the public's health and safety;
  - (B) does not reduce the total area of the primary enclosure below that established by the board; and
  - (C) does not otherwise adversely affect the overall welfare of the animal involved.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.112. CARE, TREATMENT, AND TRANSPORTATION OF ANIMAL.

(a) For each dangerous wild animal, the owner shall comply with all applicable standards of the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act relating to:

- (1) facilities and operations;
- (2) animal health and husbandry; and
- (3) veterinary care.

(b) An owner of a dangerous wild animal shall maintain a separate written log for each dangerous wild animal documenting the animal's veterinary care and shall make the log available to the animal registration agency or its agent on request. The log must:

- (1) identify the animal treated;
- (2) provide the date of treatment;
- (3) describe the type or nature of treatment; and
- (4) provide the name of the attending veterinarian, if

applicable.

(c) When transporting a dangerous wild animal, the owner of the animal, or a designated carrier or intermediate handler of the animal, shall comply with all transportation standards that apply to that animal under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments or the regulations adopted under that Act.

(d) A person is exempt from the requirements of this section if the person is caring for, treating, or transporting an animal for which the person holds a Class "A" or Class "B" dealer's license or a Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.113. OFFENSE AND PENALTY. (a) A person commits an offense if the person violates Section 822.103(a), Section 822.106, or Section 822.110(a) or (b). Each animal with respect to which

there is a violation and each day that a violation continues is a separate offense.

(b) A person commits an offense if the person knowingly sells or otherwise transfers ownership of a dangerous wild animal to a person who does not have a certificate of registration for that animal as required by this subchapter.

(c) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.114. CIVIL PENALTY. (a) A person who violates Section 822.103(a) is liable for a civil penalty of not less than \$200 and not more than \$2,000 for each animal with respect to which there is a violation and for each day the violation continues.

(b) The county or municipality in which the violation occurs may sue to collect a civil penalty. A civil penalty collected under this subsection may be retained by the county or municipality.

(c) The county or municipality in which the violation occurs may also recover the reasonable costs of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the animal registration agency in the civil action. Costs or fees recovered under this subsection shall be credited to the operating account from which payment for the animal registration agency's expenditures was made.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.115. INJUNCTION. Any person who is directly harmed or threatened with harm by a violation of this subchapter or a failure to enforce this subchapter may sue an owner of a dangerous wild animal to enjoin a violation of this subchapter or to enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.116. EFFECT OF SUBCHAPTER ON OTHER LAW. (a) This subchapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of this state or a

political subdivision of this state.

(b) This subchapter does not prevent a municipality or county from prohibiting or regulating by ordinance or order the ownership, possession, confinement, or care of a dangerous wild animal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.



## *Agenda Item Request Form*

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

9:00 a.m. Every Tuesday

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

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

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

**AGENDA ITEM:**

Discussion and possible action to authorize the County Judge to execute a contract between the Hays County Personal Health Department (PHD) and Sendero Health Plan (a Medicaid program).

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

**PREFERRED MEETING DATE REQUESTED:** February 21, 2012

**AMOUNT REQUIRED:** N/A

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

**REQUESTED BY:** Priscilla Hargraves

**SPONSORED BY:** Ingalsbe

**SUMMARY:** This contract will allow the PHD to provide maternity, well child, and immunization services to Sendero Health Plan clients, and bill for those services. This contract will take effect on March 1, 2012.



**Sendero Health Plans  
Hospital/Ancillary Application**

Please complete and attach copies of documents requested on page 3 of this application.

Date: 02/07/12		
Parent company (If applicable): County of Hays		
Legal Name: County of Hays		
Doing Business As: Hays County Personal Health Department (If different)		
Street Address: 401 A Broadway		
City: San Marcos County: Hays	State: TX	Zip: 78666
Phone: 512-393-5539	Fax: 512-393-5530	After Hours Phone: N/A
Mailing Address: N/A (If different)		
City:	State:	Zip:

***Person responsible for the completion of this application***

Name/Title: Glenda Walton/Administrative Assistant II	Phone: 512-393-5539
E-mail: Glenda_walton@co.hays.tx.us	Fax: 512-393-5530

***Licensure/Certification/ID Numbers***

State License Number: N/A	License Expiration Date:
Medicare Provider Number: 00368Y	SNF Number: N/A (If applicable)
Medicaid Provider Number: 1384059-05	NPI: 1295707974
Taxonomy: 261QP0905X	Tax ID: 746002241
Are clinical laboratory services performed on site? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Check type of radiology services provided, if applicable <input type="checkbox"/> X-ray <input type="checkbox"/> Mammography	
Hospital Trauma Level: <u>N/A</u> Expiration Date: _____	
Rural Hospital: <input type="checkbox"/> Yes <input type="checkbox"/> No	Urban Hospital: <input type="checkbox"/> Yes <input type="checkbox"/> No

### Accreditation

Accredited by (check all that apply):

- ☐ Joint Commission on Accreditation of Healthcare Organizations (JCAHO)
- ☐ American Osteopathic Association (AOA)
- ☐ The Rehabilitation Accreditation Commission (CARF)
- ☐ Accreditation Association for Ambulatory Health Care, Increased. (AAAHC)
- ☐ American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF)
- ☐ Continuing Care Accreditation Commission (CCAC)
- ☐ The Community Health Accreditation Program, Increased. (CHAP)
- ☐ Accreditation Commission for Health Care (ACHC)
- ☐ American College of Radiology (ACR)
- ☐ College of American Pathologist (CAP)
- ☒ Not accredited by any of the above named organizations

### Medical Liability Insurance

Current Carrier's Name: Texas Association of Counties

Policy Period: Nov 2011-Nov 2012

Policy No.: 1050

Amount of Coverage per Occurrence:\$100,000.00

Aggregate: \$300,000.00

### Disclosures

1. Has the facility license to do business in any jurisdiction ever been denied, restricted, suspended, reduced or not renewed or have you ever been reprimanded by a licensing agency?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Has the facility ever been denied participation, suspended from or denied renewal from Medicare or Medicaid or had participation status modified?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The undersigned hereby certifies that the above information requested by Sendero Health Plans is truthful, correct and complete in all respects, and the undersigned further understands that intentional submission of false or misleading information or the withholding of relevant information are grounds for termination as a participating provider with Sendero Health Plans. The undersigned hereby agrees to notify Sendero Health Plans of any changes in the above information.

Signature

Date

Title

## ATTACHMENTS

***Please attach copies of following documents:***

- ☐ State license or ☒ State License not required
- ☐ Documentation (such as a letter) of participation in the Medicaid program
- ☐ Accreditation approval letter or certificate with expiration date
- ☒ CLIA certificate, as applicable
- ☐ Bureau of Radiation Control certificate(s), as applicable
- ☐ Liability face sheet
- ☒ W-9
- ☒ Additional Locations – Please attach a list of all locations.

**If NOT accredited** by one of the above named accreditation organizations, please submit:

- ☒ A CMS or state report that a review has been performed for your facility, or a letter from CMS or the state showing that your facility was reviewed (A CMS letter or report suffices as documentation of participation in the Medicare program) and undergo a site visit prior to credentialing.

**Please mail or fax completed application and all applicable attachments to:**

**Sendero Health Plans  
Attn: Credentialing  
2028 East Ben White, Suite 510  
Austin, TX 78741**

**OR**

**Fax: 512/901-9704**

**512-978-8008**

## Hays County Personal Health Department

Other Medicaid Provider Number:

Taxonomy Code:

1384059-03 (Immunization)

261QP0905X

1384059-06 (Family Planning)

261QA0005X

1384059-04 (Maternity)

261QP0905X

CENTERS FOR MEDICARE & MEDICAID SERVICES  
CLINICAL LABORATORY IMPROVEMENT AMENDMENTS

CERTIFICATE OF WAIVER

LABORATORY NAME AND ADDRESS

HAYS COUNTY HEALTH DEPARTMENT  
401 A BROADWAY  
SAN MARCOS, TX 78666-7751

CLIA ID NUMBER

45D0504390

EFFECTIVE DATE

08/03/2010

LABORATORY DIRECTOR

CHARLES P ANDERSON

EXPIRATION DATE

08/02/2012

Pursuant to Section 353 of the Public Health Services Act (42 U.S.C. 263a) as revised by the Clinical Laboratory Improvement Amendments (CLIA), the above named laboratory located at the address shown hereon (and other approved locations) may accept human specimens for the purposes of performing laboratory examinations or procedures.

This certificate shall be valid until the expiration date above, but is subject to revocation, suspension, limitation, or other sanctions for violation of the Act or the regulations promulgated thereunder.



*Judith A. Yost*

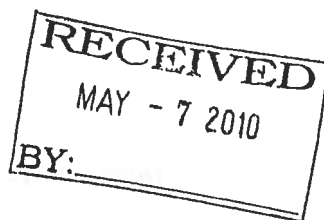
Judith A. Yost, Director  
Division of Laboratory Services  
Survey and Certification Group  
Center for Medicaid and State Operations

1339 cert1\_071010

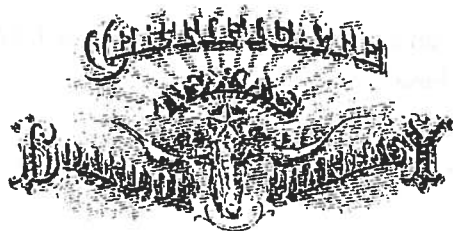
- If this is a Certificate of Registration, it represents only the enrollment of the laboratory in the CLIA program and does not indicate a Federal certification of compliance with other CLIA requirements. The laboratory is permitted to begin testing upon receipt of this certificate, but is not determined to be in compliance until a survey is successfully completed.
- If this is a Certificate for Provider-Performed Microscopy Procedures, it certifies the laboratory to perform only those laboratory procedures that have been specified as provider-performed microscopy procedures and, if applicable, examinations or procedures that have been approved as waived tests by the Department of Health and Human Services.
- If this is a Certificate of Waiver, it certifies the laboratory to perform only examinations or procedures that have been approved as waived tests by the Department of Health and Human Services.

FOR MORE INFORMATION ABOUT CLIA, VISIT OUR WEBSITE AT [WWW.CMS.HHS.GOV/CLIA](http://WWW.CMS.HHS.GOV/CLIA)  
OR CONTACT YOUR LOCAL STATE AGENCY. PLEASE SEE THE REVERSE FOR  
YOUR STATE AGENCY'S ADDRESS AND PHONE NUMBER.  
PLEASE CONTACT YOUR STATE AGENCY FOR ANY CHANGES TO YOUR CURRENT CERTIFICATE.

TEXAS STATE BOARD OF PHARMACY  
333 GUADALUPE ST STE 3 600  
AUSTIN TX 78701



HAYS COUNTY HEALTH DEPARTMENT  
401 BROADWAY  
SAN MARCOS, TX 78666-7751



This certifies that the pharmacy named below is hereby licensed to operate as a  
Class D pharmacy.


License No. **7191**

Expiration Date **5/31/2012**

Balances 0

HAYS COUNTY HEALTH DEPARTMENT  
401 BROADWAY  
SAN MARCOS, TX 78666-7751



  
Gay Dodson, R.Ph  
Executive Director/Secretary

**MUST BE DISPLAYED IN FULL PUBLIC VIEW**



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.  
COMMISSIONER

P.O. Box 149347  
Austin, Texas 78714-9347  
1-888-963-7111  
TTY: 1-800-735-2989  
[www.dshs.state.tx.us](http://www.dshs.state.tx.us)

December 13, 2011

Hays County Health Department  
Concepcion Cantu, LMSW.  
401-A Broadway  
San Marcos TX 78666

Dear Ms. Cantu:

We have received the documents that we requested from you as a follow-up to the Quality Assurance Annual Review made to your agency on October 26, 2011. The current Internal Quality Assurance policy of your agency includes the following minimum requirements: chart review, frequency of chart review, number of charts to be reviewed and the process for resolving any issues; however, the policy does not include the requirement of case manager observation and identification of who will review the charts.

Please provide a copy of a revised Internal QA policy/plan within 30 business days from the date of this letter. If you or your agency choose to create an Internal QA Policy Variance Request, please contact Alice Watkins, Region 8.

If you have any questions please do not hesitate to contact me at 1-888-963-7111 ext. 6664 or by e-mail at [emily.parks@dshs.state.tx.us](mailto:emily.parks@dshs.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Parks", written over a horizontal line.

Emily Parks, LMSW  
Case Management Branch Manager

cc: Eileen Walker, LBSW, MS, Program Manager of Case Management & Social Work Services,  
HSR 7

Alice Watkins, Case Management Regional Liaison, HSR 7





## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.  
COMMISSIONER

P.O. Box 149347  
Austin, Texas 78714-9347  
1-888-963-7111  
TTY: 1-800-735-2989  
[www.dshs.state.tx.us](http://www.dshs.state.tx.us)

November 14, 2011

Hays County Health Department  
Concepcion Cantu, LMSW  
401-A Broadway  
San Marcos TX 78666

Dear Ms. Cantu:

We have completed your Quality Assurance Review. The findings are listed below and on the enclosed Quality Assurance Annual Review Report. Please complete the action steps listed below within the stated time frames.

### **Technical Assistance**

Three billing logs were blank. You indicated that claims were not submitted for these charts. Please adhere to the technical assistance instruction that was provided by the regional liaison at your QA Annual Review Meeting. If additional information is needed regarding billing, you may contact the DSHS regional or central office staff to inquire about billing.

### **Corrective Action Plan**

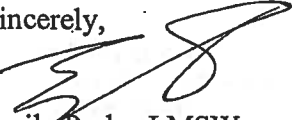
- No Internal Quality Assurance plan/policy. Please provide a copy of your Internal QA policy or your approved Internal QA Policy Variance Request within 30 business days from the date of this letter.
- Concerns were identified related to policy noncompliance for the provision of case management services during record review and client interviews. These concerns included: Intakes did not meet minimum documentation requirements; records did not contain HIPPA Privacy Notice; Family Needs Assessments does not meet minimum documentation requirements; Service Plan does not meet minimum documentation requirements; and follow-up visits were not conducted according to policy. Based on these findings, you will be required to participate in an accelerated record review within 3 months. A regional liaison will contact you to schedule this review.

Failure to comply with action steps listed above may jeopardize continued participation as a provider.

*An Equal Employment Opportunity Employer and Provider*

If you have any questions please do not hesitate to contact me at 1-888-963-7111 ext. 6664 or by e-mail at [emily.parks@dshs.state.tx.us](mailto:emily.parks@dshs.state.tx.us).

Sincerely,



Emily Parks, LMSW  
Manager, Case Management Branch

cc: Alice Watkins, Case Management Regional Liaison

Case  
Management

Children &  
Pregnant Women

ays

## **ATTACHMENT B**

### **Texas Medicaid and CHIP Provisions**

#### **Recitals**

**Whereas**, SENDERO is in the business of providing managed care services under the Texas Medicaid program and CHIP; and,

**Whereas**, The HHSC Agreement requires specific provisions be included in agreements between SENDERO and its Participating Providers;

**Now Therefore**, SENDERO and SERVICE PROVIDER agree as follows:

#### **General Legal Issues**

1. **Scope of this Attachment.** SERVICE PROVIDER agrees to arrange or provide to HHSC Members Covered Services. SERVICE PROVIDER agrees to render Covered Services to HHSC Members in accordance with the terms of this Agreement. The provisions of this Attachment B apply only to services provided pursuant to an HHSC Contract. With respect to services provided to HHSC Members; to the extent a provision in Article 1 through Article 8 conflicts with a provision in this Attachment B, the provision under this Attachment B shall prevail.

2. **Laws, Rules, and Regulations.** SERVICE PROVIDER understands and agrees that it is subject to all state and federal laws, rules, regulations, waivers, policies and guidelines, and court-ordered consent decrees, settlement agreements, or other court orders that apply to the SERVICE PROVIDER Contract and the SENDERO's managed care contract with HHSC, the HMO Program, and all persons or entities receiving state and federal funds. The SERVICE PROVIDER understands and agrees that any violation by a SERVICE PROVIDER of a state or federal law relating to the delivery of services pursuant to this SERVICE PROVIDER contract, or any violation of the SENDERO's contract with HHSC could result in liability for money damages, and/or civil or criminal penalties and sanctions under state and/or federal law.

3. **Generally Applicable Laws, Rules, and Regulations.** SERVICE PROVIDER and SENDERO understands and agrees that the following laws, rules, and regulations, and all amendments or modifications thereto, apply to this Agreement:

Environmental protection laws:

- a. Pro-Children Act of 1994 (20 U.S.C. §6081 *et seq.*) regarding the provision of a smoke-free workplace and promoting the non-use of all tobacco products;

- b. National Environmental Policy Act of 1969 (42 U.S.C. §4321 *et seq.*) and Executive Order 11514 ("Protection and Enhancement of Environmental Quality") relating to the institution of environmental quality control measures;
- c. Clean Air Act and Water Pollution Control Act regulations (Executive Order 11738, "Providing for Administration of the Clean Air Act and Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, and Loans");
- d. State Clean Air Implementation Plan (42 U.S.C. §740 *et seq.*) regarding conformity of federal actions to State Implementation Plans under §176(c) of the Clean Air Act; and
- e. Safe Drinking Water Act of 1974 (21 U.S.C. §349; 42 U.S.C. §300f to 300j-9) relating to the protection of underground sources of drinking water.

State and federal anti-discrimination laws:

- a. Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*) and as applicable 45 C.F.R. Part 80 or 7 C.F.R. Part 15;
- b. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794);
- c. Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*);
- d. Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107);
- e. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688);
- f. Food Stamp Act of 1977 (7 U.S.C. § 200 *et seq.*);
- g. Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16; and
- h. the HHS agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

The Immigration Reform and Control Act of 1986 (8 U.S.C. §1101 *et seq.*) and the Immigration Act of 1990 (8 U.S.C. §1101, *et seq.*) regarding employment verification and retention of verification forms;

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191); and the Health Information Technology for Economic and Clinical Health Act (HITECH Act) at 42 U.S.C. 17931 *et seq.*

4. **Confidentiality.** SERVICE PROVIDER must treat all information that is obtained through the performance of the services included in this Agreement as confidential information to the extent that confidential treatment is provided under state and federal laws, rules, and regulations. This includes, but is not limited to, information relating to applicants or recipients of HHSC Programs.

SERVICE PROVIDER shall not use information obtained through the performance of this Agreement in any manner except as is necessary for the proper discharge of obligations and securing of rights under this Agreement.

5. **Confidentiality – HIPAA.** SERVICE PROVIDER shall protect the confidentiality of Member Protected Health Information (PHI), including patient records. SERVICE PROVIDERS must comply with all applicable Federal and State laws, including the HIPAA Privacy and Security Rule governing the use and disclosure of protected health information.

6. **Sole Recourse for Payment.** SERVICE PROVIDER understands and agrees that SENDERO has the sole responsibility for payment of Covered Services rendered by SERVICE PROVIDER under this Agreement. In the event of SENDERO's insolvency or cessation of operations, SERVICE PROVIDER's sole recourse against SENDERO is through the bankruptcy, conservatorship, or receivership estate of the SENDERO. SERVICE PROVIDER understands and agrees that HHSC is not liable or responsible for payment for any Covered Services provided under this Agreement. SERVICE PROVIDER understands and agrees that SENDERO's Members may not be held liable for the SENDERO's debts in the event of SENDERO's insolvency.

7. **HHSC Liability.** The SERVICE PROVIDER understands and agrees that the Texas Health and Human Services Commission (HHSC) does not assume liability for the actions of, or judgments rendered against, the SENDERO, its employees, agents or subcontractors. Further, the SERVICE PROVIDER understands and agrees that there is no right of subrogation, contribution, or indemnification against HHSC for any duty owed to the SERVICE PROVIDER by the SENDERO or any judgment rendered against the SENDERO. HHSC's liability to the SERVICE PROVIDER, if any, will be governed by the Texas Tort Claims Act, as amended or modified (Tex. Civ. Pract. & Rem. Code §101.001 et seq.).

8. **Compliance with Payer Agreement.** SENDERO is responsible for ensuring that SERVICE PROVIDER complies with the requirements and provisions of any HHSC Agreement. HHSC will impose appropriate sanctions and remedies upon SENDERO for any default under the HHSC Agreement that is caused directly or indirectly by the acts or omissions of SERVICE PROVIDER. SERVICE PROVIDER agrees that such sanctions may be passed through or recouped from SERVICE PROVIDER if specifically allowed by HHSC in its Notice of Default.

9. **Third Party Recovery.** SERVICE PROVIDER understands and agrees that it may not interfere with or place any liens upon the State's right or the SENDERO's right, acting as the State's agent, to recovery from third party resources.

10. **TPIN and NPI.** SERVICE PROVIDER shall enter into and maintain a Medicaid PHYSICIAN agreement with HHSC or its agent to participate in the Medicaid Program, and shall have a Texas PHYSICIAN Identification Number (TPIN). PHYSICIAN shall have a National PHYSICIAN Identifier (NPI) in accordance with the timelines established in 45 C.F.R. Part 162, Subpart D (for most PHYSICIANS, the NPI must be in place by May 23, 2007.)

### **Information for HHSC, Government**

**11. Information Requirements.** SERVICE PROVIDER agrees to provide HHSC:

- a. all information required under any HHSC Agreement, including but not limited to the reporting requirements and other information related to the SERVICE PROVIDER's performance of its obligations under this Agreement or any HHSC Agreement; and
- b. any information in its possession sufficient to permit HHSC to comply with the federal Balanced Budget Act of 1997 or other federal or state laws, rules, and regulations.

All information must be provided in accordance with the timelines, definitions, formats, and instructions specified by HHSC.

**12. Access to Information.** SERVICE PROVIDER shall provide the following entities or their designees with prompt, reasonable, and adequate access to the SERVICE PROVIDER contract and any records, books, documents, and papers that are related to this Agreement and/or the SERVICE PROVIDER's performance of its responsibilities under this Agreement:

- a. United States Department of Health and Human Services or its designee;
- b. The Comptroller General of the United States or its designee;
- c. MCO Program personnel from HHSC or its designee;
- d. The Office of Inspector General;
- e. The Medicaid Fraud Control Unit of the Texas Attorney General's Office or its designee;
- f. Any independent verification and validation contractor, audit firm, or quality assurance contractor acting on behalf of HHSC;
- g. The Office of the State Auditor of Texas or its designee;
- h. A State or Federal law enforcement agency;
- i. A special or general investigating committee of the Texas Legislature or its designee; and
- j. Any other state or federal entity identified by HHSC, or any other entity engaged by HHSC.

The SERVICE PROVIDER must provide access wherever it maintains such records, books, documents, and papers. The SERVICE PROVIDER must provide such access in reasonable comfort and provide any furnishings, equipment, and other conveniences deemed reasonably necessary to fulfill the purposes described herein.

Requests for access may be for, but are not limited to, the following purposes:

- a. examination;
- b. audit;
- c. investigation;
- d. contract administration;
- e. the making of copies, excerpts, or transcripts; or
- f. any other purpose HHSC deems necessary for contract enforcement or to perform its regulatory functions.

13. Access to Records. Upon receipt of a records review request from the Health and Human Services Commission Office of Inspector General ("OIG") or another state or federal agency authorized to conduct compliance, regulatory, or program integrity functions, a provider must provide, at no cost to the requesting agency, the records requested within three (3) business days of the request. If the OIG or another state or federal agency representative reasonably believes that the requested records are about to be altered or destroyed or that the request may be completed at the time of the request or in less than 24 hours, the provider must provide the records requested at the time of the request and/or in less than 24 hours. The request for record review includes, but is not limited to clinical medical or dental Member records; other records pertaining to the Member; any other records of services provided to Medicaid or other health and human services program recipients and payments made for those services; documents related to diagnosis, treatment, service, lab results, charting; billing records, invoices, documentation of delivery items, equipment, or supplies; radiographs and study models related to orthodontia services; business and accounting records with backup support documentation; statistical documentation; computer records and data; and/or contracts with providers and subcontractors. Failure to produce the records or make the records available for the purpose of reviewing, examining, and securing custody of the records may result in OIG imposing sanctions against the provider as described in 1 Tex. Admin. Code Chapter 371 Subchapter G.

14. Updates to Contact Information. SERVICE PROVIDER must inform both SENDERO and HHSC's administrative services contractor of any changes to the provider's address, telephone number, group affiliation etc.

15. **State Auditor's Office.** SERVICE PROVIDER understands and agrees that the acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office ("SAO"), or any successor agency, to conduct an investigation in connection with those funds. [SERVICE PROVIDER] further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested.

16. **Complaints and Appeals.** The SERVICE PROVIDER understands and agrees that HHSC reserves the right and retains the authority to make reasonable inquiry and to conduct investigations into SERVICE PROVIDER and Member complaints.

#### **Fraud, Waste and Abuse**

17. **Investigations.** The SERVICE PROVIDER understands and agrees to the following:

- a. HHSC Office of Inspector General ("OIG") and/or the Texas Medicaid Fraud Control Unit must be allowed to conduct private interviews of SERVICE PROVIDERS and their employees, agents, contractors, and patients;
- b. requests for information from such entities must be complied with, in the form and language requested;
- c. SERVICE PROVIDERS and their employees, agents, and contractors must cooperate fully with such entities in making themselves available in person for interviews, consultation, grand jury proceedings, pre-trial conference, hearings, trials and in any other process, including investigations at the SERVICE PROVIDER's own expense; and
- d. compliance with these requirements will be at the SERVICE PROVIDER's own expense.

18. **Applicable Fraud, Waste and Abuse Laws.** The SERVICE PROVIDER understands and agrees to the following:

- a. SERVICE PROVIDER is subject to all state and federal laws and regulations relating to fraud, abuse or waste in health care or dental care and the Medicaid and/or CHIP Programs, as applicable;
- b. SERVICE PROVIDERS must cooperate and assist HHSC and any state or federal agency that is charged with the duty of identifying, investigating, sanctioning or prosecuting suspected fraud, abuse or waste;
- c. SERVICE PROVIDERS must provide originals and/or copies of any and all information, allow access to premises, and provide records to the Office of Inspector General, HHSC, the Centers for Medicare and Medicaid Services



(CMS), the U.S. Department of Health and Human Services, FBI, TDI, the Texas Attorney General's Medicaid Fraud Control Unit or other unit of state or federal government, upon request, and free-of-charge;

- d. If the SERVICE PROVIDER places required records in another legal entity's records, such as a hospital, the SERVICE PROVIDER is responsible for obtaining a copy of these records for use by the above-named entities or their representatives; and
- e. SERVICE PROVIDERS must report any suspected fraud or abuse including any suspected fraud and abuse committed by the SENDERO or a Member to the HHSC Office of Inspector General.

19. If the SERVICE PROVIDER receives annual Medicaid payments of at least \$5 million (cumulative, from all sources), the SERVICE PROVIDER must:

- a. Establish written policies for all employees, managers, officers, contractors, subcontractors, and agents of the Network Provider. The policies must provide detailed information about the False Claims Act, administrative remedies for false claims and statements, any state laws about civil or criminal penalties for false claims, and whistleblower protections under such laws, as described in Section 1902(a)(68)(A).
- b. Include as part of such written policies detailed provisions regarding the SERVICE PROVIDER'S policies and procedures for detecting and preventing Fraud, Waste, and Abuse.
- c. Include in any employee handbook a specific discussion of the laws described in Section 1902(a)(68)(A), the rights of employees to be protected as whistleblowers, and the Provider's policies and procedures for detecting and preventing Fraud, Waste, and Abuse.

20. **Termination for Gifts or Gratuities.** SERVICE PROVIDER may not offer or give any thing of value to an officer or employee of HHSC or the State of Texas in violation of state law. A "thing of value" means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited to, cash, food, lodging, entertainment and charitable contributions. The term does not include contributions to public office holders or candidates for public office that are paid and reported in accordance with state and/or federal law. The SENDERO may terminate this SERVICE PROVIDER contract at any time for violation of this requirement.

## **Claims**

21. **Claims Processing Entities.** SERVICE PROVIDER must submit claims for processing and/or adjudication to such entities as are listed in the Provider Manual, which includes the name of the entities, the address to which claims must be sent, an explanation for determination of the correct claims payer based on services rendered, and a phone number the SERVICE PROVIDER may call to make claims inquiries. SENDERO shall notify SERVICE PROVIDER in writing of any changes in the list of claims processing or adjudication entities at least 30 days prior to the effective date of change. If the SENDERO is unable to provide 30 days notice, the SENDERO shall give SERVICE PROVIDER a 30-day extension on its claims filing deadline to ensure claims are routed to the correct processing center.

22. **Clean Claims.** In order to submit a clean claim, SERVICE PROVIDER must provide the information described in the Provider Manual with the claim. SENDERO will provide the SERVICE PROVIDER at least 90 days notice prior to implementing a change in the claims guidelines, unless the change is required by statute or regulation in a shorter timeframe. SENDERO shall pay Clean Claims submitted by Provider for Covered Services provided to Members in accordance with the reimbursement rates set forth in the Agreement, and the following:

- a. **Clean Claims Elements.** Provider shall submit a Clean Claim by providing the required data elements specified in the Provider Manual, along with any attachments and additional elements, or revisions to data elements, attachments and additional elements, of which Provider has been properly notified as necessary, and any coordination of benefits or non-duplication of benefits information, if applicable.
- b. **Clean Claims Submission.** Provider shall submit Clean Claims to SENDERO in the format approved by SENDERO. Provider shall submit Clean Claims bills to SENDERO within ninety-five (95) days after the first date of service in the case of inpatient Covered Services, or the date such services are rendered in the case of all other Covered Services. SENDERO shall not be obligated to pay any claim submitted after the ninety-five (95) day period. Claims excepted from the ninety-five (95) day deadline are:
  - i. When claims for long-term services and supports covers multiple dates of service, the ninety-five (95) day deadline is based on the first day of service in the date span.
  - ii. If PHYSICIAN files with the wrong plan within the ninety-five (95) day submission requirement and produced documentation to that effect, SENDERO must honor the initial filing date and Process the claim without denying the resubmission for the sole reason of passing the filing timeframe. PHYSICIAN must file the claim with the correct SENDERO

within 95 days of the date receiving notice of non-payment from the (wrong) plan.

- iii. When a service is billed to a third party insurance resource other than SENDERO, the claim must be refilled and received by SENDERO within ninety-five (95) days from the date of disposition by the other insurance resource. SENDERO will determine, as a part of its provider claims filing requirements, the documentation required when a provider refiles these types of claims.

In the event SENDERO requests additional information in order to process a claim, PHYSICIAN shall provide such additional information within sixty (60) days of SENDERO's request.

- c. **Deficient Claims.** If a submitted claim is determined by SENDERO to be deficient, SENDERO shall notify Provider that the claim is deficient within fifteen (15) calendar days of receipt of the claim.
- d. **Payment of Clean Claims.** After receipt of a Clean Claim and prior to the expiration of thirty (30) days from the receipt of that Clean Claim, SENDERO shall pay Provider for Covered Services rendered to Members. In the event SENDERO does not pay a Clean Claim in 30 days of receipt, Provider shall be entitled to interest on the unpaid Clean Claim at a rate of 1.5% per month (18% per annum) for every month the Clean Claim remains unpaid.
- e. **Prohibition on Limiting Member's Ability to Contest Claims.** SERVICE PROVIDER is prohibited from including in their contract with their covered members language which limits the member's ability to contest claims payment issues, or that binds the member to the insurer's interpretation of the contract terms.
- f. **Claims Payment.** Program violations arising out of performance of the contract are subject to administrative enforcement by Health and Human Services Commission Office Inspector General as specified in 1 TEX. ADMIN. CODE Chapter 371, Subchapter G.
- g. **Notice of Revisions to Clean Claim Elements.** SENDERO may revise its requirements for data elements, attachments or additional Clean Claim elements that have previously been properly included as elements of a Clean Claim by providing advance written notice to Service Provider of such revisions. The notice shall identify with specificity the revisions and or additions to data elements, attachments, or additional Clean Claim elements, and must be received by the Service Provider at least sixty (60) calendar days before the SENDERO enforces such revisions to the requirements of a Clean Claim.
- h. **Disclosure of Fee Schedule and Coding Information.** SENDERO shall provide to Service Provider, upon written request, information necessary to determine that

Provider is being compensated in accordance with this Agreement. Service Provider may make the request for information by any reasonable and verifiable means. SENDERO may provide the required information by any reasonable method through which Service Provider can access the information, including e-mail, computer disks, paper or access to an electronic database. SENDERO shall provide the fee schedules and other required information by the 30th day after the date that SENDERO receives the request. SENDERO may make any amendments, revisions or substitutions of any information provided pursuant to this paragraph by providing Service Provider with at least sixty (60) calendar days written notice of such amendment, revision or substitution. Service Provider that receives information under this paragraph: (i) may not use or disclose the information for any purpose other than the Provider's practice management and billing activities; (ii) may not use this information to knowingly submit a claim for payment that does not accurately represent the level, type or amount of Covered Services that were actually provided to a Member or to misrepresent any aspect of the Covered Service; and (iii) may not rely upon information provided pursuant to this paragraph about a Covered Service as verification that a Member is covered for that Covered Service.

23. **Interest for Certain Late Payments.** SENDERO shall adjudicate (finalize as paid or denied adjudicated) clean claims within 30 days from the date the claim is received by the SENDERO. The SENDERO will pay SERVICE PROVIDERS interest at a rate of 1.5% per month (18% per annum) on all clean claims that are not adjudicated within 30 days.

#### **Transactions with HHSC Members**

24. **Free Communication.** SENDERO is prohibited from imposing restrictions upon the SERVICE PROVIDER's free communication with a HHSC Member about the Member's medical conditions, treatment options, SENDERO referral policies, and other SENDERO policies, including financial incentives or arrangements and all managed care plans with whom the SERVICE PROVIDER contracts.

25. **Marketing.** SERVICE PROVIDER agrees to comply with HHSC's marketing policies and procedures, as set forth in the HHSC Contract (which includes HHSC's Uniform Managed Care Manual). SERVICE PROVIDER is prohibited from engaging in direct marketing to Members that is designed to increase enrollment in a particular health plan. The prohibition should not constrain SERVICE PROVIDERS from engaging in permissible marketing activities consistent with broad outreach objectives and application assistance.

26. **Charging Medicaid Recipients.** The SERVICE PROVIDER shall not bill or collect any amount from a Medicaid Member for Health Care Services provided pursuant to this Agreement. Federal and state laws provide severe penalties for any SERVICE PROVIDER who attempts to bill or collect any payment from a Medicaid recipient for a Covered Service.

27. **Collection of Co-Payments, Deductibles.** SERVICE PROVIDER is responsible for collecting at the time of service any applicable CHIP co-payments or deductibles in accordance with CHIP cost-sharing limitations.

SERVICE PROVIDER shall not charge:

- a. cost-sharing or deductibles to CHIP Members of Native American Tribes or Alaskan Natives;
- b. co-payments or deductibles to a CHIP Member with an ID card that indicates the Member has met his or her cost-sharing obligation for the balance of their term of coverage; and
- c. co-payments for well-child or well-baby visits or immunizations.

Co-payments are the only amounts that SERVICE PROVIDERS may collect from CHIP Members, except for costs associated with unauthorized non-emergency services provided to a Member by out-of-network SERVICE PROVIDERS for non-covered services.

28. **Costs of Non-covered Services.** SERVICE PROVIDER must inform a CHIP Member of the costs for non-covered services prior to rendering such services and must obtain a signed Private Pay form from such a Member.

SERVICE PROVIDERS must notify the Medical Consenter about the provision of Emergency Services no later than the second Business Day after providing Emergency Services, as required by Texas Family Code §266.009.

### **Behavioral Health**

29. **Scheduling Outpatient Psychiatric Services.** If SERVICE PROVIDER provides inpatient psychiatric services to a Member, then it must schedule the Member for outpatient follow-up and/or continuing treatment prior to discharge. The outpatient treatment must occur within seven days from the date of discharge. Behavioral health SERVICE PROVIDERS must contact Members who have missed appointments within 24 hours to reschedule appointments

### **Family Planning**

30. **Family Planning Counseling.** If a Medicaid Member requests contraceptive services or family planning services, SERVICE PROVIDER must also provide the Member counseling and education about family planning and available family planning services.

31. **Parental Consent.** SERVICE PROVIDER cannot require parental consent for Medicaid Members who are minors to receive family planning services.

32. **Family Planning; Confidentiality.** SERVICE PROVIDER must comply with state and federal laws and regulations governing Medicaid Member confidentiality (including minors) when providing information on family planning services to Members.

#### **Primary Care Physicians (PCPs)**

33. **Screening.** If SERVICE PROVIDER is a PCP, the SERVICE PROVIDER must assess the medical needs and behavioral health needs of Members for referral to specialty care SERVICE PROVIDERs and provide referrals as needed. PCPs must coordinate Members' care with specialty care SERVICE PROVIDERs after referral.

If SERVICE PROVIDER is a PCP, the SERVICE PROVIDER must have screening and evaluation procedures for detection and treatment of, or referral for, any known or suspected behavioral health problems and disorders.

**Preventative Care.** If SERVICE PROVIDER is a PCP, the SERVICE PROVIDER must provide preventative care:

- a. to children under age 21 in accordance with AAP recommendations for CHIP Members and CHIP Perinatal Newborns, and the THSteps periodicity schedule published in the THSteps Manual for Medicaid Members; and
- b. to adults in accordance with the U.S. Preventative Task Force requirements.

34. **Enrollment in THSteps.** If SERVICE PROVIDER is a PCP, the SERVICE PROVIDER must:

- a. either be enrolled as a THSteps SERVICE PROVIDER or refer Members due for a THSteps check-up to a THSteps SERVICE PROVIDER;
- b. refer Members for follow-up assessments or interventions clinically indicated as a result of the THSteps check-up, including the developmental and behavioral components of the screening;

#### **Misc.**

35. **SENDERO's Responsibility to take Action.** SENDERO shall initiate and maintain any action necessary to stop a SERVICE PROVIDER or employee, agent, assign, trustee, or successor-in-interest from maintaining an action against HHSC, an HHS Agency, or any Member to collect payment from HHSC, an HHS Agency, or any Member, excluding payment for non-covered services. This provision does not restrict SERVICE PROVIDER from collecting allowable copayment and deductible amounts from CHIP Members. Additionally, this provision does not restrict a CHIP Dental SERVICE PROVIDER from collecting payment for services that exceed a CHIP member's benefit cap.

36. **TPIN, NPI. SERVICE PROVIDER Network Requirements, Medicaid Agreements, TPI and NPI.** Network Acute Care SERVICE PROVIDERs serving Medicaid Members must enter into and maintain a Medicaid SERVICE PROVIDER agreement with HHSC or its agent to participate in the Medicaid Program, and must have a Texas Physician Identification Number (TPIN). All SERVICE PROVIDERs, both CHIP and Medicaid, must have a National Physician Identifier (NPI) in accordance with the timelines established in 45 C.F.R. Part 162, Subpart D (for most Physicians, the NPI must be in place by May 23, 2007.)

37. **Child Protection Litigation.** At the request of HHSC for the Texas Department of Family and Protective Services, SERVICE PROVIDER shall testify in court as needed for child protection litigation.

38. **Professional Conduct.** While performing the services described under this Agreement, the SERVICE PROVIDER agrees to:

- a. comply with applicable state laws, rules, and regulations and HHSC's requests regarding personal and professional conduct generally applicable to the service locations; and
- b. otherwise conduct themselves in a businesslike and professional manner.

39. **Tuberculosis.** SERVICE PROVIDERs shall coordinate with the local TB control program to ensure that all Members with confirmed or suspected TB have a contact investigation and receive Directly Observed Therapy (DOT). The SERVICE PROVIDERs must report to the Texas Department of State Health Services (DSHS) or the local TB control program any Member who is non-compliant, drug resistant, or who is or may be posing a public health threat.

40. **Early Childhood Intervention (ECI).** SERVICE PROVIDER shall cooperate and coordinate with local ECI programs to comply with federal and state requirements relating to the development, review and evaluation of Individual Family Service Plans (IFSP). SERVICE PROVIDER understands and agrees that any Medically Necessary Health and Behavioral Health Services contained in an IFSP must be provided to the Member in the amount, duration, scope and setting established in the IFSP.

41. **Women, Infants and Children (WIC).** SERVICE PROVIDERs shall coordinate with the WIC Special Supplemental Nutrition Program to provide medical information necessary for WIC eligibility determinations, such as height, weight, hematocrit or hemoglobin.

42. **Advance Directives.** SERVICE PROVIDER shall comply with the requirements of state and federal laws, rules and regulations relating to advance directives.

43. **Encounter Data.** SERVICE PROVIDER shall submit proxy claims forms to SENDERO as requested for services provided to all STAR, STAR+PLUS or

CHIP Members that are capitated by SENDERO in accordance with the encounter data submissions requirements established by SENDERO and HHSC.

44. **THSteps Newborn Screens.** SERVICE PROVIDERs must send all THSteps newborn screens to the Texas Department of State Health Services (DSHS), formerly the Texas Department of Health, Bureau of Laboratories or a DSHS-certified laboratory. SERVICE PROVIDERs must include detailed identifying information for all screened newborn Members and each Member's mother to allow HHSC to link the screens performed at the hospital with screens performed at the two-week follow-up.

45. **Indemnification of State.** SERVICE PROVIDER agrees to hold harmless the State of Texas, all state officers and employees, and all Members in the event of non-payment by SENDERO to SERVICE PROVIDER. SERVICE PROVIDER further agrees to indemnify and hold harmless the State and its agents, officers and employees against all injuries, death, losses, damages, claims, suits, liabilities, judgments, costs and expenses that may in any manner accrue against the State or its agents, officers or employees through the intentional conduct, negligence or omission of SERVICE PROVIDER, any shareholder, partner or any other individual or entity holding an equitable interest in SERVICE PROVIDER, its agents, officers, employees or contractors. SERVICE PROVIDER further agrees that: (i) this provision shall survive the termination of this agreement regardless of the cause giving rise to the termination and shall be construed to be for the benefit of SENDERO's Members, and that (ii) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between SERVICE PROVIDER and the Member or persons acting on their behalf. Insofar as such contrary agreement relates to liability for payment for continuation of Covered Services provided under the terms and conditions of this continuation of benefits provision.

SENDERO

By: \_\_\_\_\_

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

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

SERVICE PROVIDER

By: \_\_\_\_\_

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

Practice or Facility Name:

\_\_\_\_\_

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



**ANCILLARY GROUP OR FACILITY**

**SERVICES AGREEMENT**

**BETWEEN**

**SENDERO HEALTH PLANS, INC.**

**AND**

**HAYS COUNTY PERSONAL HEALTH DEPARTMENT**

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FORM # SHP.ANC Brown McCarroll, L.L.P. Edit of 10/12/11  
VERSION.030711

## ANCILLARY GROUP OR FACILITY SERVICE AGREEMENT

This Agreement is made as of \_\_\_\_\_ (the "Effective Date") by and between Sendero Health Plans, Inc. ("Sendero") and \_\_\_\_\_ ("PROVIDER").

### RECITALS

- A. SENDERO is seeking a health maintenance organization license in Texas and seeks to be engaged in the business of providing or arranging for the provision of certain healthcare services to Members enrolled in various Benefit Plans; and
- B. SENDERO desires to create panels of healthcare Providers who will agree to comply with the reimbursement, utilization management mechanisms, and other policies and procedures for such Benefit Plans; and
- C. PROVIDER is engaged in the business of providing or arranging to provide medical and other healthcare services through other healthcare providers under contract with or employed by PROVIDER; and
- D. SENDERO desires that PROVIDER and its Contractor Providers provide or arrange to provide certain medical and healthcare services to Members enrolled in Benefit Plans, and PROVIDER desires to do so; and
- E. PROVIDER, on behalf of itself and its Contractor Providers, is duly authorized to enter into this Agreement with SENDERO.

Now, therefore, SENDERO and PROVIDER agree as follows:

### ARTICLE ONE- DEFINITIONS

- 1.1 **Benefit Plan** means a policy or program issued or administered by a Payer, the plan or programs document, or any other legally enforceable instrument under which a Member may be entitled to receive Covered Services.
- 1.2 **Benefit Plan Requirements** means the rules, procedures, policies, protocols, and other conditions to be followed by Participating Providers and Members with respect to providing Covered Medical Services under the Benefit Plan.
- 1.3 **Care Coordinator** means the SENDERO staff person or subcontractor responsible for coordinating the development and implementation of a Member's Plan of Care.
- 1.4 **Children's Health Insurance Program or CHIP** means the health insurance programs authorized and funded pursuant to Title XXI, Social Security Act (42 U.S.C. §§1397aa-1397jj) and administered by the Texas Health and Human Services Commission.

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- 1.5 **CHIP Member** means any Member enrolled in a Benefit Plan under which SENDERO provides managed care services to HHSC under CHIP.
- 1.6 **Claim** means an invoice submitted by PROVIDER in a format approved by SENDERO for payment of Covered Services.
- 1.7 **Clean Claim** means a claim submitted by PHYSICIAN for medical care or health care services rendered to a Member, with the data necessary for SENDERO or its subcontracted claims processor to adjudicate and accurately report the Claim, as provided for in the Provider Manual.
- 1.8 **Contractor Providers** means, collectively, all healthcare entities, physicians, mid-level practitioners, and other healthcare providers who are employed by, or under contract with, the PROVIDER to assist the PROVIDER in the provision of Covered Services.
- 1.9 **Coordination of Benefits** means the allocation of financial responsibility between two or more payers of health care services, each with a legal duty to pay for or provide Covered Services to a Member at the same time.
- 1.10 **Co-payment** means the fixed amount that a Member is obligated to pay, and that the PROVIDER is obligated to collect, under a Benefit Plan.
- 1.11 **Covered Services** means those medical and healthcare services and items the Member is entitled to receive under a particular Benefit Plan.
- 1.12 **Deductible** means the minimum amount that a Member is obligated to pay under a particular Benefit Plan before a Payer is obligated to pay benefits under the Benefit Plan.
- 1.13 **Emergency Care** means acute care services, emergency behavioral health services and health-related services provided in response to any condition requiring immediate intervention and/or medical treatment, including emergency labor and delivery and any medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses the average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy; serious impairment to bodily functions; in the case of a pregnant woman, possible harm to a fetus; serious disfigurement; serious dysfunction of any bodily organ or part; or an emergency behavioral health condition.
- 1.14 **HHSC** means the Texas Health and Human Services Commission.

- 1.15 **HHSC Contract** means any agreement between SENDERO and HHSC whereby SENDERO provides managed care services to HHSC under the State's Medicaid program or CHIP.
- 1.16 **HHSC Member** means any Member enrolled in a Benefit Plan pursuant to a HHSC Contract.
- 1.17 **Inpatient** means services and items that include, but are not limited to: (a) bed and board; (b) medical, nursing, surgical, pharmacy and dietary services; (c) all diagnostic and therapeutic services required by a Member when ordered by an attending physician with appropriate medical and clinical staff privileges; (d) use of PROVIDER's facilities, and medical, mental health and social services furnished by PROVIDER, for the provision of Covered Services, (e) drugs while an inpatient, take-home drugs, supplies, appliances and equipment; (f) transportation services, subsequent to admission and prior to discharge required in providing Inpatient Services; (g) services rendered by PROVIDER within twenty-four (24) hours prior to Member's admission as an inpatient, which are related to the condition for which the Member is admitted; and (h) PROVIDER-based physician and other professional services where such physicians or allied health professionals are employees or contractors of PROVIDER, and PROVIDER normally bills for these services on PROVIDER's UB-92 (UB-82) form. Such services are included in the compensation rates contained in this Agreement and shall not be billed separately by PROVIDER, physicians or allied health professionals.
- 1.18 **Medicaid** means programs of health care offered by a Benefit Plan in accordance with Title XIX of the Federal Social Security Act and Chapter 32 of the Texas Human Resources Code, and other laws, and includes the Texas Medicaid Managed Care Programs.
- 1.19 **Medicaid Member** means any Member enrolled in a Benefit Plan under which SENDERO provides managed care services to HHSC under the State's Medicaid program.
- 1.20 **Medically Necessary Health Services** means medical or healthcare services that are:
- a. reasonable and necessary to prevent illnesses or medical conditions, or provide early screening, interventions, and/or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a handicap, cause illness or infirmity of a Member, or endanger life;
  - b. provided at appropriate facilities and at the appropriate levels of care for the treatment of a Member's medical conditions. For Inpatient stays, this means that acute care as an inpatient is necessary due to the kind of

services the Member is receiving or the severity of the Member's condition, and that safe, cost effective and adequate care cannot be received as an outpatient or in a less intensified medical setting;

- c. consistent with healthcare practice guidelines and standards that are issued by professionally recognized healthcare organizations or governmental agencies;
- d. consistent with the diagnosis of the conditions;
- e. no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;
- f. not experimental or investigative; and,
- g. Are not primarily for the convenience of the Member or PROVIDER.

For Medicaid Members birth through age 20, the following Texas Health Steps services:

- h. Screening, vision and hearing services; and,
- i. Other health care services, including behavioral health services, that are necessary to correct or ameliorate a defect or physical or mental illness or condition. A determination of whether a service is necessary to correct or ameliorate a defect or physical or mental condition:
  - i. Must comply with the requirements of the Alberto N., et al. v. Suehs, et al. partial settlement agreements; and
  - ii. May include consideration of other relevant factors..

1.21 **Member** means a person who is eligible and enrolled in a Benefit Plan.

1.22 **Out-of-Area Urgent Care** means care that: (i) is needed urgently by a Member while he or she is outside the Service Area, the need for which could not reasonably have been anticipated before the Member left the Service Area; and (ii) cannot safely be postponed until the Member is able to return to the Service Area to obtain care from or through his or her Primary Care Provider (PCP). Out-of-Area Urgent Care does not include services provided by non-Participating providers after the point at which the Member could safely be transferred to the care of a Participating Provider.

1.23 **Participating Provider** means a Provider that is under contract with SENDERO to provide Covered Services to Members.

- 1.24 **Payer(s)** means the party, including SENDERO, that is responsible for providing coverage for medical and healthcare services to Members under a Benefit Plan and that is authorized by SENDERO to access the PROVIDER's services under this Agreement.
- 1.25 **Plan of Care** means the document that sets forth the care and services to be provided to a SENDERO Plan Member as developed by the Plan of Care Team.
- 1.26 **Primary Care Provider (PCP)** means a Participating Provider who has agreed with SENDERO to provide a medical home to Members, who is responsible for providing initial and primary care to Members, maintain continuity of Member care, initiate referrals for care, and who has been credentialed by SENDERO as a Primary Care Provider. A Specialist may sometimes be credentialed by SENDERO as a PCP.
- 1.27 **Physician** means a physician duly licensed by the State of Texas to practice medicine.
- 1.28 **PROVIDER** means an appropriately credentialed and licensed individual, facility, agency, institution, organization or other entity, and its employees and subcontractors, that has a contract with the SENDERO for delivery of Covered Services to SENDERO'S Members.
- 1.29 **Protocols** mean, as applicable, Benefit Plan Requirements, the Provider Manual, the Texas Medicaid Provider Procedures Manual, the UMCC and the UCMCM.
- 1.30 **Provider Manual** means the Provider Procedures Manual prepared by SENDERO which sets forth the procedures for Participating Providers to follow under this Agreement.
- 1.31 **Quality Improvement Committee** means the SENDERO committee that assesses, reviews, and improves upon all aspects of quality, availability, and accessibility of healthcare services.
- 1.32 **Service Area** means the area of the State that TDI has approved for SENDERO's service area.
- 1.33 **Specialist** means a Participating Provider who is a Physician and has been credentialed by SENDERO as a Specialist.
- 1.34 **TDI** means the Texas Department of Insurance.
- 1.35 **Texas Health Steps** is the name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. It includes the State's Comprehensive Care Program extension to EPSDT, which adds benefits to the federal EPSDT requirements contained in 42 USC §1396d(r), and defined and codified at 42 CFR §§440.40 and 441.56-62.

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HHSC's rules are contained in 25 TAC Chapter 33 (relating to Early and Periodic Screening, Diagnosis and Treatment).

- 1.36 **Texas Medicaid Bulletin** means the bimonthly update to the Texas Medicaid Provider Procedures Manual.
- 1.37 **Texas Medicaid Provider Procedures Manual** means the policies and procedures manual published by or on behalf of HHSC that contains policies and procedures required of all health care providers who participate in the Texas Medicaid program. The manual is published and updated bi-monthly by the Texas Medicaid Bulletin.
- 1.38 **UMCC** means HHSC's Uniform Managed Care Contract.
- 1.39 **UMCM** means HHSC's Uniform Managed Care Manual, which is the manual published by or on behalf of HHSC that contains policies and procedures required of all managed care organizations participating in HHSC programs.

## **ARTICLE TWO RELATIONSHIP OF SENDERO AND PROVIDER**

- 2.1 **Services Provided.** **PROVIDER** agrees to provide Covered Services to Members under the Benefit Plans identified in, and in exchange for the rates identified in, Attachment A.
- 2.2 **Amending Attachment A.** Attachment A may be amended as follows:
  - a. SENDERO will send the PROVIDER a written notice of a proposed amendment to Attachment A summarizing the proposed rates for PROVIDER's participation in a Benefit Plan. If SENDERO does not receive written notice from PROVIDER rejecting the proposed amendment to Attachment A within 30 days of SENDERO's notice, then the PROVIDER shall be deemed to have accepted the amendment to Attachment A and will provide Covered Services to Members of such Benefit Plan in accordance with the Protocols, without further action on the part of PROVIDER or SENDERO. Rejection of a proposed amendment to Attachment A does not otherwise terminate PROVIDER's obligations under this Agreement with respect to other Benefit Plans.
  - b. SENDERO, at its sole discretion, may eliminate a Benefit Plan from Attachment A at any time, with no further obligation to reimburse PROVIDER for the provision of Covered Services provided to Members of the eliminated Benefit Plan.
- 2.3 **Independent Contractors.** This Agreement does not create any relationship between PROVIDER, Contractor Providers and SENDERO other than that of

independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Nothing in this Agreement shall be construed to establish a relationship of partnership, joint venture, agency or employment between SENDERO and PROVIDER or Contractor Providers. Neither SENDERO nor PROVIDER has authority to enter into contracts or to assume any obligations for the other, nor can either party make any warranties or representations on behalf of the other concerning the duties, obligations or services of the other except in accordance with the express terms of this Agreement or as otherwise authorized in writing by the other.

- 2.4 **Responsibility for Medical Decisions.** The parties acknowledge and agree that SENDERO does not and cannot practice medicine, and that PROVIDER and Contractor Providers are solely responsible for all medical decisions made by them in connection with the care of any Member, notwithstanding the receipt by them, whether in writing or otherwise, of any recommendation, direction or other statement regarding such care or the coverage of such care that may be issued by or on behalf of SENDERO with respect to such Member.
- 2.5 **Coverage Determinations.** The parties acknowledge and agree that SENDERO shall be solely responsible for the determination of the extent of coverage of a Member's Covered Services. If a question arises concerning whether a particular service is a Covered Service under a Benefit Plan, PROVIDER shall promptly refer such question to SENDERO and shall cooperate with SENDERO in the resolution of such question.
- 2.6 **Authority of PROVIDER to bind Contractor Providers.** PROVIDER unconditionally warrants, represents and guarantees that it has the authority to bind Contractor Providers to the terms and conditions of this Agreement. PROVIDER acknowledges that without this representation, SENDERO would never agree to enter into this Agreement. PROVIDER agrees to indemnify, defend and hold SENDERO harmless from any and all liability or damages incurred by SENDERO in connection with the PROVIDER's unconditional representation made in this Section, including, but not limited to, attorney fees and other costs SENDERO may accrue if any party disputes PROVIDER's authority to bind Contractor Providers to the terms of this Agreement. This Section shall survive the termination of this Agreement.
- 2.7 **Parties' use of Others' Identifying Information.** PROVIDER shall permit SENDERO to make public reference to PROVIDER and Contractor Providers in SENDERO's materials, including the names, addresses, telephone numbers, hospital affiliations, educational background, certifications, specializations and other information with respect to Contractor Providers and PROVIDER. PROVIDER may identify itself as being a Participating Provider, but shall not otherwise use the name or trademark of SENDERO unless first approved in writing by SENDERO.



- 2.8 **Volume.** SENDERO does not, by this Agreement or otherwise, promise, warrant or guarantee the PROVIDER or any Contractor Provider any minimum number of Members on the PROVIDER's panel or as referrals to PROVIDER or any Contractor Provider.

### **ARTICLE THREE DUTIES AND OBLIGATIONS OF SENDERO**

- 3.1 **Payment.** SENDERO will cause Payers to pay Claims submitted by PROVIDER at the rate established in Attachment A for that Benefit Plan when the Covered Services are Medically Necessary, covered under the Benefit Plan, and otherwise provided in accordance with the terms and conditions of this Agreement and the Protocols.
- 3.2 **Compliance with Laws.** SENDERO will comply with all applicable laws including, but not limited to, those involving (i) licensure, (ii) the confidentiality of Members and their protected healthcare information and (iii) prompt payment of claims to the extent those requirements are applicable.
- 3.3 **Access to Information.** SENDERO shall provide PROVIDER electronic access to Protocols, Members' eligibility status, and claims status.
- 3.4 **Member/Provider Communications.** SENDERO shall not impose restrictions upon PROVIDER or Contractor Provider's free communication with Members about Member's medical conditions, treatment options or their costs, referral policies, and other managed care policies, including financial incentives or arrangements.
- 3.5 **Retaliation.** SENDERO shall not engage in any retaliatory action against PROVIDER or Contractor Providers, including termination or refusal to renew this Agreement, because PROVIDER or any Contractor Provider has, acting on behalf of a Member, reasonably filed a complaint with TDI or any governmental agency against SENDERO, or appealed a decision of SENDERO.
- 3.6 **Identification of Members.** SENDERO shall provide, or require Payers to provide, Members with appropriate identification indicating their participation in a Benefit Plan.
- 3.7 **Notice of Selection.** SENDERO shall notify PROVIDER of a Member's selection of a Contractor Provider as the primary care physician or primary care provider, or of the assignment of the Member to that Contractor Provider by SENDERO, not later than the 30th working day after the date of the selection or assignment.
- 3.8 **Provider Complaints and Appeals.** SENDERO shall process all complaints and provide an opportunity for appeal according to the protocols as referenced in Appendix B of the Provider Manual.

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3.9 **Podiatrists Only.** If CONTRACTOR is licensed as a podiatrist in the State of Texas, then:

- a. the CONTRACTOR may request, and SENDERO shall provide not later than the 30th day after the date of the request, a copy of the coding guidelines and payment schedules applicable to the compensation that the CONTRACTOR will receive under the contract for services;
- b. SENDERO may not unilaterally make material retroactive revisions to the coding guidelines and payment schedules; and
- c. CONTRACTOR may, while practicing within the scope of the law regulating podiatry, provide x-rays and nonprefabricated orthotics covered by the evidence of coverage.

#### **ARTICLE FOUR DUTIES AND OBLIGATIONS OF CONTRACTOR**

- 4.1 **Compliance with Protocols.** PROCIDER shall comply with the Protocols, which may be amended from time to time at the discretion of SENDERO and Payers.
- 4.2 **Contractor Providers, Employees, Subcontractors.** PROVIDERR shall ensure that the Contractor Providers and PROVIDER's employees, affiliates and subcontractors comply with the terms of this Agreement and facilitate PROVIDER's compliance with this Agreement.
- 4.3 **Hours of Operation.** PROVIDER shall make necessary and appropriate arrangements to ensure the availability of Covered Services to Members twenty-four (24) hour per day, seven (7) day per week. PROVIDER shall provide timely access to care and services as provided in the Protocols.
- 4.4 **Acceptance of New Members.** So long as PROVIDER and Contractor Providers are accepting new patients from health plans other than SENDERO, PROVIDER and Contractor Providers shall continue to accept new Members from SENDERO.
- 4.5 **Identification of Providers.** PROVIDER shall identify Contractor Providers to SENDERO as required under the Protocols or as otherwise requested by SENDERO.
- 4.6 **Representations.** PROVIDER, on behalf of itself and the Contractor Providers, represents, warrants and covenants that at all times during the term of this Agreement:

- a. PROVIDER and its Contractor Providers are licensed by the State to provide Covered Services and shall maintain such licensure throughout the term of this Agreement;
- b. Covered Services shall be provided in compliance with all applicable local, State, and federal laws, rules, regulations, and professional standards of care;
- c. Covered Services shall be provided in the same locations, within the same time frames, and in accordance with the same standards of care, skill and diligence that as provided to any other PROVIDER patient, regardless of source of payment;
- d. PROVIDER shall not differentiate or discriminate in providing Covered Services to Members because of race, color, religion, national origin, ancestry, age, sex, marital status, sexual orientation, physical, sensory or mental handicap, socioeconomic status or participation in publicly funded programs of healthcare
- e. Contractor Providers who are Physicians maintain in effect privileges to practice at one or more hospitals that are Participating Providers;
- f. PROVIDER has disclosed, and will continue to disclose, to SENDERO any pending or potential litigation or administrative actions against PROVIDER or Contractor Providers relating to the provision of healthcare services;
- g. PROVIDER and Contractor Providers, as appropriate, hold and will maintain a current DEA narcotic registration certificate, and a current State narcotics license, where applicable;
- h. All information contained in any credentialing application submitted by PROVIDER to SENDERO, either on its own behalf or on behalf of a Contractor Provider, is true and correct;
- i. PROVIDER and Contractor Providers meet and will continue to meet all credentialing standards adopted by SENDERO;
- j. PROVIDER and Contractor Providers are eligible to participate in Medicare, Medicaid, and CHIP and have not been excluded from participation in any of these programs or any other publicly funded healthcare program;
- k. The individual signing this Agreement on behalf of the PROVIDER has the authority to bind the PROVIDER and Contractor Providers.

- 4.7 **Notifications.** PROVIDER shall provide written notice to SENDERO within three (3) days of the time PROVIDER receives information, oral, written or otherwise, relating to
- a. Any disciplinary or other action or proceeding by any licensing authority, accrediting organization, medical professional organization, or governmental agency including, but not limited to, the state and federal agencies that administer Medicare, Medicaid, or CHIP;
  - b. Any materially false or misleading statement or material omission in connection with being credentialed or recredentialed by SENDERO;
  - c. Any claim, suit or other action or proceeding involving a Member alleging malpractice against PROVIDER or a Contractor Provider that has resulted in a judgment against or has been settled on the basis of any payment by or on behalf of PROVIDER or a Contractor Provider;
  - d. The addition any new Contractor Providers to the PROVIDER (by contract, employment, or otherwise) or the departure of any Contractor Provider;
  - e. Any material reduction in the overall number or geographic distribution of PROVIDERR or Contractor Providers, or the number or geographic distribution of PROVIDER or Contractor Providers in any particular specialty.
  - f. The revocation, limitation, surrender or suspension of any Contractor Provider at any hospital or other health care PROVIDER;
  - g. The termination or material modification of any PROVIDERR or Contractor Provider's professional liability insurance coverage;
  - h. an incident reported by PROVIDER or Contractor Provider to its/his/her professional liability insurance carrier, or to a governmental body with authority over licensing, billing, reimbursement or professional conduct.
  - i. Any notice or action being taken against PROVIDER or any Contractor Provider that could affect the representations, warranties and covenants contained in this Agreement.
- 4.8 **Reporting Changes of Provider Information.** PROVIDER shall notify SENDERO in writing at least thirty (30) calendar days prior to any change in PROVIDER business address, business telephone number, tax identification number.
- 4.9 **Emergency Care.** When a Member presents themselves for Emergency services, PROVIDER agrees to perform any medical screening evaluation or other

evaluation required by State or federal law which is needed to determine if an Emergency medical condition exists. If PROVIDER determines that an Emergency medical condition does not exist, PROVIDER agrees to instruct Member to contact their PCP to obtain an appropriate level of care. However, if an Emergency medical condition is determined to exist, PROVIDER agrees to provide Emergency care services to the covered Member. Furthermore, once Member is considered to be stabilized, PROVIDER agrees to contact SENDERO for the approval and coordination of post stabilization services. SENDERO or its appointed representative(s) will approve or deny coverage of post stabilization care within the time frame appropriate to the circumstances but in no case to exceed one (1) hour. After PROVIDER treats a Member for Emergency services, PROVIDER agrees to contact SENDERO within twenty-four (24) hours of providing Emergency services or on the next working day.

- 4.10 **Referrals to non-Participating Providers.** Except for referrals made for Emergency Care or Out of Area Urgent Care, unless otherwise pre-authorized in accordance with applicable Protocols, PROVIDER and Contractor Providers shall refer Members to Participating Providers for Covered Services. PROVIDER shall provide notice to SENDERO of any referral that is not made to a Participating Provider within 24 hours of the referral.
- 4.11 **Member Eligibility Verification.** Except in an Emergency, prior to providing or arranging for the provision of Covered Services for a Member, PROVIDER shall verify each Member's eligibility in accordance with the Protocols.
- 4.12 **Care Coordination.** PROVIDER shall actively participate in coordination of Covered Services in accordance with Protocols and shall cooperate with a Member's PCP and SENDERO's Care Coordinators.
- 4.13 **Non-Covered Services.** In the event that Contractor Providers provide any services other than Covered Services to any Member, prior to the provision of such services, Contractor Providers will advise the Member, in writing: (a) of the nature of the service, (b) that the service is not a Covered Service for which SENDERO will pay, and (c) that the Member will be responsible for paying for the service.
- 4.14 **Collection of Co-Payments, Deductibles.** PROVIDER is responsible for collecting at the time of service any applicable CHIP co-payments or deductibles in accordance with CHIP cost-sharing limitations.

PROVIDER shall not charge:

- A. cost-sharing or deductibles to CHIP Members of Native American Tribes or Alaskan Natives;

- B. co-payments or deductibles to a CHIP Member with an ID card that indicates the Member has met his or her cost-sharing obligation for the balance of their term of coverage; and
- C. co-payments for well-child or well-baby visits or immunizations.

Co-payments are the only amounts that PHYSICIAN may collect from CHIP Members, except for costs associated with unauthorized non-emergency services provided to a Member by out-of-network PROVIDERS for non-covered services.

**4.15 Coordination of Benefits.** PROVIDER agrees to cooperate with SENDERO and Payer in Coordination of Benefits, to provide SENDERO and Payers relevant information relating to any other coverage held by a Member, and to abide by the Coordination of Benefits, subrogation, and duplicate coverage policies and procedures of SENDERO and Payers. PROVIDER consents to the release of medical information by SENDERO, Payers, or other PROVIDER health plans necessary and lawful to accomplish Coordination of Benefits.

- a. **The Payer as Primary Carrier.** If SENDERO or Payer determines that the Payer is the primary carrier, then PROVIDER compensation shall be on the basis specified in this Agreement.
- b. **The Payer as Other Than Primary Carrier.** If SENDERO or Payer determines that the Payer is not the primary carrier, and PROVIDER's bill to the primary carrier(s) was not computed on the basis specified in this Agreement, then, any further reimbursement to PROVIDER from the Payer may not exceed an amount that, when added to amounts shown on the explanation of benefits from the primary carrier, equals the amounts specified in this Agreement.

**4.16 Liability Insurance.** PROVIDER shall purchase and maintain professional liability insurance, general comprehensive liability insurance and workers' compensation insurance in amounts as may be required by SENDERO; and, at a minimum, shall ensure Facility PROVIDER's professional liability insurance has limits of at least \$3,000,000 per occurrence or claim and \$10,000,000 as an annual aggregate, and Group PROVIDER's professional liability insurance has limits of at least \$1,000,000 per occurrence or claim and \$3,000,000 as an annual aggregate.

**4.17 Required Posting.** PROVIDER and Contractor Providers shall post a notice to Members in the office(s) of the PROVIDER on the process for filing and resolving complaints with SENDERO. The notice must include the Texas Department of Insurance's toll-free telephone number for filing complaints.

**4.18 Maintenance of Records.** PROVIDER shall maintain the medical, financial and administrative records concerning Members in compliance with all state and

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Federal laws and the Protocols. Such records shall be retained by PROVIDER for the period of time required by applicable laws or regulations, but in no event less than seven (7) years from the date a service was rendered.

- 4.19 **Access to Records.** During the term of this Agreement, PROVIDER and Contractor Providers shall furnish upon request of SENDERO any record reasonably related to services furnished pursuant to this Agreement, or a copy thereof.
- a. Upon request, PROVIDER and Contractor Providers shall provide state and Federal agencies access to records reasonably related to services rendered to Members, and shall provide immediate notice to SENDERO of such requests unless specifically prohibited by law.
  - b. PROVIDER shall obtain any necessary releases from Members with respect to their records and the information contained therein to permit SENDERO, or state and Federal agencies, access to such records.
  - c. Notwithstanding termination of this Agreement, the access to records that is granted hereunder in this Section shall survive the termination of this Agreement.
- 4.20 **Transfer of Medical Information.** PROVIDER shall cooperate in the transfer of Members' medical records to other Participating Providers, to assume any cost associated therewith, and to transfer any medical records in PROVIDER's custody within ten (10) days of a Member's or SENDERO's request. In accordance with laws and regulations governing confidentiality, PROVIDER and Contractor Providers further agree to cooperate with the continuum of care provided for in Member's Plan of Care by transferring pertinent sections of the Member's medical record to the Member's SENDERO Care Coordinator.
- 4.21 **Utilization Management.** PROVIDER and Contractor Providers shall cooperate with and participate in SENDERO's utilization management activities ("UM"), and shall comply with Protocols relating to UM activities. PROVIDER shall maintain policies and procedures that meet SENDERO's minimal UM requirements as described in the Provider Manual. PROVIDER shall cooperate with SENDERO's utilization management audits and other activities.
- 4.22 **Quality Management and Improvement.** PROVIDER and Contractor Providers shall cooperate with and participate in all quality management and improvement ("QM/QI") activities conducted by SENDERO, including on-site QM/QI reviews undertaken by SENDERO. Contractor Providers will respond to requests for information and directions from SENDERO's Quality Improvement Committee. PROVIDER and Contractor Providers shall implement any corrective action required by SENDERO in response to quality deficiencies identified in the course of its QM/QI activities.

- 4.23 **Complaints.** Contractor Provider shall cooperate with SENDERO's complaint and appeals process to ensure timely resolution and compliance with the complaint provisions of the Protocols as well as state and federal laws.

## **ARTICLE FIVE CLAIMS AND CLAIMS PAYMENT**

- 5.1 **Reimbursement and Billing Procedures.** PROVIDER agrees to comply with the reimbursement and billing procedures established by SENDERO, Payers and Benefit Plans established in the Protocols. Noncompliance is grounds for denial of a Claim, in whole or in part. To the extent applicable, Payers will pay Clean Claims in accordance with applicable laws.

- 5.2 **Billing Timeline.** As further described in the Protocols, PROVIDER forfeits all rights to payment if a Claim for a Covered Service is not submitted to SENDERO within ninety-five (95) days of the date PROVIDER or Contractor Provider renders the Covered Service. Claims excepted from the ninety-five (95) day deadline are:

- A. When claims for long-term services and supports covers multiple dates of service, the ninety-five (95) day deadline is based on the first day of service in the date span.
- B. If PROVIDER files with the wrong plan within the ninety-five (95) day submission requirement and produced documentation to that effect, SENDERO must honor the initial filing date and Process the claim without denying the resubmission for the sole reason of passing the filing timeframe. PROVIDER must file the claim with the correct SENDERO within 95 days of the date receiving notice of non-payment from the (wrong) plan.
- C. When a service is billed to a third party insurance resource other than SENDERO, the claim must be refilled and received by SENDERO within ninety-five (95) days from the date of disposition by the other insurance resource. SENDERO will determine, as a part of its provider claims filing requirements, the documentation required when a provider refiles these types of claims.

In the event SENDERO requests additional information in order to process a claim, PROVIDER shall provide such additional information within sixty (60) days of SENDERO's request.

- 5.3 **Payment Collection Above Contracted Amounts.** PROVIDER is responsible for collecting at the time of the delivery of a Covered Service any applicable Co-payments or Deductibles in accordance with the terms of a Benefit Plan.



- 5.4 **Payment in Full, Hold Harmless.** Payment as provided under this Agreement, together with any Co-payment, is payment in full for Covered Services. PROVIDER shall not seek to recover, and will not accept, any payment from a Member, SENDERO, Payer or anyone acting on their behalf, in excess of payment in full. PROVIDER and Contractor Providers hereby agree that in no event shall PROVIDER or Contractor Providers bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Member for Covered Services provided pursuant to this Agreement. This provision shall not prohibit collection of Co-payments in accordance with the terms of a Benefit Plan. PROVIDER understands and agrees that Payers the sole responsibility for payment of services rendered by PROVIDER or a Contractor Provider under this Agreement. In the event of a Payer's insolvency or cessation of operations, PROVIDER's sole recourse shall be against such Payer through the bankruptcy, conservatorship, or receivership estate of the Payer. This provision shall survive the termination of this Agreement.
- 5.5 **Compensation Information.** SENDERO acknowledges and agrees that PROVIDER is entitled upon request to all information necessary to determine that Provider is being compensated in accordance with this Agreement. PROVIDER may make the request for information by any reasonable and verifiable means in accordance with the Provider Manual. The information shall include a level of detail sufficient to enable a reasonable person with sufficient training, experience and competence in claims processing to determine the payment to be made according to the terms of this Agreement. At a minimum, SENDERO shall provide the fee schedules and other required information by the 30th day after the date SENDERO receives PROVIDER's request.
- 5.6 **Reconciliation of Claims.** In the event that either party believes that a Claim has not been paid correctly, or that funds were paid beyond or outside of what is provided for under this Agreement, either party may seek correction of the payment in accordance with this Agreement.
- a. If PROVIDER believes that a Claim has not been paid correctly, then it must first engage in the administrative claim dispute resolution process set forth in the Protocols as a condition precedent to initiating arbitration proceedings. If PROVIDER is unsatisfied with the result of the administrative claim dispute resolution process, then it may initiate arbitration proceedings in accordance with Section 8.20; provided, however, that any such arbitration proceeding must be initiated by PROVIDER on or before the 360th day following the date PROVIDER first submitted the Claim. PROVIDER agrees to forever waive any and all claims for any payment on any disputed Claim if arbitration relating to the Claim has not been initiated by PROVIDER within 360 days of PROVIDER's first submission of the Claim to SENDERO for payment.

- b. PROVIDER will repay overpayments within thirty (30) days of discovery or notification of an overpayment (whichever time is less). PROVIDER will promptly report any credit balance that it maintains with regard to any claim overpayment under this Agreement and will return such overpayment to SENDERO within thirty (30) days of posting such overpayment.
- c. PROVIDER agrees that SENDERO may recover overpayments by off-set against future payments.

**5.7 Batched Claims.** In accordance with Texas Insurance Code §843.323, upon request by PROVIDER, SENDERO covenants to not refuse to process or pay an electronically submitted clean claim, as defined by Texas Insurance Code Chapter 843, Subchapter J, because the claim is submitted together with or in a batch submission with a claim that is not a clean claim.

**5.8 Electronic Submission of Information.**

- a. Consistent with Texas Insurance Code Article 21.52Z and 28 Texas Administrative Code §21.3701, SENDERO may require PROVIDER to electronically submit the following:
  - i. health care claims or equivalent encounter information;
  - ii. referral certifications; and/or
  - iii. any authorization or eligibility transactions.
- b. SENDERO must give 90 calendar days written notice prior to requiring electronic filing of any information described in this section.
- c. In the event of a systems failure, or a catastrophic event as defined in 28 Texas Administrative Code §21.2803, that substantially interferes with the business operations of the PROVIDER, the PROVIDER may submit non-electronic claims in accordance with the requirements as discussed in the Provider Manual and for the number of calendar days during which substantial interference with business operations occurs as of the date of the catastrophic event or systems failure. PROVIDER shall provide written notice of the PROVIDER's intent to submit non-electronic claims to SENDERO within five calendar days of the catastrophic event or systems failure.
- d. PROVIDER may request a waiver of the electronic submission requirements in any of the following circumstances:
  - i. No method available for the submission of claims in electronic form. This exception applies to situations in which the federal

standards for electronic submissions (45 C.F.R., Parts 160 and 162) do not support all of the information necessary to process the claim.

- ii. The operation of small physician and provider practices. This exception applies to those physicians and providers with fewer than ten full-time-equivalent employees, consistent with 42 C.F.R. §424.32(d)(1)(viii).
  - iii. Demonstrable undue hardship, including fiscal or operational hardship.
  - iv. Any other special circumstances that would justify a waiver.
- e. PROVIDER's request for a waiver must be in writing and must include documentation supporting the issuance of a waiver. SENDERO shall, within 14 calendar days of receipt of the waiver request, issue or deny a waiver.
- i. If approved, the waiver shall contain any restrictions, conditions or limitations related to the waiver.
  - ii. If denied, or the issuance of the waiver is qualified or conditional, then SENDERO's response shall include the reason for the denial or any restrictions, conditions or limitations, and shall provide notice of the PROVIDER's right to appeal the determination TDI.
- f. If PROVIDER is requesting or receiving a waiver, appealing a waiver determination, or requesting reconsideration of an appeal determination, then it may elect to file the required electronic transactions in a non-electronic format until a final determination on the request is made.
- g. SENDERO may not refuse to contract or to renew a contract with PROVIDER based in whole or in part on PROVIDER requesting or receiving a waiver, appealing a waiver determination, or requesting reconsideration of an appeal determination under this section.

## **ARTICLE SIX TERM AND TERMINATION**

- 6.1 **Term.** This Agreement shall be in effect for an initial two (2) year term commencing on the date of execution of this Agreement and shall continue in effect for successive one-year terms unless it is terminated as provided in this Article.
- 6.2 **Immediate Termination.** SENDERO may immediately terminate this Agreement, or a Contractor Provider's Participating Provider status under this

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Agreement, upon notice to PROVIDER if SENDERO determines that there is imminent danger of harm to a Member's health, safety, or welfare; an action by a state medical or dental board, or other medical or dental licensing board, or another licensing board or government agency that effectively impairs the provider's ability to practice medicine, dentistry, or another profession; or there has been fraud or malfeasance. If SENDERO terminates PROVIDER or any Contractor Provider pursuant to this Section, such termination shall be subject to the review procedures set forth in Section 6.5; provided, however, that said review procedures shall not delay the immediate effect of the termination.

- 6.3 **Termination Without Cause.** After the initial two (2) year term, either party may terminate this Agreement without cause by providing at least ninety (90) days written notice to the other; provided that, if SENDERO terminates this Agreement, such termination shall be subject to the review procedures set forth in Section 6.5. In addition, SENDERO may terminate a particular Contractor Provider's Participating Provider status in the same manner provided for in this Section.
- 6.4 **Termination With Cause.** Except as provided in Sections 6.2 and 6.3, in the event of a breach of a material provision of this Agreement, the party claiming the breach will give the other party written notice of termination setting forth the fact underlying its claim(s) that the other has breached. The party receiving notice of termination shall have ninety (90) days from the date of receipt to remedy or cure the claimed breach to the satisfaction of the other party. If SENDERO is the party claiming the breach, then with its initial notice of breach, it will offer PROVIDER the review procedure set forth in Section 6.5. In addition, SENDERO may terminate a particular Contractor Provider's Participating Provider status in the same manner provided for in this Section.
- 6.5 **Provider Termination Procedures.** Before terminating this Agreement with PROVIDER or any Contractor Provider's Participating Provider status, SENDERO shall provide a written explanation to the PROVIDER of the reasons for termination. Not later than thirty (30) days following receipt of the termination notice, PROVIDER may request a review of SENDERO'S proposed termination by an advisory review panel, except when immediate termination is appropriate under Section 6.2, in which case the convening of the advisory review panel shall not delay the termination. Within sixty (60) days following receipt of PROVIDER'S request for review and before the effective date of termination, the advisory review panel shall make its formal recommendation, and SENDERO shall communicate its decision to PROVIDER. The advisory review panel shall be composed of physicians and providers, including at least one representative in the physician's or provider's specialty or a similar specialty, if available, appointed to serve on SENDERO's Quality Improvement Committee or Utilization Review Committee. The decision of the advisory review panel must be considered but is not binding on SENDERO. SENDERO shall provide to the

PROVIDER, on request, a copy of the recommendation of the advisory review panel and SENDERO's determination.

- 6.6 Termination in the Event of Bankruptcy.** To the extent permitted by applicable law, either SENDERO or PROVIDER may terminate this Agreement upon the bankruptcy of the other. As used in this Section 6.6, bankruptcy of an entity shall mean (i) the filing of a petition commencing a voluntary case against the entity under the United States Bankruptcy Code; (ii) a general assignment by the entity for the benefit of creditors; (iii) the insolvency of the entity; (iv) the inability of the entity to pay its debts as they become due; (v) the filing by the entity of any petition or answer in any proceeding seeking for itself or consenting to, or acquiescing in, any insolvency, receivership, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute or regulation, or the filing by the entity of an answer or other pleading admitting or failing to deny or to contest the material allegations of a petition filed against it in any such proceedings; (vi) the entity's seeking or consenting to, or acquiescence in, the appointment of, any trustee, receiver or liquidator of it, or any material part of its property; or (vii) the commencement against the entity of an involuntary case under the United States Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution, or like law or statute, which case or proceeding is not dismissed or vacated within (60) sixty days.
- 6.7 Notice of Provider Termination.** SENDERO shall provide Members with at least thirty (30) days notice prior to the effective date of termination of the impending termination of a Contractor Provider who is currently treating the Member. SENDERO may provide notice immediately if termination of the Contractor Provider is for reasons related to imminent harm to Members. Sendero will send the written notice of termination of a Contractor Provider to such Members within fifteen (15) calendar days after receipt or issuance of a termination notice to each Member who receives his or her primary care from, or who is seen on a regular basis by, the Contractor Provider. These Members will include (i) all Members who are on the Contractor Provider's PCP panel (if the Contractor Provider is a PCP), and, (ii) all Members who have had two or more visits with the Contractor Provider for home-based or office-based care in the past twelve (12) months.
- 6.8 Post-Termination.**
- a. In the event of termination of this Agreement, SENDERO will continue to pay PROVIDER for Medically Necessary Covered Services provided to Medicaid Members or CHIP Members until the Member's records, clinical information and care can be transferred to another Participating Provider or until such time as the Member is no longer enrolled in SENDERO, whichever is shorter.

- b. The termination or expiration of this Agreement by PROVIDER shall not relieve PROVIDER of the responsibility to continue a Member's course of treatment that began prior to such termination or expiration until the Member can, without medically injurious consequences, be transferred to the care of another Participating Provider. If SENDERO requests that PROVIDER continue to provide such care, PROVIDER shall be compensated at the applicable rate set forth in Attachment A. PROVIDER and Contractor Provider shall not require such Members to pay any amount in excess of what would have been paid had the PROVIDER or Contractor Provider remained a Participating Provider.

**6.9 Continuation of Care for Special Circumstances.**

- a. In this Section, "special circumstance" means a condition regarding which the PROVIDER or Contractor Provider(s) reasonably believes that discontinuing care by the PROVIDER or Contractor Provider(s) could cause harm to a Member who is a patient. Examples of a Member who has a special circumstance include an Member with a disability, acute condition, life-threatening illness, or who is past the 24th week of pregnancy.
- b. SENDERO's Termination of this Agreement, except for reason of medical competence or professional behavior, does not release SENDERO from the obligation of continuing to reimburse PROVIDER or Contractor Provider(s) providing Medically Necessary treatment at the time of termination to a Member who has a special circumstance in accordance with the dictates of medical prudence. Subject to Subsections (d) and (e), if SENDERO terminates this Agreement or a Contractor Provider's status as a Participating Provider for reasons other than harm or potential harm to Members, medical competence, or professional behavior, SENDERO shall provide continued reimbursement at not less than the applicable contract rate set forth in Attachment A in exchange for the Member's continued receipt of ongoing treatment from PROVIDER or Contractor Provider(s) if PROVIDER identifies a special circumstance.
- c. In accordance with the Protocols, PROVIDER shall notify SENDERO of the special circumstance and agree not to seek payment from Member.
- d. Except as provided by Subsection (e), this Section does not extend the obligation of SENDERO to reimburse PROVIDER for ongoing treatment of a Member after:
  - i. the 90th day after the effective date of the termination; or

- ii. if the Member has been diagnosed with a terminal illness at the time of termination, the expiration of the nine-month period after the effective date of the termination.
- e. If a Member is past the 24th week of pregnancy at the time of termination, SENDERO's obligation to reimburse PROVIDER extends through delivery of the child and applies to immediate postpartum care and a follow-up checkup within the six-week period after delivery.
- f. Disputes regarding the necessity for continued treatment by PROVIDER shall be resolved in accordance with Section 8.20 of this Agreement.

## ARTICLE SEVEN HHSC CONTRACT(S)-ADDITIONAL CRITERIA

**Attachment B.** The provisions of Attachment B ("Texas Medicaid and CHIP Provisions") apply only to services provided pursuant to an HHSC Contract. To the extent a provision in Articles 1 through 8 of this Agreement conflicts with a provision in Attachment B, and the provision relates to an HHSC Contract, the provision under Attachment B shall prevail.

## ARTICLE EIGHT MISCELLANEOUS

- 8.1 **Force Majeure.** Notwithstanding anything in this Agreement to the contrary, SENDERO and PROVIDER shall each be excused, discharged and released from performance under this Agreement to the extent such performance is limited, delayed or prevented in whole or in part for any reason whatsoever not reasonably within the control of the affected party, including but not limited to any acts of God, war, invasion, acts of foreign enemy, hostilities (whether war be declared or not), any strike and/or industrial dispute, work stoppage, embargo or ban, non-performance of suppliers, transportation delays or by any law, regulation or order. In the event that any action of a government authority impairs, limits or delays SENDERO's performance of any obligation hereunder, SENDERO shall be excused from such performance, and SENDERO's failure to perform such obligation for such reason shall not constitute a breach of this Agreement. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as such conditions cease, the party affected thereby shall promptly fulfill its obligations under this Agreement.
- 8.2 **Amendments.** Except as otherwise provided in this Agreement, this Agreement may be amended in writing as mutually agreed upon by the parties. In addition, SENDERO may, acting on its own initiative or at the request of HHSC or TDI, amend any provision of this Agreement except for Attachment(s) A. Otherwise, SENDERO shall provide PROVIDER with at least thirty (30) days notice of a proposed amendment prior to the effective date of the amendment. If

PROVIDER does not object to the implementation of the amendment within this thirty (30) day period, PROVIDER shall be deemed to have accepted the amendment. In the event PROVIDER objects to any such amendment, PROVIDER shall have the right to terminate this Agreement upon no more or less than ninety (90) days' prior written notice delivered during the thirty (30) day period. Until termination is effective, however, the amendment will be in effect. Nothing herein requires SENDERO to provide notice to, or to seek consent of, PROVIDER with respect to revisions to the Protocols.

- 8.3 **Entire Agreement.** This Agreement constitutes the entire understanding of the parties with respect to its subject matter, superseding all oral or written, previous or contemporaneous agreements between the parties.
- 8.4 **Waiver.** The waiver by a party of a breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation. No act, delay or omission done, suffered or permitted by a party shall be deemed to exhaust or impair any right, remedy or power of such party hereunder.
- 8.5 **Severability.** Should any clause or provision hereof be held to be invalid or legally unenforceable, such ruling shall in no way affect the validity or enforceability of any other clause or provision hereof, and this Agreement shall be reformed to eliminate the invalid or unenforceable provision in a manner that most closely approximates the intent of the parties with respect to this Agreement.
- 8.6 **Assignment.** This Agreement shall not be assigned, sublet, delegated or transferred by PROVIDER without the prior written consent of SENDERO. This Agreement may be assigned by SENDERO without prior written consent.
- 8.7 **Captions.** The captions and headings throughout this Agreement are for convenience only and shall in no way be held or deemed to limit, modify or amplify the meaning of any provision of this Agreement.
- 8.8 **Governing Law.** This Agreement shall be governed by federal law and the laws of the State of Texas.
- 8.9 **Venue.** The Venue for any dispute arising from or relating to this Agreement shall be Austin, Travis County, Texas.
- 8.10 **Contracts with Other Parties.** Nothing in this Agreement shall prevent PROVIDER from contracting with any health maintenance organization or other pre-paid health plans other than SENDERO or prevent SENDERO from contracting with any healthcare provider other than PROVIDER.



- 8.11 **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be deemed given if sent by certified mail, return receipt requested, Postage prepaid, or by personal delivery or confirmed telecopy, to SENDERO at:

Sendero Health Plans, Inc.  
1111 E. Cesar Chavez St.  
Austin, Texas, 78702  
Attention: Network Manager

and to PROVIDER at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Texas  
Attention: \_\_\_\_\_

or at such other address as either SENDERO or PROVIDER shall designate by like notice to the other party. Any notice given by mail in the manner specified herein shall be deemed received on the date indicated on the return receipt card. Any notice given by telecopy or personal delivery shall be deemed received on the date of transmission or delivery, as the case may be.

- 8.12 **Subcontracting.** PROVIDER shall not subcontract for the performance of services under this Agreement without the prior written consent of SENDERO.
- 8.13 **Indemnification by PROVIDER.** PROVIDER will at all times hereafter indemnify, defend, and hold harmless SENDERO and its representatives individually from any and all causes of action, liabilities, claims, or other expenses (including, without limitation, costs of suit and attorneys' fees) which might be asserted against SENDERO and its representatives arising from, or pertaining to, any acts or omissions of PROVIDER under this Agreement. However, to the extent any such causes of action, costs, or fees are compensated for by insurance purchased by SENDERO, PROVIDER shall not be required to reimburse SENDERO or insure for same.
- 8.14 **Indemnification by SENDERO.** SENDERO will at all times hereafter indemnify, defend, and hold harmless PROVIDER and its representatives individually from any and all causes of action, liabilities, claims, or other expenses (including, without limitation, costs of suit and attorneys fees) which might be asserted against PROVIDER arising from, or pertaining to, any acts or omissions of SENDERO under this Agreement; provided, however, that to the extent any such causes of action, costs, or fees are compensated for by insurance purchased by PROVIDER, SENDERO shall not be required to reimburse PROVIDER or insure for same.
- 8.15 **Release.** PROVIDER hereby releases from liability SENDERO, Benefit Plans, Payers, and their affiliates, directors, committees, officers, employees, or agents,

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and agrees to waive all legal claims which PROVIDER may now or hereafter have against such individuals or entities related to any and all actions taken in good faith in connection with evaluating PROVIDER's professional qualifications. PROVIDER further releases from liability any individual or entity who may have information bearing on PROVIDER's professional qualifications who discloses in good faith such information in connection with evaluation by the above entities and individuals of PROVIDER's and such PROVIDER's professional qualifications. PROVIDER further agrees that any act, communication, report recommendation, or disclosure made in connection with the evaluation of professional qualifications shall be privileged and confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release.

- 8.16 **Attorneys' Fees.** If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which the party may be entitled.
- 8.17 **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original and together shall constitute one and the same agreement, with one counterpart being delivered to the other party hereto.
- 8.18 **Costs Associated with this Agreement.** Except as otherwise provided herein, each party shall bear the costs of its own legal, accounting, and other services necessary to comply with its duties and obligations under this Agreement.
- 8.19 **Confidentiality of Proprietary Information.** The parties acknowledge that in connection with their performance under this Agreement, each may have access to proprietary, non-public information concerning the other's business and operations, including, but not limited to, the terms of this Agreement ("Confidential Information"). The parties agree that neither will utilize or disclose to any third party the other party's Confidential Information for any purpose other than the performance of this Agreement, except as required by law or expressly authorized by the other party. Any confidential material or information shall be returned to the originating party upon termination of the Agreement.
- 8.20 **Dispute Resolution and Arbitration.** If a party has a dispute regarding the other's performance under this Agreement, then it must first engage in the administrative claim dispute resolution process set forth in the Protocols as a condition precedent to initiating arbitration proceedings. If the party remains unsatisfied with the result of the administrative claim dispute resolution process, then it may initiate the binding arbitration process. Such arbitration shall be initiated by either party making a written demand for arbitration on the other party. The arbitrator shall be selected by agreement of the parties; but if no agreement can be reached, the arbitrator shall be appointed pursuant to the

procedures of the American Health Lawyers Association Dispute Resolution Service. Such arbitration shall be conducted under rules the same as or consistent with the rules of the American Health Lawyers Association Dispute Resolution Service, but need not necessarily be conducted by that organization, except where applicable federal or State law requires otherwise. The parties expressly agree to be bound by the decision of the arbitrator(s). During the arbitration, each party shall bear its own attorneys' fees. Upon an award of the arbitrator, the prevailing party shall be entitled to recover its share of arbitration costs expended, and all its other costs, including its attorneys' fees. In the event the arbitrator fails to render an award within 90 days after submission of the matter for decision, or such longer times as the parties may stipulate, then either party may elect to have all further arbitration proceedings terminated and the matter submitted for judicial resolution. All reasonable costs and fees incurred during the arbitration shall then be awarded by the court to the prevailing party.

IN WITNESS WHEREOF, SENDERO and PROVIDER have entered into this Agreement as of the Effective Date.

Sendero Health Plans, Inc.

ANCILLARY

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Practice or Facility Name: \_\_\_\_\_  
Date: \_\_\_\_\_

## *Agenda Item Request Form*

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

9:00 a.m. Every Tuesday

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

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

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

**AGENDA ITEM:** Discussion and possible action to adopt a resolution authorizing the County Judge to submit a grant application to the Office of the Governor –Criminal Justice Division (CJD) for the Hays County Sheriff's Office in the amount of \$28,970.15.

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

**PREFERRED MEETING DATE REQUESTED:** February 21, 2012

**AMOUNT REQUIRED:** No match required

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:** Cutler/Hauff

**SPONSORED BY:** Ingalsbe

**SUMMARY:** The Sheriff's Office is requesting grant funding to purchase equipment for the Jail booking area (three Laptops), the Narcotics Task Force (one FLIR Bi-Ocular Thermal Camera) and the Criminal Investigation Division (one Electronic Video Recording System). The FLIR Bi-Ocular Thermal Camera which will provide recorded footage, photographs and/or videotape of criminal activity during an undercover investigation when limited or no lighting is available.

The Jail booking area has three computers for the all law enforcement officers to use to enter arrest reports. When there are several officers needing access to a computer they often have to wait sometimes up to 45 minutes to an hour depending on how many arrest reports an officer may have to enter. The laptops will help reduce the time the officer spends in the booking area and will allow them more time to be out patrolling.

Currently the Investigators stationed in Dripping Springs do not have a Video Recording System to record confession statements that could be used as admissible evidence during a court trial. Having a video recorder system in Dripping Springs will provide the necessary tool to record the confession statement at that location rather than having to travel one hour or more to San Marcos to record a confession. The grant application is due at CAPCOG by February 24, 2012.

**Agency Name:** Hays County

**Grant/App:** 2552401 **Start Date:** 9/1/2012 **End Date:** 8/31/2013

**Project Title:** Law Enforcement Technology Enhancement

**Status:** Application Pending Submission

### **Eligibility Information**

**Your organization's Texas Payee/Taxpayer ID Number:**  
746002241

### **Application Eligibility Certify:**

Created on:1/12/2012 4:50:42 PM By:Jeff Hauff

### **Profile Information**

**Applicant Agency Name:** Hays County

**Project Title:** Law Enforcement Technology Enhancement

**Division or Unit to Administer the Project:** Hays County Sheriff's Office

**Address Line 1:** 1307 Old Uhland Road

**Address Line 2:**

**City/State/Zip:** San Marcos Texas 78666

**Start Date:** 9/1/2012

**End Date:** 8/31/2013

**Regional Council of Governments(COG) within the Project's Impact Area:** Capital Area Council of Governments

**Headquarter County:** Hays

**Counties within Project's Impact Area:** Hays

### **Grant Officials:**

#### **Authorized Official**

**User Name:** Bert Cobb, M.D.

**Email:** bert.cobb@co.hays.tx.us

**Address 1:** 111 E. San Antonio St., Ste. 300

**Address 1:**

**City:** San Marcos, Texas 78666

**Phone:** 512-393-2205 Other Phone:

**Fax:** 512-393-2282

**Title:** Mr.

**Salutation:** Judge

#### **Project Director**

**User Name:** Gary Cutler

**Email:** Sheriff@co.hays.tx.us

**Address 1:** 1307 Old Uhland Rd

**Address 1:**

**City:** San Marcos, Texas 78666

**Phone:** 512-393-7808 Other Phone:

**Fax:** 512-393-7879

**Title:** Mr.

**Salutation:** Sheriff

#### **Financial Official**

**User Name:** Bill Herzog

**Email:** bherzog@co.hays.tx.us

**Address 1:** 712 S. Stagecoach Trail, Ste. 1071

**Address 1:**

**City:** San Marcos, Texas 78666

**Phone:** 512-393-2283 Other Phone: 512-393-2253

**Fax:**  
**Title:** Mr.  
**Salutation:** Mr.

**Grant Writer**

**User Name:** Jeff Hauff  
**Email:** Jeff.Hauff@co.hays.tx.us  
**Address 1:** 712 S. Stagecoach Trail, Ste. 1204  
**Address 1:**  
**City:** San Marcos, Texas 78666  
**Phone:** 512-393-2209 Other Phone: 512-393-2211  
**Fax:** 512-393-2248  
**Title:** Mr.  
**Salutation:** Mr.

**Grant Vendor Information**

**Organization Type:** County  
**Organization Option:** applying to provide services to all others  
**Applicant Agency's State Payee Identification Number (e.g., Federal Employer's Identification (FEI) Number or Vendor ID):** 746002241  
**Data Universal Numbering System (DUNS):**

**Narrative Information**

**Primary Mission and Purpose**

The purpose of the Edward Byrne Justice Assistance Formula Grant (JAG) Program is to prevent and control crime and make improvements to the criminal justice system.

**Funding Levels**

The anticipated funding levels for the JAG program are as follows:

- Minimum Award - \$10,000
- Maximum Award – None
- Match Required - None

For more information regarding grantee match, please click on the **Budget** tab, and then click on the **Source of Match** tab in eGrants.

**Note:** *If you voluntarily include matching funds that exceed the minimum match requirement, you will be held to that amount throughout the grant period.*

*\* The requirements for this fund source are subject to change pursuant to actions of the U.S. Congress and federal guidance.*

**Preferences** – Preference will be given to projects that perform the following activities:

1. Promote intelligence sharing, crime reporting and communication.
2. Target statistically supported areas of violent crime.
3. Promote the use of inter-local agreements (Texas Government Code, Chapter 791) to target statistically supported crime threats to a specified geographical area.
4. Promote comprehensive solutions to local criminal justice priorities.

**Purpose Areas**

Applicant assures that its proposed project meets at least one of the following Purpose Areas to be eligible for funding:

Law Enforcement - Supports state and local law enforcement agencies that address violent crime or statistically supported major crime initiatives at the local level.

Prosecution and Court - Programs that improve the prosecution of serious and violent crimes, including those that reduce the time from arrest to disposition.

Technology - Programs that implement or expand a law enforcement agency's ability to report and analyze crime. Applicant assures that any criminal intelligence databases developed under this program will comply with 28 CFR Part 23.

Corrections and Community Corrections - Programs that reintegrate adults and juveniles into the community.

Drug Treatment - Programs that target substance abuse treatment for juveniles or adults who have been court ordered to participate, including drug courts and projects that serve as alternatives to incarceration.

## **Drug Court Program Requirements**

Drug Court programs that provide court-supervised substance abuse treatment as an alternative to traditional criminal sanctions, as defined in Chapter 469 of the Texas Health and Safety Code must incorporate the following ten (10) essential characteristics of drug courts noted below and codified in Texas Health and Safety Code §469.001 to be eligible for funding:

### **Ten Essential Characteristics**

Describe in detail how your program meets each of the 10 essential characteristics of a drug court.

Integration of Services - The integration between alcohol and other drug treatment services in the processing of cases in the judicial system.

N/A

Non-Adversarial Approach - The use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants.

N/A

Prompt Placement - Early identification and prompt placement of eligible participants in the program.

N/A

Access - Access to a continuum of alcohol, drug, and other related treatment and rehabilitative services.

N/A

Abstinence Monitoring - Monitoring of abstinence through weekly alcohol and other drug testing.

N/A

Compliance Strategy - A coordinated strategy to govern program responses to participants' compliance.

N/A

Judicial Interaction - Ongoing judicial interaction with program participants.

N/A

Evaluation - Monitoring and evaluation of program goals and effectiveness.

N/A

Education - Continuing interdisciplinary education to promote effective program planning, implementation, and operations.

N/A

Partnerships - Development of partnerships with public agencies and community organizations.

N/A

### General Approaches

- Pre-adjudication - The defendant is diverted to the treatment program in lieu of prosecution before charges are filed or before final case.
- Post-adjudication - The drug offender begins the drug court program after entering a plea of guilty or nolo contendere or having been found guilty, often as a condition of probation.
- Reentry - Offenders completing sentences of incarceration or lengthy terms of residential treatment are ordered into the treatment program to facilitate their transition and reintegration into society.
- Civil - Participants enter the drug court program in relation to suits affecting the parent-child relationship, including child welfare / CPS cases, child support cases, or other civil matters.

Select the **general approach(es)** that best fit this drug court.

Select all that apply:

- ☐ Pre-adjudication
- ☐ Post-adjudication
- ☐ Reentry
- ☐ Civil
- ☒ N/A

**Observation** - The drug court team (judge, prosecutor, defense counsel, treatment provider, supervision officer, court coordinator, etc.) of a new program must observe at least one drug court staffing session and hearing, in Texas, prior to program implementation.

**Policies and Procedures** - The drug court will develop and maintain written policies and procedures for the operation of the program.

**Information Sharing** - The applicant will submit a copy of any project evaluations, evaluation plans, recidivism studies, or related reports that are completed during the grant period to CJD.

**Jurisdiction** - Provide the name of the court administering the Drug Court program (e.g., 999th Judicial District Court, Somewhere County Criminal Court, or City of Somewhere Municipal Court). If this has not been decided enter 'To Be Determined', or enter 'N/A' if this item does not apply.

N/A

**Drug Court Date** - If the Court has commenced operations, provide the date that the Court was established.

Enter the date [mm/dd/yyyy]:

### Drug Court Type

- Adult - Programs serving adults (either pre-adjudication, post-adjudication, or reentry).
- Family - Programs serving parents who enter the drug court in relation to suits affecting the parent-child relationship, including child welfare / CPS cases, child support cases, or other civil matters.
- Juvenile - Programs serving juveniles (either pre-adjudication, post-adjudication, or reentry).
- Veterans - Programs serving veterans or current members of the United States armed forces, including members of the Reserves, National Guard or State Guard.

Select the type of drug court that will be operated:

- ☐ Adult
- ☐ Veterans
- ☐ Family
- ☐ Juvenile



☒ N/A

Will the drug court accept **DWI offenders**?

Select the appropriate response:

☐ Yes  
☐ No  
☒ N/A

**Presiding Judge** - The presiding judge of a drug court funded through this program must be an active judge holding elective office, an associate judge or magistrate assigned to preside over drug court, or a retired judge available as a sitting judge.

Enter the name, phone number, and email address of the **Presiding Judge** for the Drug Court. If this has not been decided enter 'To Be Determined', or enter 'N/A' if this item does not apply. Applicant must notify CJD with this information when a judge is appointed.

N/A

**Drug Court Coordinator** - Enter the name, phone number and email address of the Drug Court Coordinator. If this has not been decided enter 'To Be Determined', or enter 'N/A' if this item does not apply. Applicant must notify CJD with this information when a coordinator is appointed.

**Note:** *The Drug Court Coordinator usually monitors the operation of the Drug Court, supervises Drug Court staff, participates in Drug Court judicial staff meetings, prepares and oversees Drug Court contracts with service providers, maintains data on Drug Court operations, and communicates with legal staff, government officials, social service agencies, and the public regarding matters of the Drug Court.*

N/A

**Federal Funding** - Applicant agrees to apply for federal grant funding from the Bureau of Justice Assistance to support operations of the court. Applicant also agrees to notify CJD immediately of any additional state or federal grants or other funds that may become available to support operation of the court. At that time, CJD may deobligate a portion of the funds awarded under this solicitation.

Has the drug court ever applied for **federal funding**?

Select the appropriate response:

☐ Yes  
☐ No  
☒ N/A

Has the drug court ever received **federal funding**?

Select the appropriate response:

☐ Yes  
☐ No  
☒ N/A

If you selected **Yes** above, provide the federal award amount, grant period [mm/dd/yyyy to mm/dd/yyyy], and how the funds were used or will be used if the federal grant period overlaps with the grant period for this solicitation.

Enter the federal funding description:

N/A

### **TDSHS - CMBHS Registration**

Applicant assures that it is currently registered or will register with the Texas Department of State Health Services (TDSHS) - Clinical Management for Behavioral Health Services (CMBHS) database. Information about registration

procedures can be accessed [here](#).

## **Program Requirements Cont'd.**

### **Program Income**

Applicant agrees to comply with all federal and state rules and regulations for program income and agrees to report all program income that is generated as a result of the project's activities. Applicant agrees to report program income to CJD through a formal grant adjustment and to secure CJD approval prior to use of the program income. Applicant agrees to use program income for allowable costs and agrees to expend program income immediately after CJD's approval of a grant adjustment and prior to requesting reimbursement of CJD funds.

**Deduction Method** - Program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless CJD authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the CJD award and grantee match rather than to increase the funds committed to the project.

**Asset Seizures and Forfeitures** - Program income from asset seizures and forfeitures is considered earned when the property has been adjudicated to the benefit of the plaintiff (e.g., law enforcement entity).

### **Uniform Crime Reporting**

Applicant assures that if it operates a law enforcement agency, the agency it is current and has been current in reporting required Part I violent crime data for the three previous years to the Texas Department of Public Safety, and will continue timely reporting of required crime data throughout the grant period.

### **Criminal History Reporting**

Applicant assures that they are currently reporting at an average of 90% or above on disposition completeness and will maintain timely reporting of all information as required under the *Texas Code of Criminal Procedure, Chapter 60*. Disposition completeness percentage is defined as the percentage of arrest charges a county reports to the Texas Department of Public Safety to be entered into the computerized criminal history system under Chapter 60 that were brought against a person in the county for which a disposition has been subsequently reported and entered into the computerized criminal history system.

### **Constitutional Compliance**

Applicant assures that they will engage in no activity that violates Constitutional law including profiling based upon race.

### **Information Systems**

Applicant assures that any new criminal justice information systems will comply with data sharing standards for the Global Justice XML Data Model and the National Information Exchange Model.

Applicant assures that if its agency was eligible to apply, it did apply for a 2010 direct award from the Bureau of Justice Assistance for JAG funds under the Edward Byrne Memorial Justice Assistance Formula Grant Program: Local Solicitation.

Was your agency eligible for a (direct award) in the current federal fiscal year?

☒ Yes  
☐ No

Did your agency apply for these funds?

☒ Yes  
☐ No

If you selected **Yes** above, provide the amount you are eligible to receive, or have already received.

Enter the amount (\$) of JAG Funds:  
12165

If you selected **Yes** above, describe how you plan to use the funds.

To expedite information flow and process and improve the efficiency of our judicial system by allowing electronic access to court records, which is anticipated to expedite cases heard by the Courts. Equipment purchased: Five digital scanners, one desk top computer and monitor and two Laptops.

### **Civil Rights Liaison**

A civil rights liaison who will serve as the grantee's civil rights point of contact and who will be responsible for ensuring that the grantee meets all applicable civil rights requirements must be designated. The designee will act as the grantee's liaison in civil rights matters with CJD and with the federal Office of Justice Programs.

Enter the Name of the Civil Rights Liaison:

Dee Dee Baen

Enter the Address for the Civil Rights Liaison:

712 S. Stagecoach Trail, Ste. 1063, San Marcos, Texas 78666

Enter the Phone Number for the Civil Rights Liaison [(999) 999-9999 x9999]:

512-393-2215

### **Certification**

Each applicant agency will certify to the specific criteria detailed above under **Program Requirements** to be eligible for funding under the Justice Assistance Grant (JAG) Program Solicitation.

**X I certify to all of the above eligibility requirements.**

### **Problem Statement:**

Please provide a detailed account in the Problem Statement section of the existing issues your project will target.

Enter your problem statement:

Law Enforcement lacks equipment to efficiently perform essential processing of crime information and gather pertinent evidence that is admissible in court during a criminal trial that will reinforce an officer's testimony for a more successful prosecution.

### **Supporting Data:**

Provide as much supporting data, to include baseline statistics and the sources of your data, which are pertinent to where the grant project is located and/or targeted. Do not use statewide data for a local problem or national data for a statewide problem.

Enter your supporting data:

Annual Report 2010: Assault-307; Theft -144; Other Property-111; DWI/DUI- 417; and Controlled substance-677.

2011: Assault-276; Theft-26; Other Property-102; DWI/DUI-417 and Controlled Substance -683. Data source:

Hays County Adult Probation. The FLIR can be utilized for surveillance of criminal activities when limited or no lighting is available to conduct an undercover investigation. In 2010 detectives investigated six cases in Hays County where suspects were growing marihuana using their residence as grow houses. Therefore regardless of the lighting conditions or type of mission being conducted, the officer can monitor the area in the dark without being seen and will be able to record the criminal activity. As reflected in our statistics above controlled substance cases are on a steady rise and obtaining admissible evidence will make for a more successful case prosecution. At this time there are three workstations in the Jail booking area. In 2011 there were 7,007 bookings into the Hays County Jail. A peace officer can have several arrest reports that need to be entering in the system in order for the Jail booking officers to finalize the process and hold the individual(s). During the busiest time of the week beginning on a Thursday night and through the weekend, officers are often waiting trying to enter their required arrest reports due to limited workstations, putting a strain on the facility and the booking area. Additional workstations will reduce the time the arresting officers spend entering the arrest report(s) and will allow them more time to be out patrolling. The population of Hays County has grown by 61% over the last decade, with the 2010 Census figure of 157,107 persons living in the County. While much of the increase can be attributed to communities along the IH35 corridor, the western side of the County, including the Wimberley, Woodcreek and Dripping Springs areas have also contributed to the growth. In 2011 there were 586 of criminal cases that were investigated within this area of Hays County. Currently officers stationed on the west side of Hays County do not have the proper equipment to video record confession and witness statements that can be admissible in court.

Irrefutable video evidence leads to more guilty pleas and less risk of an innocent person being convicted or guilty person being acquitted. The Electronic Recording conference room to be located in the Dripping Springs Substation of the Sheriff's Office will provide the proper equipment to record confession statements where normally the officer

and suspect would have to travel to San Marcos to provide such recording. Time and safety is of concern when conducting a major investigation, and having to travel 45 minutes to an hour to access an interview room can pose a problem when transporting a "non-custodial" person in the patrol car.

### **Community Plan:**

For projects that have a local or regional impact target area, provide information regarding the community plan need(s) that your project will address.

Enter your community planning needs:

Problem #1 Law Enforcement, prosecutors, and courts are challenged to have enough personnel and resources to stay abreast with the growth in population in Hays County, and safety concerns for both citizens and officers. Improve time in filing cases and solving crime. Deter crime by increasing personnel, more visible patrol officers patrolling and responding in a timely manner. & Problem #3-In order to effectively police a county experiencing such unprecedented growth, law enforcement agencies across the county need compatible equipment and technology to support critical communication for effective response efforts across the county. New technology is critical for law enforcement and judicial court system to be equipped with the most up to date tools to apprehend criminals, keep our community safe, and the ability to communicate with other agencies to maximize our response time to situations/incidents with our community.

### **Goal Statement:**

Provide a brief description of the overall goals and objectives for this project.

Enter a description for the overall goals and objectives:

The goal of this project is to increase efficiency in obtaining and recording evidence that will support a more successful prosecution, and reduce the time arresting officers spend in the booking area completing required paperwork to allow them more time to be out patrolling.

### **Cooperative Working Agreement (CWA):**

When a grantee intends to carry out a grant project through cooperating or participating with one or more outside organizations, the grantee must obtain authorized approval signatures on the cooperative working agreement (CWA) from each participating organization. Grantees must maintain on file a signed copy of all cooperative working agreements, and they must submit to CJD a list of each participating organization and a description of the purpose of each **CWA**. Cooperative working agreements do not involve an exchange of funds.

For this project, provide the name of the participating organization(s) and a brief description of the purpose(s) for the **CWA(s)**. You should only provide information here that this project's successful operation is contingent on for the named service or participation from the outside organization.

Note: A **Sample CWA** is available [here](#) for your convenience.

Enter your cooperating working agreement(s):

N/A

### **Continuation Projects:**

For continuation projects only, if your current or previous year's project is NOT on schedule in accomplishing the stated objectives, briefly describe the major obstacles preventing your organization from successfully reaching the project objectives as stated within your previous grant application. (Data may be calculated on a pro-rated basis depending on how long the current or previous year's project has been operating.)

Enter your current grant's progress:

n/a

### **Project Summary:**

Briefly summarize the entire application, including the project's problem statement, supporting data, goal, target group, activities, and objectives. Be sure that the summary is easy to understand by a person not familiar with your project and that you are confident and comfortable with the information if it were to be released under a public information request.

Enter your summary statement for this project:

Law Enforcement lacks equipment to efficiently perform essential processing of crime information and gather pertinent evidence that is admissible in court during a criminal trial that will reinforce an officer's testimony for a more successful prosecution. The FLIR can be utilized for surveillance of criminal activities when limited or no lighting is available. All jurisdictions in Hays County use this facility for holding criminals, in 2010 detectives investigated six cases in Hays County where suspects were growing marijuana using their residence as grow houses. Therefore regardless of the lighting conditions or type of mission being conducted, the officer can monitor the area in the dark without being seen and will be able to record the criminal activity. As reflected in our statistics, controlled substance cases are on a steady rise and obtaining admissible evidence will make for a more successful case prosecution. At this time there are three workstations in the jail booking area. In 2011 there were 7,007

bookings into the Hays County Jail. A peace officer can have several arrest reports that need to be entering in the system in order for the Jail booking officers to finalize the process and hold the individual(s). During the busiest time of the week, beginning on a Thursday night and through the weekend, officers are often waiting trying to enter their required arrest reports due to limited workstations, putting a strain on the facility and the booking area. Additional workstations will reduce the time the arresting officers spend entering the arrest report(s) and will allow them more time to be out patrolling. The population of Hays County has grown by 61% over the last decade, with the 2010 Census figure of 157,107 persons living in the County. While much of the increase can be attributed to communities along the IH35 corridor, the western side of the County, including the Wimberley, Woodcreek and Dripping Springs areas have also contributed to the growth. In 2011 there were 586 of criminal cases that were investigated within this area of Hays County. Currently officers stationed on the west side of Hays County do not have the proper equipment to video record confession and witness statements that can be admissible in court. Irrefutable video evidence leads to more guilty pleas and less risk of an innocent person being convicted or guilty person being acquitted. The Electronic Recording conference room to be located in the Dripping Springs Substation of the Sheriff's Office will provide the proper equipment to record confession statements where normally the officer and suspect would have to travel to San Marcos to provide such recording. Time and safety is of concern when conducting a major investigation, and having to travel 45 minutes to an hour to access an interview room can pose a problem when transporting a "non-custodial" person in the patrol car. The Hays County Community Plan lists the following issues: Problem #1 Law Enforcement, prosecutors, and courts are challenged to have enough personnel and resources to stay abreast with the growth in population in Hays County, and safety concerns for both citizens and officers. Improve time in filing cases and solving crime. Deter crime by increasing personnel, more visible patrol officers patrolling and responding in a timely manner. & Problem #3-In order to effectively police a county experiencing such unprecedented growth, law enforcement agencies across the county need compatible equipment and technology to support critical communication for effective response efforts across the county. New technology is critical for law enforcement and judicial court system to be equipped with the most up to date tools to apprehend criminals, keep our community safe, and the ability to communicate with other agencies to maximize our response time to situations/incidents with our community. The goal of this project is to increase efficiency in obtaining and recording evidence that will support a more successful prosecution, and reduce the time arresting officers spend in the booking area completing required paperwork to allow them more time to be out patrolling.

## Project Activities Information

### Drug Courts

Does your project have a Steering Committee that helps direct and enhance your court's operations?

☐ Yes  
☐ No  
☒ N/A

List the members of your project's treatment team and describe their role in supporting the participants.

Provide the average caseload size for a full-time case manager/probation officer assigned to this project.

Provide your project's policy on drug testing participants.

Describe the process you will use to determine your project's effectiveness.

Provide the total cost for operating your project during the previous fiscal year. (This should include all salaries, travel, counseling, treatment services, office supplies, etc.)

0

List the sources and amounts of non-CJD funding used to support this project during the previous fiscal year. (This may include local or state funds and any other charges to participants.)

List the treatment resources used for this project (e.g., ATR, TAIP, in-house, etc.).

Provide the total fees collected in your county during the most recently completed fiscal year, in accordance with Chapter 102.0178, Code of Criminal Procedure, for offenses found in Chapter 49, Penal Code (DWI) and Chapter 481, Health and Safety Code (controlled substances). Note: The party responsible for collecting court assessed fees in your county may be the treasurer, county clerk, or district clerk.

0

Of the fees collected in your county, provide the amount that was directed to your project.

0

Describe how your project used those fees.

### Law Enforcement Projects

What is your agency's approved budget for law enforcement operations for the current fiscal year?

29141789

How many commissioned peace officers are funded through your agency's current budget?

356

Provide the amount of asset forfeitures awarded to your agency in the previous fiscal year.

83951

Provide the balance of asset forfeitures on hand as of the date of this application.

155814

Describe the proposed use of the forfeiture funds:

Criminal investigation, supplies, salaries, fringe benefits, witness reimbursement, contract services, travel and continuing education.

### Sources of Financial Support

Please complete the following information on all **law enforcement or homeland security grants** awarded to your agency during the previous fiscal year, and all applications you have submitted or new awards for the current fiscal year, or enter 'N/A' if this item does not apply.

Each source of funding you select below should include the following information for each grant award; or if your agency did not receive funding from any of the sources listed below, enter 'N/A':

1. name of agency providing funds;
2. grant period;
3. amount of the award (or amount requested);
4. amount expended; and
5. how the funds have been or will be used.

1. Homeland Security Grant (Community Response Team)-08/01/10-07/31/12-(\$18,674.00) (\$7,298.00)- Uniforms, Ice machine, Training, Lease space for equipment. 2. Homeland Security Grant (Law Enforcement Strike Team)-08/01/10-07/31/12-(\$6,620.00) (\$6,620.00)- Tactical bags, Shin guards, Gloves, Gas masks, Riot batons, Mark 9 pouches, Baton Grommets, Radio pouches, Earpiece & adaptors . 3. Department of Bureau of Justice - 09/17/10-08/31/12-(\$1,712.06)(\$1,712.00)-Bulletproof Vests.4. Regional Auto Theft Enforcement Task Force- 09/01/10-08/31/11-(\$63,182.00) (\$35,128.00)-Officer Salary. 5. FBI Joint Terrorism Team Task Force-10/01/10- 09/30/11(\$5,000.00) (\$1,563.00)-Overtime. 6. Department of Bureau of Justice-SCAAP-10/01/10-09/30/11- (\$84,808.00)(\$64,723)-Salaries for correctional officers. 7. Hays County Juvenile Probation-10/01/10-09/30/11- (\$648,034) (\$648,034) for the purpose of salaries for probation officers, GED programs expenses, and detention. 8. Office of the Attorney General -VINE 09/01/11-08/31/12-(\$30,710.00)(0)-contract services. 9. Office of the Governor-CJD-09/01/10-03/31/11-(\$15,717.00) (\$14,251.00)-(3)In-Car video cameras. 10. Travis County Auto Theft Task Force-09/1/10-08/31/11-(\$60,438) (\$59,209)-Officer Salary. 11. U.S. Marshal Services-11/01/10- 09/30/11 (\$5,000.00) (\$1,563.00). 12. JAG-10/01/10-09/30/14-(\$12,165.00)(\$11,402.00)(2) Laptops, (5)

Scanners, (1) Computer/Monitor. 13. Office of Governor, CJD-AVL-09/01/11-03/31/12-(\$47,265.00)(\$0)GPS 18x Receiver, GPS Applications for Laptops, Automatic Vehicle Locator Server, Fleet Management System, Software Services. 14. Texas State ALERRT-10/01/11-09/30/12(\$57,088) (\$106,203)-Salary, Fringe, Cell phone service. 15. Homeland Security Grant Program- 09/01/11-08/31/13(\$18,426) (0)-Cert Equipment- training, exercise costs 16. Texas Indigent Defense-10/01/11-09/30/12(\$71,325) (\$101,924) 17. EMPG - 10/01/10-03/31/12(\$25,300.00) (\$25,300.00) -partial Salary & Fringe benefits 18. Office of the Attorney General-09/01/11-08/31/12 (\$42,000.00) (\$7,480)-Personnel 19. U.S. Marshal Services- FY12 (\$5,000.00) (\$668.00)-Overtime. Does your agency expect to be awarded funds from any of the following sources during the project period of this grant?

Does your agency expect to be awarded funds from any of the following sources during the project period of this grant?

Select the appropriate response(s):

- ☐ The American Recovery and Reinvestment Act (any source)
- ☒ Community Oriented Policing (COPS)
- ☐ Weed and Seed Program
- ☒ Bureau of Justice Assistance
- ☒ Homeland Security Grant Program (HSGP)
- ☐ Operation Stonegarden (OPSG)
- ☐ Interoperable Emergency Communications Grant Program (IECGP)
- ☐ Emergency Operations Center (EOC) Grant Program
- ☐ State Criminal Justice Planning (421) Fund
- ☒ Governor's Division of Emergency Management (GDEM) or Texas Department of Public Safety
- ☒ Texas Automobile Burglary and Theft Prevention Authority (ABTPA)
- ☐ Selective Traffic Enforcement Program (STEP)
- ☐ Texas Border Sheriff's Coalition (TBSC)
- ☒ Other state or federal grant programs
- ☐ Private Organization, Private Enterprise, or Non-Government Organization Grant Programs
- ☐ Applicant does not expect to receive grant funds from any source to support its law enforcement agency

If you selected any of the boxes above (except for the last box), describe your agency's internal controls and processes that will be used to **prevent supplanting** of your agency's budgeted funds with grant funds. Example: Timesheets will be tracked to determine allowable charges for each fund source and to ensure that duplicate invoices are not submitted to multiple agencies.

Each grant award is budgeted and accounted for in a separate cost center in the financial management system. This prevents the County from using grant awards to reduce local operating sources, and therefore, prevents the County from supplanting.

**Selected Project Activities:**

ACTIVITY	PERCENTAGE:	DESCRIPTION
Equipment	100.00	This project will increase efficiency in obtaining and recording evidence that is admissible in court during a criminal trial that will reinforce an officer's testimony for a more successful prosecution. The FLIR Bi-Ocular Thermal Night Vision Camera will provide recorded footage, photographs and/or videotape of criminal activity when limited or no lighting is available to capture evidence that will be admissible in court to support the case in a criminal trial. The Electronic Recording conference room to be located in the Dripping Springs Subdivision of the Sheriff's Office will provide the proper equipment to record confession statements where normally the officer and suspect would have to travel to San Marcos to provide such recording. Additional workstations (Laptops) in the Jail booking area will reduce the time the arresting officers spend entering the arrest report(s) and will allow them more time to be out patrolling.

**Geographic Area:**

Hays County, Texas

**Target Audience:**

Sheriff Deputies and other law enforcement agencies

**Gender:**

Females and Males

**Ages:**  
18-70

**Special Characteristics:**  
N

## Measures Information

### Progress Reporting Requirements

All programs will be required to report the output and outcome measures for this program to Texas A&M University, Public Policy Research Institute ([PPRI](#)).

#### Objective Output Measures

OUTPUT MEASURE	CURRENT DATA	TARGET LEVEL
Number of staff with access to equipment purchased with grant funds.	100	110
Number of units purchased.	0	5

#### Custom Objective Output Measures

CUSTOM OUTPUT MEASURE	CURRENT DATA	TARGET LEVEL
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#### Objective Outcome Measures

OUTCOME MEASURE	CURRENT DATA	TARGET LEVEL
Number of agencies that benefitted from equipment purchases.	0	9

#### Custom Objective Outcome Measures

CUSTOM OUTCOME MEASURE	CURRENT DATA	TARGET LEVEL
------------------------	--------------	--------------

## Certification and Assurances

Each applicant must click on this link to review the standard [Certification and Assurances](#).

## Resolution from Governing Body

Except for state agencies, each applicant must provide information related to the [resolution](#) from its governing body, such as the city council, county commissioners' court, school board, or board of directors. Please ensure that the resolution approved by your governing body addresses items one through four below.



1. Authorization by your governing body for the submission of the application to CJD that clearly identifies the name of the project for which funding is requested;
2. A commitment to provide all applicable matching funds;
3. A designation of the name and/or title of an authorized official who is given the authority to apply for, accept, reject, alter, or terminate a grant (Note: If a name is provided, you must update CJD should the official change during the grant period.); and
4. A written assurance that, in the event of loss or misuse of grant funds, the governing body will return all funds to CJD.

Upon approval from your agency's governing body, upload the approved resolution to eGrants by clicking on the **Upload Files** sub-tab located in the **Summary** tab.

### Contract Compliance

Will CJD grant funds be used to support any contracts for professional services?

Select the Appropriate Response:

☐ Yes  
☒ No

For applicant agencies that selected **Yes** above, describe how you will monitor the activities of the sub-contractor(s) for compliance with the contract provisions (including equipment purchases), deliverables, and all applicable statutes, rules, regulations, and guidelines governing this project.

Enter a description for monitoring contract compliance:

### Lobbying

For applicant agencies requesting grant funds in excess of \$100,000, have any federally appropriated funds been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan, or cooperative agreement?

**Note:** Pursuant to Texas Government Code §556.005, a political subdivision or private entity that receives state funds may not use the funds to pay a person required to register as a lobbyist or for lobbying expenses. A political subdivision or private entity that violates this provision is not eligible to receive additional state funds.

Select the Appropriate Response:

☐ Yes  
☐ No  
☒ N/A

For applicant agencies that selected either **No** or **N/A** above, have any non-federal funds been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress in connection with this federal contract, loan, or cooperative agreement?

Select the Appropriate Response

☐ Yes  
☒ No  
☐ N/A

## Fiscal Year

Provide the begin and end date for the applicant agency's fiscal year (e.g., 09/01/20xx to 08/31/20xx).

Enter the Begin Date [mm/dd/yyyy]:

10/1/2011

Enter the End Date [mm/dd/yyyy]:

9/30/2012

## Sources of Financial Support

Each applicant must provide the amount of grant funds expended during the most recently completed fiscal year for the following sources:

Enter the amount (\$) of Federal Grant Funds:

2478202

Enter the amount (\$) of State Grant Funds:

1265867

## Single Audit

Has the applicant agency expended federal grant funding of \$500,000 or more, or state grant funding of \$500,000 or more during the most recently completed fiscal year?

Select the Appropriate Response:

☒ Yes

☐ No

**Note:** Applicants who expend less than \$500,000 in federal grant funding or less than \$500,000 in state grant funding are exempt from the Single Audit Act and cannot charge audit costs to a CJD grant. However, CJD may require a limited scope audit as defined in OMB Circular A-133.

Applicant agencies that selected **Yes** above, provide the date of your organization's last annual single audit, performed by an independent auditor (in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133).

Enter the date of your last annual single audit:

1/12/2011

## Equal Employment Opportunity Plan (EEOP)

Type I Entity: Defined as an applicant that meets one or more of the following criteria:

- the applicant has less than 50 employees;
- the applicant is a non-profit organization;
- the applicant is a medical institution;
- the applicant is an Indian tribe;
- the applicant is an educational institution, or
- the applicant is receiving a single award of less than \$25,000.

Requirements for a Type I Entity:

- The applicant is not required to prepare an EEOP because it is a Type I Entity as defined above, pursuant to 28 CFR 42.302; and
- the applicant will comply with applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Type II Entity: Defined as an applicant that meets the following criteria:

- the applicant has 50 or more employees, and
- the applicant is receiving a single award of \$25,000 or more, but less than \$500,000.

Requirements for a Type II Entity: Federal law requires a Type II Entity to formulate an EEOP and keep it on file.

- The applicant agency is required to formulate an EEOP in accordance with 28 CFR 42.301, et seq., subpart E;

- the EEOP is required to be formulated and signed into effect within the past two years by the proper authority;
- the EEOP is available for review by the public and employees or for review or audit by officials of CJD, CJD's designee, or the Office of Civil Rights, Office of Justice Programs, U.S. Department of Justice, as required by relevant laws and regulations;
- the applicant will comply with applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services; and
- the EEOP is required to be on file in the office of (enter the name and address where the EEOP is filed below):

Enter the name of the person responsible for the EEOP and the address of the office where the EEOP is filed:

Dee Dee Baen, 712 S. Stagecoach Trail, Ste. 1063, San Marcos, Texas 78666

**Type III Entity:** Defined as an applicant that is NOT a Type I or Type II Entity. Requirements for a Type III Entity: Federal law requires a Type III Entity to formulate an EEOP and submit it for approval to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice.

- The EEOP is required to be formulated and signed into effect within the past two years by the proper authority;
- the EEOP has been submitted to the Office of Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice and has been approved by the OCR, or it will be submitted to the OCR for approval upon award of the grant, as required by relevant laws and regulations; and
- the applicant will comply with applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Based on the definitions and requirements above, the applicant agency certifies to the following entity type:

Select the appropriate response:

- ☐ Type I Entity
- ☒ Type II Entity
- ☐ Type III Entity

## Debarment

Each applicant agency will certify that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal Court, or voluntarily excluded from participation in this transaction by any federal department or agency;
- Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
- Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in the above bullet; and have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

Select the appropriate response:

- ☒ I Certify
- ☐ Unable to Certify

If you selected **Unable to Certify** above, please provide an explanation as to why the applicant agency cannot certify the statements.

Enter the debarment justification:

## FFATA Certification

**Certification of Recipient Highly Compensated Officers** – The Federal Funding Accountability and Transparency Act (FFATA) requires Prime Recipients (CJD) to report the names and total compensation of each of the five most highly compensated officers (a.k.a. positions) of each sub recipient organization for the most recently

completed fiscal year preceding the year in which the grant is awarded if the subrecipient answers **YES** to the **FIRST** statement but **NO** to the **SECOND** statement listed below.

In the sub recipient's preceding completed fiscal year, did the sub recipient receive: (1) 80 percent or more of its annual gross revenue from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; AND (2) \$25,000,000 or more in annual gross revenue from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements?

☐ Yes  
☒ No

Does the public have access to information about the compensation of the senior executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986?

☐ Yes  
☒ No

If you answered **YES** to the **FIRST** statement and **NO** to the **SECOND** statement, please provide the name and total compensation amount of each of the five most highly compensated officers (a.k.a. positions) within your agency for the current calendar year. If you answered **NO** to the first statement you are **NOT** required to provide the name and compensation amounts. NOTE: "Total compensation" means the complete pay package of each of the sub recipient's compensated officers, including all forms of money, benefits, services, and in-kind payments (see SEC Regulations: 17 CCR 229.402).

Position 1 - Name:

N/A

Position 1 - Total Compensation (\$):

0

Position 2 - Name:

Position 2 - Total Compensation (\$):

0

Position 3 - Name:

Position 3 - Total Compensation (\$):

0

Position 4 - Name:

Position 4 - Total Compensation (\$):

0

Position 5 - Name:

Position 5 - Total Compensation (\$):

0

## **Fiscal Capability Information**

### **Organizational Information**

Enter the Year in which the Corporation was Founded:

Enter the Date that the IRS Letter Granted 501(c)(3) Tax Exemption Status:

Enter the Employer Identification Number Assigned by the IRS:

Enter the Charter Number assigned by the Texas Secretary of State:

## Accounting System

The grantee organization must incorporate an accounting system that will track direct and indirect costs for the organization (general ledger) as well as direct and indirect costs by project (project ledger). The grantee must establish a time and effort system to track personnel costs by project. This should be reported on an hourly basis, or in increments of an hour.

Is there a list of your organization's accounts identified by a specific number (i.e., a general ledger of accounts).

Select the appropriate response:

- ☐ Yes
- ☐ No

Does the accounting system include a project ledger to record expenditures for each Program by required budget cost categories?

Select the appropriate response:

- ☐ Yes
- ☐ No

Is there a timekeeping system that allows for grant personnel to identify activity and requires signatures by the employee and his or her supervisor?

Select the appropriate response:

- ☐ Yes
- ☐ No

If you answered 'No' to any question above in the Accounting System section, in the space provided below explain what action will be taken to ensure accountability.

Enter your explanation:

## Financial Capability

Grant agencies should prepare annual financial statements. At a minimum, current internal balance sheet and income statements are required. A balance sheet is a statement of financial position for a grant agency disclosing assets, liabilities, and retained earnings at a given point in time. An income statement is a summary of revenue and expenses for a grant agency during a fiscal year.

Has the grant agency undergone an independent audit?

Select the appropriate response:

- ☐ Yes
- ☐ No

Does the organization prepare financial statements at least annually?

Select the appropriate response:

- ☐ Yes
- ☐ No

According to the organization's most recent Audit or Balance Sheet, are the current total assets greater than the liabilities?

Select the appropriate response:

- ☐ Yes
- ☐ No

If you selected 'No' to any question above under the Financial Capability section, in the space provided below explain what action will be taken to ensure accountability.

Enter your explanation:

### **Budgetary Controls**

Grant agencies should establish a system to track expenditures against budget and / or funded amounts.

Are there budgetary controls in effect (e.g., comparison of budget with actual expenditures on a monthly basis) to include drawing down grant funds in excess of:

a) Total funds authorized on the Statement of Grant Award?

- ☐ Yes
- ☐ No

b) Total funds available for any budget category as stipulated on the Statement of Grant Award?

- ☐ Yes
- ☐ No

If you selected 'No' to any question above under the Budgetary Controls section, in the space provided below please explain what action will be taken to ensure accountability.

Enter your explanation:

### **Internal Controls**

Grant agencies must safeguard cash receipts, disbursements, and ensure a segregation of duties exist. For example, one person should not have authorization to sign checks and make deposits.

Are accounting entries supported by appropriate documentation (e.g., purchase orders, vouchers, receipts, invoices)?

Select the appropriate response:

- ☐ Yes
- ☐ No

Is there separation of responsibility in the receipt, payment, and recording of costs?

Select the appropriate response:

- ☐ Yes
- ☐ No

If you selected 'No' to any question above under the Internal Controls section, in the space provided below please explain what action will be taken to ensure accountability.

Enter your explanation:

### Budget Details Information

#### Budget Information by Budget Line Item:

CATEGORY	SUB CATEGORY	DESCRIPTION	CJD	CASH MATCH	IN-KIND MATCH	GPI	TOTAL	UNIT /%
Contractual and Professional Services	Installation of grant purchased equipment and technology	Labor & expenses purchase, deliver, install, configure, test and provide training at customer site for all items. (1 @ \$2,920.00 = \$2,920.00)	\$2,920.00	\$0.00	\$0.00	\$0.00	\$2,920.00	0
Equipment	Laptop System and Accessories	3 - Laptops -Latitude E6520 fully customizable Laptop, Windows 7 professional, Intel Core (2.40GHZz, 6M cache, Upgraded to Intel VPro Technology) Memory- 8.0GB, DDR3-1333MHz SDRAM, 2 DIMMS. Graphics- Internal English Backlit Dual Pointing Keyboard, Numpad, Primary Storage- 320GB 5400rpm Hard Drive. LCDs 15.6" UltraSharp FHD (1920X1080) Wide View Anti-Glare LED-Backlit with premium panel Guarantee. AC adapter (90W A/C Adapter -3-pin). 8XDVD+/-RW wRoxio & Cyberlink Power DVD, Camera Microphone, Wireless LAN (802.11) 2 year extended battery service and 3 of system life. 3 year basic hardware service with 3 year NBD limited onsite service after remote diagnosis.(3 @ \$1,708.66 = \$5,259.15)	\$5,259.15	\$0.00	\$0.00	\$0.00	\$5,259.15	3
Supplies	Security	1 yr. VideOversight	\$1,200.00	\$0.00	\$0.00	\$0.00	\$1,200.00	0

and Direct Operating Expenses	Software Services	EE Software maintenance agreement (includes VideOversight software upgrades, enhancements, & point releases as they made available to the field at no addition fee. Phone & online support, on-site support if necessary. Automatic annual renewal, Add coverage for 1 new server, 1 new room to existing system. (1 @ \$1,200.00= \$1,200.00)						
Equipment	Security System (e.g., evidence rooms, law enforcement offices, courthouses, etc.)	1 - Electronic Interview Recording Case Management System- VideOversight Enterprise Edition (EE) Host Software for interview recording, archiving, & access control. EE Room Software Fee, 1.5TB Tower server with minimum Intel Core i3 540/3.06 GHz; 4GB DDR3;3X 500GB SATA RAID-5 storage & 250GB Data Drive; dual layer DVD/CD RW & Microsoft windows XP Professional OS;3YR depot wty, Network Video Recorder (NVR) with dual channel synchronous video & audio & 1TB storage, Covert, In-wall, junction box mounted color day/night camera with min. 520LOR, fixed lens (size TBD0 1/3" CCD, 3 LUX F1.2, 12VDC. Single channel 7 band equalizer/microphone kit., Misc. Installation Materials, power cable, 22-2 shielded audio cable (100ft) BNC Connectors (qty 2); 3ft 9 outlet power strip, Cat5 Jumper cable (2) Low Voltage Junction Box for mic	\$11,233.00	\$0.00	\$0.00	\$0.00	\$11,233.00	1



		(2). (1 @ \$11,233.00)						
Equipment	Thermal Imaging Equipment	1- Bi-Ocular Thermal Thermal Night Vision Camera-640X480 Bi-Ocular Thermal Body Only, 30Hz NTSC, SD Card, Snapshot/Video Record option, Tactical Carrying bag, 35MM Quick disconnect Lens for BHS Series Thermal Handheld Camera 4X zoom (1 @ \$8,358.00)	\$8,358.00	\$0.00	\$0.00	\$0.00	\$8,358.00	1

## Source of Match Information

### Detail Source of Match/GPI:

DESCRIPTION	MATCH TYPE	AMOUNT
-------------	------------	--------

### Summary Source of Match/GPI:

Total Report	Cash Match	In Kind	GPI Federal Share	GPI State Share
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

## Budget Summary Information

### Budget Summary Information by Budget Category:

CATEGORY	CJD	CASH MATCH	IN-KIND MATCH	GPI	TOTAL
Contractual and Professional Services	\$2,920.00	\$0.00	\$0.00	\$0.00	\$2,920.00
Equipment	\$24,850.15	\$0.00	\$0.00	\$0.00	\$24,850.15
Supplies and Direct Operating Expenses	\$1,200.00	\$0.00	\$0.00	\$0.00	\$1,200.00

### Budget Grand Total Information:

CJD	CASH MATCH	IN-KIND MATCH	GPI	TOTAL
-----	------------	---------------	-----	-------

\$28,970.15	\$0.00	\$0.00	\$0.00	\$28,970.15
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### Condition Of Fundings Information

Condition of Funding / Project Requirement	Date Created	Date Met	Hold Funds	Hold Line Item Funds
--	--------------	----------	------------	----------------------

You are logged in as **User Name:** JHauff



## RESOLUTION

STATE OF TEXAS       §  
                                  §  
COUNTY OF HAYS     §

A resolution of the Commissioners' Court of the County of Hays, Texas hereby authorizing the submittal of a grant application to the Edward Byrne Memorial Justice Assistance Grant Program (JAG) and Office of the Governor, Criminal Justice Division.

1. To authorize the submittal of a grant application to the Office of the Governor-Criminal Justice Division (CJD) identified by CJD as Application No. 2552401.
2. To comply with the provisions of the fiscal reimbursement and reporting requirements of the Office of the Governor-Criminal Justice Division (CJD).
3. To use the funds solely for the purpose for which they are provided and in the event of loss or misuse of CJD grant funds, the governing body will return all funds to CJD in full.
4. To designate the County Judge as the Authorized Official with power to apply for, accept, reject, alter or terminate the grant.

**NOW, THEREFORE, BE IT RESOLVED BY THE** Commissioners' Court of Hays County, Texas.

**ADOPTED THIS THE 21<sup>st</sup> DAY OF FEBRUARY, 2012**

\_\_\_\_\_  
**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**

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 fund \$25,000 for the improvements to the San Marcos Senior Citizens Center, a project of Community Action, Inc. and authorize the County Judge to execute a funding agreement as prepared by legal counsel.**

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

**PREFERRED MEETING DATE REQUESTED: February 21, 2012**

**AMOUNT REQUIRED: \$25,000**

**LINE ITEM NUMBER OF FUNDS REQUIRED: Tobacco Settlement Funds**

**REQUESTED BY: Ingalsbe**

**SPONSORED BY: Ingalsbe**

**SUMMARY: The SM Senior Citizens Center has been in existence for over 30 years and provides a community facility where senior citizens can come together to receive services, and take part in recreational activities that enhance their quality of life, support their independence and encourage their continued involvement in and with the community.**

**The average daily attendance is 25 persons a day.**

**This past year, the Center was visited from Seniors from outside the SM area:**

**Kyle – 67**

**Wimberley – 11**

**Buda – 18**

**D.S. – 5**

**Please see back-up for additional information.**

**DESCRIPTION OF Item:** Discussion and Possible action to fund \$25,000 for the improvements to the San Marcos Senior Citizens Center, a project of Community Action, Inc. and authorize the County Judge to execute a funding agreement as prepared by legal counsel.

**PREFERRED MEETING DATE REQUESTED:** February 21, 2011

**COUNTY AUDITOR**

**AMOUNT:** \$25,000

**LINE ITEM NUMBER:** Tobacco Settlement Funds

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



## Community Action, Inc. of Central Texas

— DEVELOPING OPPORTUNITIES —

Overview of the San Marcos Senior Citizens Center, a project of Community Action, Inc. of Central Texas (formerly Community Action, Inc. of Hays, Caldwell, and Blanco Counties)

Community Action has been providing services to older individuals in San Marcos, Hays County for over 35 years. Average daily attendance for this past year was 25 persons a day. The number of seniors attending daily ranges from 10-45. Special Events and Holiday Celebrations draw over 50 seniors. The center has seen a 50% growth rate in the past 5 years.

The center is supported by Community Action, Inc. of Central Texas, Capital Area Planning Council (CAPCO)-Area Agency on Aging (AAA), City of San Marcos, Combined Community Action (Giddings), Grande Communications, and Hays County.

The annual budget for the facility which includes salaries is \$46,500. Total encounters for the year was 6,364. (the cost per encounter was \$7.30) Of the 354 unduplicated clients, 340 were Hays County residents.

The original location of the center was on the corner of Georgia Street and Arizona. With funding from the City of San Marcos a new facility was constructed in 2003 on Arizona Street (adjacent to the previous location). Community Action requested Community Development Block Grant money in 2010 to expand the facility by 1,600 square feet and to erect a parking lot with a drive way that will enable the seniors to be dropped off and picked up under a covered area and to enlarge the square footage of the facility. The total request for the project was \$262,850. The city awarded Community Action \$213,624. After careful scrutiny of the project it appears that the project will be approximately \$25,000 short to complete the entire project.

Attached please find two additional brochures that describe Community Action and the San Marcos Senior Citizens Center.

Thank you for your consideration.

Original CDBG Request to CoSM	\$262,850
CDBG Grant Awarded by CoSM	\$213,624
Shortfall	\$49,226

<b>Total CoSM CDBG Award Budget</b>	<b>\$213,624</b>
Minus Engineering & Design	\$36,000
<b>Construction Budget</b>	<b>\$177,624</b>

To construct the following;

- a. ( Parking lot - base material, asphalt, curb, gutter, etc. - one way load/unload)
- b. ( Addition - 1400 square foot recreation area to existing building )
- c. ( Canopy - safety and protection of seniors from inclement weather )

<b>Estimated Construction Budget</b>	<b>\$206,000</b>
Shortfall	-\$28,376

<b>Request to County to Complete</b>	<b>\$25,000</b>
--------------------------------------	-----------------

## **SAN MARCOS SENIOR CITIZENS CENTER SUMMARY OF PROGRAM SERVICES**

The San Marcos Senior Citizen Center provides senior citizens with opportunities to pursue mutual interests and participate in recreational activities that enhance quality of life, support independence and encourage continued involvement in and with the community.

Below is a list of the services that are provided at the San Marcos Senior Citizens Center:

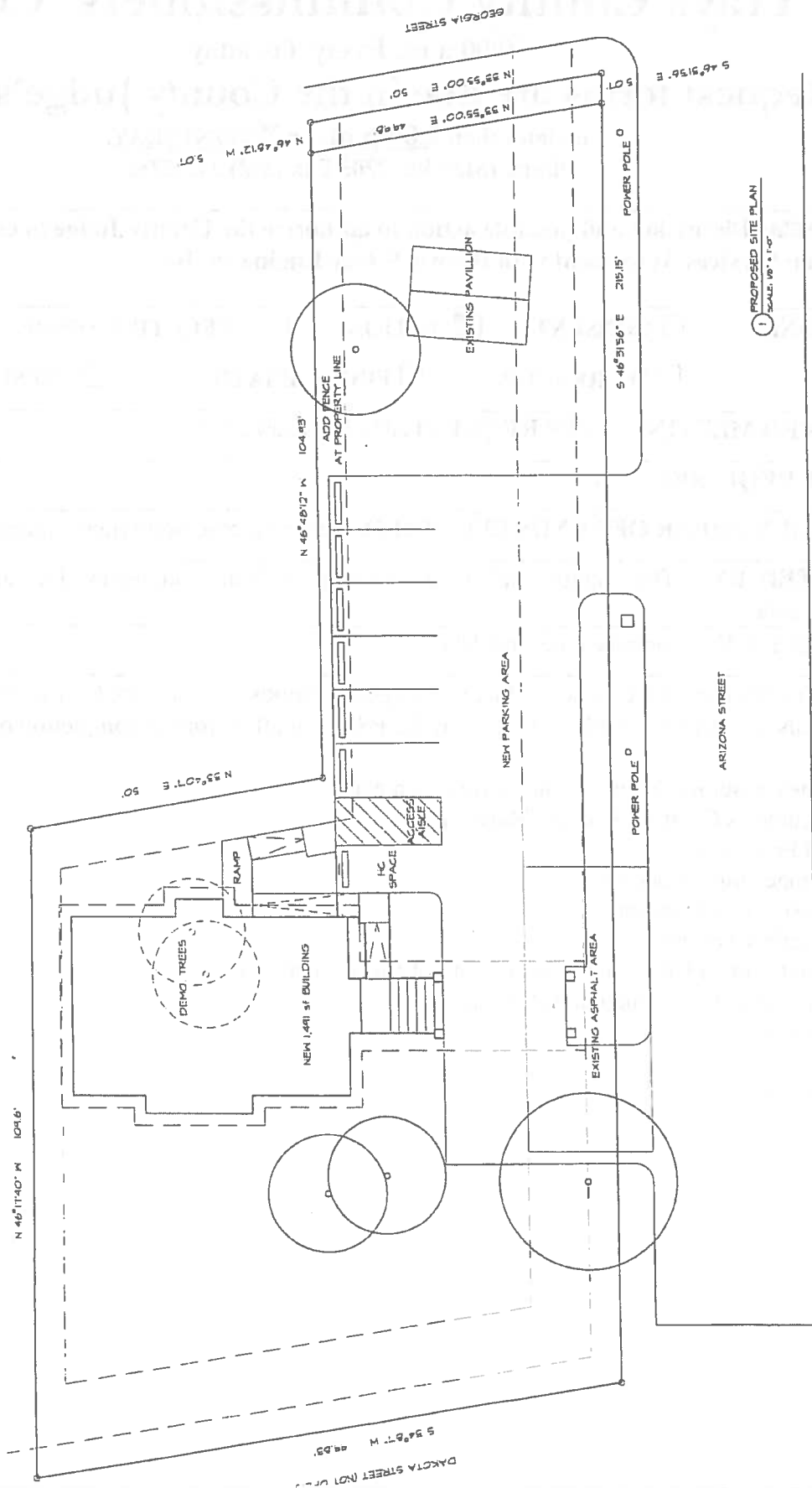
- Fellowship
- Nutrition services (Hot meals)
- Nutrition counseling presentations
- Home delivery of some meals
- Food Bank distribution location
- Information and Referrals
- Translation services
- Form filling (SSI and Medicaid applications, Food Stamps, etc.)
- Applications for utility assistance
- Arranging transportation services for participants (medical appointments, etc.)
- Providing contacts to Home Health Services
- Health screening at the Center
- Exercise for the seniors
- Arts & Crafts projects
- Games (Bingo, card games, puzzles, etc.)
- Special Activities, including:
  - Strong for Life exercise program
  - Special field trips
  - Birthday and Holiday celebrations
  - Capital Area Food Bank – Nutrition classes / Cooking demonstrations
  - Other special interest presentations

Viola Sowell is the Center Director at the San Marcos Center. The Center address is 810 Arizona St., San Marcos, TX. San Marcos Center hours are 8:00am - 2:00pm, Monday - Friday. For more information, please call the Center at 512-392-2427.





JOB NAME:	Georgia Street Senior Citizens Center
DATE:	12-18-01
JOB NO.:	2000-14
SHEET NAME:	Proposed Site Plan
SHEET NO.:	A2
of	5



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

**AGENDA ITEM:** Discussion and possible action to authorize the County Judge to execute the Professional Services Agreement with Brown & Gay Engineers, Inc.

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

**PREFERRED MEETING DATE REQUESTED:** February 21, 2012

**AMOUNT REQUIRED:** N/A

**LINE ITEM NUMBER OF FUNDS REQUIRED:** Budgeted road bond funds. (already allocated)

**REQUESTED BY:** The county road bond managers at Prime Strategies, Inc. and Commissioner Debbie Ingalsbe

**SPONSORED BY:** Commissioner Ingalsbe

**SUMMARY:** Brown & Gay Engineers, Inc. is the agency proposed to provide Construction Inspection and Materials Testing for the FM 110 project; the PSA will allow for the completion of :

1. Constructability reviews of the construction plans
2. Documents Control / Records Management
3. RFI Processes
4. Change Order Processes
5. Construction Oversight
6. Materials Testing
7. Monitoring of Utility Relocations (City of Buda waterline)
8. Reporting of Construction Activities
9. Surveying

See attachment.

Contract No. \_\_\_\_\_

### ***Checklist***

#### **Prior to Initiation of Work**

- ☐ Signed and Executed Agreement
- ☐ Scope of Services – Appendix A
  - ☐ Exhibit V – Services to be provided by County
  - ☐ Exhibit IX – Services to be provided by Engineer
  - ☐ Exhibit C – Work Schedule
  - ☐ Exhibit D – Fee Schedule
- ☐ Production Schedule – Exhibit IV
- ☐ Hourly Rates of Engineer – Exhibit II
- ☐ Work Authorization - Exhibit II
  - ☐ Supplemental Work Authorization for Additional Work (if applicable)
- ☐ Data to be provided to Engineer by County
  - ☐ Plans
  - ☐ Maps
  - ☐ Studies
  - ☐ Reports
  - ☐ Field Notes
  - ☐ Statistics
  - ☐ Computations
  - ☐ Other: \_\_\_\_\_
- ☐ Contractors Qualification Statement – Appendix B
- ☐ Insurance
  - ☐ Worker's Compensation
  - ☐ Commercial General Liability Insurance
  - ☐ Automobile Liability Insurance
  - ☐ Professional Liability Errors and Omissions Insurance
  - ☐ Self Insurance Documentation
  - ☐ Insurance Certificates for Subcontractors and/or Sub-consultants
  - ☐ Approval of Insurance by County

#### **Course of Work**

- ☐ Original Engineering Work Product submittal
- ☐ "Completed" Engineering Work Product
- ☐ "Accepted" Engineering Work Product
- ☐ Modifications and/or Changes for Approval of Engineering Work Product
- ☐ "Approved" Engineering Work Product
- ☐ Revisions to Work Product
- ☐ Seal of Endorsement on all Engineering Work Product
- ☐ Data necessary for applications or documentation for permits and/or grants to be provided by Engineer to County

#### **Notices (as applicable)**

**Contract No.** \_\_\_\_\_

- ☐ Notice of Suspension
- ☐ Notice of Reinstatement
- ☐ Notice of Termination
- ☐ Notice of Staffing Changes
- ☐ Written Report of Accident

**Documentation for Payment**

- ☐ Internal Revenue Form W-9
- ☐ Invoice for Services Rendered
  - ☐ Supporting Documentation
  - ☐ Report of Completion Percentage
- ☐ Invoice for Reimbursables
  - ☐ Proof of prior payment by Engineer of Reimbursables

Contract No. \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT**

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**PROFESSIONAL SERVICES AGREEMENT**

STATE OF TEXAS                   §  
   §  
COUNTY OF HAYS               §

This Professional Services Agreement (**the "Agreement"**) is made and entered into this day by and between Hays County, Texas, a political subdivision of the State of Texas, (**the "County"**) and Brown & Gay Engineers, Inc. (**the "Engineer"**).

WHEREAS, **County** proposes to construct various transportation projects;

WHEREAS, **County** desires to obtain Professional Engineering Services for inspection of the construction phase of the project known as FM 110 (**the "Project"**);

WHEREAS, **Engineer** has the professional ability and expertise to fulfill the requirements of the **Project**, and to provide advice to the **County** in the selection and analysis of cost-effective alternatives;

WHEREAS, **Engineer** agrees to provide the Professional Engineering Services as more fully set forth in Exhibit IX ("Scope of Services");

WHEREAS, **Engineer** agrees to adhere to the conditions as set forth in the Master Agreement whereby County has entered into a Pass-Through Toll Agreement with the Texas Department of Transportation which is a part of and attached to this Agreement as Exhibit XI. As such, the County shall be referred to as the DEVELOPER, and the Texas Department of Transportation shall be referred to as the DEPARTMENT.

WHEREAS, all of the Professional Engineering Services to be provided by **Engineer** pursuant to this Agreement are professional services, the essence of which entails the provision of advice, judgment, or opinion;

WHEREAS, the **County** has separately contracted with a separate engineering firm or individual (**the "Designer"**) for the preparation of the Plans, Specifications, and Estimates (**the "PS&E"**) for the **Project**.

NOW, THEREFORE, **County** and **Engineer** agree to the performance of the Professional Engineering Services by **Engineer** and the payment for these services by **County** as set forth herein.

**Section I**  
**Employment of the Engineer**

**County** agrees to employ **Engineer** and **Engineer** agrees to perform the Professional Engineering Services for the **Project** as stated in the Sections to follow. As a condition to employment, it is specifically agreed that any disputes arising hereunder shall be submitted to the County Designee or his designee and/or agent, as designated in writing by the County Designee (**individually or**

*collectively the "County Designee"*). The *County Designee* shall have complete authority for the purpose of resolving disputes arising under this Agreement. The *County Designee's* decision shall be final and binding, subject to any civil remedies otherwise deemed appropriate by the parties hereto.

However, nothing in this Section I or in any other provision of this Agreement regarding submission of disputes to the *County Designee* and the *County Designee's* ability to resolve disputed matters shall be construed to establish anything other than a *de novo* standard of review by a court of competent jurisdiction in the event that the parties hereto avail themselves of their right to seek civil remedies for any dispute. In the event of a dispute between the terms and conditions of this provision and any other provision of this Agreement, the terms and condition of this provision shall govern.

It is the intention of the *County* and the *County Designee*, and agreed to and hereby acknowledged by the *Engineer*, that no provision of this Agreement shall be construed to require the *County* or the *County Designee* to submit to mandatory arbitration or mediation in the settlement of any claim, cause of action or dispute.

## Section II Professional Services of the Engineer

- A. In consideration of the compensation herein provided, *Engineer* shall perform Professional Engineering Services for the *Project*, which are acceptable to the *County Designee*, based on standard engineering practices and the scope of work described on the Exhibits attached to this Agreement. *Engineer* shall also serve as *County's* professional engineer in those phases of the *Project* to which this Agreement applies and will consult with and give advice to *County* during the performance of *Engineer's* services.
- B. *Engineer* shall not commence work until *Engineer* has been thoroughly briefed on the scope of the *Project* and has been notified in writing by the *County Designee* to proceed, as evidenced by a work authorization substantially in the form of Exhibit II ("Work Authorization"), attached to this Agreement.
- C. *County* shall provide *Engineer* with all Plans, Specifications, and Estimates (PS&E) to this particular *Project* at no cost to *Engineer*; however, any and all such information shall remain the property of *County* and shall be returned, if the *County Designee* so instructs *Engineer*.
- D. *Engineer* shall perform the following Professional Engineering Services:
  - 1. The basic Scope of Services shall generally consist of all elements of Professional Engineering Services required for the *Project* (as more fully set out in Exhibit IX to this Agreement, "Scope of 'Service'"), satisfactory to the *County Designee* and the County's Commissioners Court, in accordance with the requirements, policies, and general practices of Hays County.



### **Section III Fee schedule**

- A. For and in consideration of the performance by **Engineer** of the Professional Engineering Services described in the Scope of Services, **County** shall pay and **Engineer** shall receive the fee set forth in Exhibit I. The fee is based upon the hourly rates set forth in Exhibit III. Exhibits I and III are attached hereto and made a part hereof. Invoices shall be submitted by **Engineer** on a monthly basis and are due upon presentation of all items required hereunder, and shall be considered past due if not paid within thirty (30) calendar days of the due date.
- B. For the performance of services not specifically described in the Scope of Services **Engineer** shall receive the additional services compensation described in Exhibit IV, which is attached hereto and made a part hereof. In the event of any dispute over the classification of **Engineer's** services as basic or additional services under this agreement, the decision of the **County Designee** shall be final and binding on **Engineer**.

### **Section IV Period of Service**

- A. **Engineer** shall perform the Professional Engineering Services described in Exhibit IX, the Scope of Services.
- B. This Agreement shall become effective upon the date approved by **County** and will remain in full force and effect for the period required for the construction contract award and construction of the **Project**, including warranty periods provided by the contractor pursuant to the construction contract and any extensions of time, unless terminated earlier as provided for herein. **Engineer** shall complete all work as described in the Scope of Services upon receipt by **Engineer** of **County's** written Work Authorization.
- C. Neither **Engineer** nor **County** shall be responsible for delays caused by "Acts of God", non-county governmental processes, national emergency, or any other causes beyond **Engineer's** or **County's** reasonable control. Upon the discovery of such an event, **Engineer** shall notify **County**, and attend a special meeting with the **County Designee** to propose a program for a solution to the problem, and, if necessary, to establish an estimated period of time of suspension or extension of the work. A written request for an extension of time, when properly documented and justified by the circumstances, will be granted by the **County Designee**.
- D. **County** may suspend the work at any time for any reason without terminating this Agreement by giving written Notice of Suspension and the work may be reinstated and this Agreement resumed in full force and effect within sixty (60) days of receipt by **Engineer** of written Notice of Reinstatement from **County**. **Engineer**, upon receipt of a Notice of Suspension shall follow the procedures described in the attached Exhibit VI, which is attached hereto and made a part hereof. In the event such suspension of the **Project** or the **Engineer's** services hereunder extends for a period of ninety (90) days or more, consecutive or in the aggregate, **Engineer** may terminate this Agreement in writing and such termination shall be treated as a

Notice of Termination as provided herein.

- E. Either party may terminate this Agreement for the material failure of the other party to perform in accordance with the terms of this Agreement (the materiality of such failure to be based on standard engineering practices and the scope of work described on the Exhibits attached to this Agreement), through no material fault of the terminating party. **County** may unilaterally terminate this Agreement for reasons other than material failure by **Engineer** to perform by delivering a written Notice of Termination which shall take effect on the tenth day following **Engineer's** receipt of same. If mutually agreed upon, the obligation to provide services under this Agreement may be terminated without cause upon thirty (30) days written notice. **Engineer** shall follow the procedures specified in Exhibit VI upon issuance or receipt of such notice. In the event of termination of this Agreement because of the material failure of **Engineer** to perform, **County** may prosecute the work to completion by contract or otherwise and, in such a case, **Engineer** shall be liable for any additional costs incurred by **County**.
- F. All references to time in this Agreement shall be measured in calendar days unless otherwise specified.

#### **Section V Coordination with the County**

- A. The **County Designee** will act on behalf of **County** with respect to the work to be performed under this Agreement. The **County Designee** shall have complete authority to interpret and define **County's** policies and decisions with respect to **Engineer's** services. The **County Designee** may, in writing, designate representatives to transmit instructions and receive information.
- B. **Engineer** shall not commence work on any phase of the **Project** until a thorough briefing on the scope of the **Project** is received and a written Work Authorization is issued by the **County Designee** in substantially the form of that in Exhibit II.
- C. **Engineer** shall have the responsibility at all times under the terms of this Agreement to advise **County** whether in **Engineer's** judgment it is feasible to proceed with the recommendations given any known constraints affecting the **Project**.
- D. **Engineer** shall cooperate and coordinate with **County's** staff, and other engineers and contractors as reasonable and necessary and as required by the **County Designee**.

#### **Section VI Review of Engineer's Instruments of Service**

- A. **Engineer's** engineering Instruments of Service will be reviewed by **County** under its applicable technical requirements and procedures.
- B. Reports and supporting documents, (*the "Instruments of Service"*), shall be submitted by

**Engineer** on or before the date specified in Exhibit IX. Upon receipt of the Instruments of Service, the submission shall be checked for acceptance. "Acceptance" shall mean that in the **County Designee's** opinion substantial conformance with the requirements of the Scope of Service of this Agreement has been achieved. The acceptability of any Instruments of Service submitted to **County** shall be determined by **County** within fourteen (14) days of such submittal and **County** shall notify **Engineer** in writing within such 14-day period if such work product has been found to be acceptable.

- C. If the submission is acceptable, **County** shall notify **Engineer**, in writing within fourteen (14) days of the submission, that the submission is acceptable.
- D. If the submission is deemed not acceptable, **County** shall notify **Engineer**, who shall perform such Professional Engineering Services as are required to make the Instruments of Service in conformance with the Scope of Services and resubmit it to **County**. This process shall be repeated until a submission is deemed acceptable.
- E. **County** shall review the Instruments of Service for conformance with the Scope of Services. If necessary, the Instruments of Service shall be returned to **Engineer**, who shall perform any required Professional Engineering Services and resubmit it to **County**. This process shall be repeated until the Instruments of Service is accepted.
- F. After acceptance, **Engineer** shall perform any required modifications, changes, alterations, corrections, and additional work necessary to receive final approval by the **County Designee**. "Approval" in this sense shall mean formal recognition that the Scope of Services have been fully performed and submitted in conformance with Exhibit IX.
- G. After approval of final Instruments of Service, **Engineer** shall without additional compensation perform any Professional Engineering Service required as a result of **Engineer's** development of the Instruments of Service which is found to be in error or omission due to **Engineer's** negligence. However, any Professional Engineering Services required or occasioned for the convenience of **County** after approval of a final Instruments of Service shall be paid for as Additional Services.
- H. In the event of any dispute over the classification of **Engineer's** Instruments of Service as conforming, accepted, or approved under this Agreement, the decision of the **County Designee** shall be final and binding on **Engineer**, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

## **Section VII**

### **Revision to Instruments of Service**

**Engineer** shall make, without expense to **County**, such revisions to the Instruments of Service as may be required to correct negligent acts, errors or omissions that result from **Engineer's** Scope of Service herein so the Instruments of Service meets the Quality Assurance Plan, but after the approval of the Instruments of Service any revisions, additions, or other modifications made at **County's** request which involve extra services and expenses

to **Engineer** shall entitle **Engineer** to additional compensation for such extra services and expenses, provided however, that **Engineer** agrees to perform any necessary corrections to the Instruments of Service, which are found to be negligent acts, error or omission as a result of the **Engineer's** development of the Instruments of Service, at any time, without additional compensation. Nothing in this Section or any other provision of this Agreement shall require **Engineer** to make any revisions or changes to the PS&E developed and provided by **Designer** except as necessary to comply with the desired *Scope of Services* as detailed in Exhibit IX related to performance of duties necessary to comply with Part III Section E of the Texas Pollution Discharge Elimination System (TPDES) permit TXR150000. The **Engineer** shall be considered "engaged", as described in Section 137.33 of the Texas Engineering Practice Act and Rules Concerning The Practice of Engineering and Professional Engineering Licensure, upon execution of this Agreement by all parties. In the event of any dispute over the classification of **Engineer's** services as Basic or Additional Services under this Agreement, the decision of the **County Designee** shall be final and binding on **Engineer**, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

### Section VIII Engineer's Responsibility and Liability

- A. **Engineer** covenants to undertake no task in which a professional license or certificate is required unless it or someone under its direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, **Engineer** shall inform **County** of such event within five working days.
- B. **Engineer** shall be responsible for conformance with applicable federal and state laws, county permitting requirements, and city ordinances currently in effect, except as otherwise directed by the **County Designee** regarding county permitting or similar requirements, applicable to the Scope of Services described Exhibit IX to this Agreement, properly waivable by the **County Designee**.
- C. **ENGINEER SHALL INDEMNIFY, AND HOLD HARMLESS COUNTY, ITS OFFICIALS AND EMPLOYEES FROM AND AGAINST ALL SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF ENGINEER OR ANY OF ITS SUBCONSULTANTS IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT; PROVIDED, HOWEVER, ENGINEER SHALL NOT BE RESPONSIBLE FOR THE NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF ANY OTHER PARTY, OTHER THAN ITSELF OR THAT OF ITS SUBCONSULTANTS AND FOR A SUBCONSULTANT ONLY AS A DIRECT RESULT OF NEGLETENT ACTS, ERRORS, OR OMISSIONS WHILE PERFORMING PROFESSIONAL SERVICES PURSUANT TO THE SCOPE OF THIS AGREEMENT.**

- D. **Engineer's** opinions of probable **Project** cost or construction cost represent **Engineer's** professional judgment as a professional familiar with the construction industry, but **Engineer** does not guarantee that proposals, bids, or the construction cost, itself, will not vary from **Engineer's** opinions of probable cost and shall not be responsible for proposals, bids, or the construction costs, should they vary from **Engineer's** opinions of probable costs.
- E. **Engineer** shall perform all services and responsibilities required of **Engineer** under this Agreement using at least that standard of care which a reasonably prudent engineer in Texas, who is licensed by the State Board of Engineers or the State Board of Registered Professional Surveyors, as applicable, would use in similar circumstances.
- F. **Engineer** represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for performance of the services required under this Agreement and that **Engineer** shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the reasonable opinion of **County**, to perform the services when and as required and without delays. It is understood that **County** will approve assignment and release of all key **Engineer** and professional personnel.
- G. All employees of **Engineer** shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of **Engineer**, who in the opinion of **County** is incompetent or whose conduct becomes detrimental to the work or coordination with **County**, shall upon **County's** and/or **County Designee's** request be immediately removed from association with the **Project**.
- H. **Engineer** shall furnish all equipment, transportation, supplies, and materials required for its performance of the Professional Engineering Services as set forth in the Scope of Services attached as Exhibit IX to this Agreement.
- I. **Engineer** shall place its Texas Professional Engineer's seal of endorsement on all documents of Instruments of Service furnished to **County**, as required by law.
- J. **Engineer** is an independent contractor under this Agreement. Neither it nor any officer, agent or employee of **Engineer** shall be classified as an employee of **County**.
- K. **Safety.** The **Engineer** shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the Project construction, for the acts or omissions of the contractor, subcontractors, any of their agents or the subcontractors' employees, or any other person performing any of the work or for the failure of such persons to carry out the work in accordance with the contract documents; provided however, the **Engineer** shall not be relieved from its obligation to notify the County or any other applicable authority of any unsafe condition resulting from an act, omission or failure on the part of the construction if **Engineer** becomes aware of such an unsafe condition in the normal course of providing its Scope of Services or as otherwise required by the **Engineer's** professional duties as prescribed by the Rules of Professional Practice promulgated by the Texas Board of Professional Engineers.

No provision of this Agreement requires **Engineer** to make exhaustive inspections of the contractor's work under the construction contract for the **Project**. **Engineer's** inspections, observations, and documentation of construction activities and work is to confirm the construction's conformance with the PS&E and acceptable engineering standards and practices.

The County shall enter into a third party contract for the construction of the project. The contract between the County and the contractor shall require the contractor to indemnify the **Engineer** and name the **Engineer** as additional insured under contractor's commercial general liability, builder's risk, and umbrella liability coverage for the insured liabilities assumed by the contractor. The contractor's insurance coverage shall be primary insurance for the insured liabilities under the Agreement with respect to the contractor, its officers, directors, agents and consultants including the **Engineer**.

The construction contractor retained by the County has sole responsibility for providing materials, means, and methods of construction, for controlling the individual work area and safety of said areas for all parties.

The **Engineer** shall be responsible for taking all appropriate steps to ensure the safety of its employees in connection with its performance of the services provided under this agreement.

## Section IX Ownership of Documents

- A. Any and all Instruments of Service, including the original drawings, estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by **Engineer** are the property of **County** and upon completion of the work or termination of this Agreement or as otherwise instructed by **County** and/or **County Designee**, shall be delivered to **County** in an organized fashion with **Engineer** retaining a copy.
- B. Any reuse by **Engineer** of any such documents described in subsection A above, without the specific written consent of **County** shall be at **Engineer's** sole risk and without liability or legal exposure to **County**. Should **Engineer** be terminated, **Engineer** shall not be liable for **County's** use of partially completed Instruments of Service on this **Project** or any other project, except to the extent such Instruments of Service were deemed complete or otherwise "Accepted" or "Approved" as provided herein by **Engineer**, or Surveyor, as applicable, as specified by professional standards.
- C. **Engineer** will not be responsible for any use or any modifications to the Instruments of Service described in subsection A performed by any entity without the specific written consent of **Engineer**. Any modification by an entity or individual other than the **Engineer** as described in this paragraph shall be made in accordance with all applicable professional standards and shall necessitate the removal of the **Engineer's** Texas Professional Engineer's seal of endorsement from all such modified documents.

**Section X**  
**Maintenance of and Right of Access to Records**

- A. **Engineer** agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the **Project** for a period of three (3) years after final payment for completed services and all other pending matters concerning this Agreement have been closed.
- B. **Engineer** further agrees that **County** or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of **Engineer**, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. **Engineer** agrees that **County** shall have access during normal working hours to all necessary **Engineer** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. **County** shall give **Engineer** reasonable advance notice of intended audits.
- C. **Engineer** further agrees to include in all its sub-consultant agreements hereunder a provision to the effect that the sub-consultant agrees that **County** shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such sub-consultant, involving transactions to the subcontract, and further, that **County** shall have access during normal working hours to all sub-consultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (D) hereof. **County** shall give sub-consultant reasonable advance notice of intended audits.
- D. **Engineer** and sub-consultant agree to photocopy such documents as may be requested by **County**. **County** agrees to reimburse **Engineer** for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed. **County** also agrees to compensate **Engineer** for services performed pursuant to this Section as requested by **County**, or by a third-party pursuant to a validly determined Texas Public Information Act request. For any such services, **Engineer** shall receive the additional services compensation described in Exhibit IV, which is attached hereto and made a part hereof.

**Section XI**  
**Miscellaneous**

- A. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and

construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

- B. ***Venue and Governing Law.*** It is contemplated that this Agreement shall be performed in Hays County, Texas, and the venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Hays County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- C. ***Equal Opportunity in Employment.*** *Engineer* agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit VII, which is attached hereto and made a part hereof.
- D. ***Certificate of Engineer.*** *Engineer* certifies that neither *Engineer* nor any members of *Engineer's* firm has:
- (1) Employed or retained for a commission, percentage, brokerage, contingency fee, or other consideration, any firm or person (other than a bona fide employee working solely for *Engineer*) to solicit or secure the work provided by the Agreement.
  - (2) Agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person other than in connection with carrying out the work to be performed under this Agreement.
  - (3) Paid or agreed to pay to any firm, organization, or person (other than bona fide employees working solely for *Engineer*) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the work provided under this Agreement.

*Engineer* further agrees that this certification may be furnished to any local, state or federal governmental agencies in connection with this Agreement and for those portions of the ***Project*** involving participation of agency grant funds and is subject to all applicable state and federal, criminal and civil laws.

- E. ***Notice.*** Any notice to be given hereunder shall be in writing and may be affected by personal delivery in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

ENGINEER: Brown & Gay Engineers, Inc.  
7000 North Mopac, Ste.330  
Austin, Texas 78731  
Attn: Wesley E. Jasek, P.E.

COUNTY: Hays County Judge  
111 E. San Antonio Street  
Suite 300  
San Marcos, Texas 78666



Attn: Judge Bert Cobb, M.D. (or successor)

with copy to: Hays County District Attorney – Civil Division Chief  
111 E. San Antonio Street, Suite 204  
San Marcos, Texas 78666  
Attn: Mark Kennedy (or successor)

and to: Prime Strategies, Inc.  
1508 South Lamar Blvd.  
Austin, Texas 78704  
Attn: Michael Weaver

and to: [Hays County Designee]  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

- F. **Insurance Requirements.** *Engineer* agrees during the performance of the services under this Agreement to comply with the INSURANCE REQUIREMENTS provisions described in Exhibit VIII, which is attached hereto and made a part hereof.
- G. **Property Taxes.** Notwithstanding anything to the contrary herein, to the extent *County* becomes aware that *Engineer* is delinquent in the payment of property taxes related to property located in Hays County at the time of invoicing, *Engineer* hereby assigns any payments to be made for services rendered hereunder to the Hays County Tax Assessor-Collector for the payment of said delinquent taxes. Notwithstanding the above, *County* shall not have an affirmative duty to determine if *Engineer* is delinquent in the payment of property taxes.
- H. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of *County* and *Engineer* and their respective successors, executors, administrators, and assigns. Neither *County* nor *Engineer* may assign, sublet, or transfer his interest in or obligations under this Agreement without the written consent of the other party hereto.
- I. **Bidding Exemption.** This Agreement is exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a contract for professional services.
- J. **Taxpayer Identification.** *Engineer* shall provide to *County Designee* upon submittal of *Engineer's* initial invoice requesting payment Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations.
- K. **Compliance with Laws.** *Engineer* shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or

administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, the **Engineer** shall furnish the **County** with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

- L. **Reports of Accidents.** Within 24 hours after **Engineer** becomes aware of the occurrence of any accident or other event on or relating to the Project which results in, or might result in, injury to the person or property of any third person (other than an employee of the **Engineer**), whether or not it results from or involves any action or failure to act by the **Engineer** or any employee or agent of the **Engineer** and which arises in any manner from the performance of this Agreement, the **Engineer** shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The **Engineer** shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the **Engineer**, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the **Engineer's** performance of work under this Agreement.
- M. **Definition of Engineer.** The term "**Engineer**" as used herein is defined as including Registered Professional Surveyors, as applicable to the work to be performed under this Agreement, and any reference to professional standards in regards to a Registered Professional Surveyor shall relate to those standards promulgated by the State Board of Registered Professional Surveyors.
- N. **Gender, Number and Headings.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.
- O. **Incorporation of Exhibits.** All of the Exhibits referred to in the Agreement are incorporated by reference as if set forth verbatim herein.
- P. **Entity Status.** By my signature below, I certify that **Engineer** is a Corporation, duly authorized to transact and do business in the State of Texas.
- Q. **Construction.** Each party hereto acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.
- R. **Independent Contractor Relationship.** Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

- S. **No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to **County**, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. **County** does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- T. **Interest and Late Payments.** **County's** payment for the Professional Engineering Services shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by **County** within thirty (30) days from the date of the Hays County Auditor's receipt of an invoice. Interest charges for any late payments shall be paid by **County** in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of **County's** fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, **County** shall notify the party requesting payment of such an invoice of the discrepancy. Following **County's** notification of any discrepancy as to an invoice, the party requesting payment must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Hays County Auditor. **County** shall pay the invoice within thirty (30) days from the date of the Hays County Auditor's receipt of the corrected or revised invoice. **County's** payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31<sup>st</sup>) day following the Hays County Auditor's receipt of the corrected or revised invoice.
- U. **Texas Public Information Act.** To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that **County**, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to **County** as to whether or not the same are available to the public. It is further understood that **County's** officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that **County**, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to **County** by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.
- V. **Acknowledgement.** As a duly authorized representative of **Engineer**, I acknowledge by my signature below that I have read and understand the above paragraphs and that **Engineer** has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.

- W. **Governing Terms and Conditions.** If there is an irreconcilable conflict between the terms and conditions set forth in Sections I. through XI. of this Agreement and the terms and conditions set forth in any Exhibit to this Agreement, the terms and conditions set forth in Sections I. through XI. of this Agreement shall control over the terms and conditions set forth in any Exhibit to this Agreement.
- X. **Entire Agreement.** This Agreement represents the entire and integrated Agreement between **County** and **Engineer** and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both **County** and **Engineer**. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COUNTY COMMISSIONERS COURT.
- Y. **No Third-Party Beneficiaries.** No provision of this Agreement shall be construed to establish a cause of action in favor of any party other than the parties hereto. It is the express intention of the **County** and the **Engineer** that there be no third-party beneficiaries to this Agreement.
- Z. **Waiver of Consequential Damages.** **County** and **Engineer** agree to waive recovery of any consequential damages which arise as a proximate result of a breach of this Agreement.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

THE ENGINEER:

Brown & Gay Engineers, Inc.

BY: \_\_\_\_\_

Printed Name: Wesley E. Jasek, P.E.

Title: Senior Project Manager

THE COUNTY:

HAYS COUNTY:

BY: \_\_\_\_\_

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

Hays County Judge

Reviewed as to Form By:

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
County Auditor

## EXHIBIT I

### COMPENSATION FOR PROFESSIONAL ENGINEERING SERVICES

#### ACTUAL COST OF SERVICES METHOD

[Note: A separate Compensation Agreement will be attached for Compensation on a Work-Order Basis]

#### SECTION 1 - BASIS FOR COMPENSATION

- 1.1 The not-to-be-exceeded fee for the performance of the Scope of Services described in the Agreement shall be the sum of \$ 693,346.00.
- 1.2 The basis of compensation for the services of principals and employees engaged in the performance of the work shall be the hourly rates set forth in attached Exhibit III.
- 1.3 *Engineer* shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Agreement at the *Engineer's* invoice cost.

#### SECTION 2 - NOT-TO-BE-EXCEEDED FEE

- 2.1 *Engineer* and *County* acknowledge the fact that the not-to-be-exceeded fee is the total estimated costs of services to be rendered under this Agreement. This not-to-be-exceeded fee is based upon the labor and non-labor costs set forth in Exhibit III to this Agreement and described above, estimated to be required in the performance of the various phases of work provided for under this Agreement. Should the actual costs of the services rendered under this Agreement be less than such estimated cost, then *Engineer* shall receive compensation for only those services actually rendered.

#### SECTION 3 – WORK AUTHORIZATIONS

- 3.1 *County* will prepare and issue Work Authorizations, in the form identified and attached hereto as Exhibit II to authorize the *Engineer* to perform one or more tasks. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, and a fee amount agreed upon by the *County* and *Engineer*. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the *Engineer's* responsibilities and obligations established in this Agreement. The executed Work Authorizations shall become part of this Agreement.
- 3.2 Work included in a Work Authorization shall not begin until *County* and *Engineer* have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization. The *Engineer* shall promptly notify the *County* of any event which will affect completion of the Work Authorization, although such notification shall not relieve the *Engineer* from costs or liabilities resulting from delays in completion of

the Work Authorization. Any changes in the Work Authorization shall be enacted by a written Supplemental Work Authorization before additional work may be performed or additional costs incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization. The **Engineer** shall not perform any proposed work or incur any additional costs prior to the execution, by both parties, of a Supplemental Work Authorization.

#### **SECTION 4 - ADDITIONAL SERVICES**

- 4.1 For additional services, compensation shall be negotiated in accordance with Exhibit IV.
- 4.2 **Engineer** shall be compensated for extra services not included in the Scope of Services described in the Agreement on the basis specified in Exhibit IV; however, **Engineer** shall not be compensated for work made necessary by **Engineer's** negligent acts, errors or omissions.
- 4.3 The maximum amount payable under this Agreement without modification (the "**Compensation Cap**") is \$ 800,000.00, provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the **Compensation Cap**.

#### **SECTION 5 – REQUIRED SUPPORTING DOCUMENTATION**

- 5.1 Upon submittal of the initial invoice for service, **Engineer** shall provide **County Designee** with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.
- 5.2 All invoices submitted to **County Designee** will be accompanied by an original, complete packet of supporting documentation. Invoices should detail hours worked by staff person, with a description of the work performed by individuals. .
- 5.3 For additional services performed pursuant to Section III B of this Agreement, a separate invoice or itemization of this work will be presented with the same requirements for supporting documentation as in Section 5.2 of this Exhibit.
- 5.4 Invoices requesting reimbursement for expenditures related to the project (reimbursables) must be accompanied by copies of the provider's invoice which was previously paid by **Engineer**.

**EXHIBIT II**

**WORK AUTHORIZATION NO. 1**

This Work Authorization is made pursuant to the terms and conditions of the Agreement entered into by and between Hays County, Texas, a political subdivision of the State of Texas, (*the "County"*) and Brown & Gay Engineers, Inc. (*the "Engineer"*).

**Part 1.** The *Engineer* will provide the following engineering services:

Professional Engineering Services for the inspection of the construction phase of the project known as FM 110 (*the "Project"*).

**Part 2.** The maximum amount payable for services under this Work Authorization without modification is \$ 693,346.00.

**Part 3.** Payment to the *Engineer* for the services established under this Work Authorization shall be made in accordance with the Agreement.

**Part 4.** This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on September 30, 2013, unless extended by a Supplemental Work Authorization.

**Part 5.** This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

**Part 6.** This Work Authorization is hereby accepted and acknowledged below.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

ENGINEER:  
Brown & Gay Engineers, Inc.

COUNTY:  
Hays County, Texas

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Wesley E. Jasek, P.E.  
Printed Name

Debbie Gonzales Ingalsbe  
Printed Name

Senior Project Manager  
Title

Hays County Commissioner, Precinct 1  
Title

**EXHIBIT III**

<b><u>PRIME</u></b>	<b><u>Position</u></b>	<b>Hourly Rates</b>	
		<b><u>On-Site</u></b>	<b><u>Off-Site</u></b>
		<b>Brown &amp; Gay Engineers, Inc. (BGE)</b>	
1.	Resident Engineer		\$200.46 / hr.
2.	Project Engineer	\$ / hr.	\$141.50 / hr.
3.	Senior Inspector	\$93.48 / hr.	\$ / hr.
4.	Field Inspector	\$66.77 / hr.	\$ / hr.
5.	Senior Scheduler	\$ / hr.	\$162.14 / hr.
6.	Records Keeper	\$ / hr.	\$79.60 / hr.
7.	Utility Coordinator		\$126.76 / hr.
8.	Utility Inspector	\$66.77 / hr.	
9.	Environmental Specialist		\$162.14 / hr.
10.	Electrician	\$93.48 / hr.	
11.	Office Engineer		\$126.76 / hr.

**SUBCONTRACTOR 1****PaveTex Engineering & Testing, Inc. (PTET)**

1.	Sr. Inspector/Materials Tech.	\$75.08 / hr.
2.	Inspector	\$60.06 / hr.
3.	Junior Inspector	\$50.05 / hr.

**SUBCONTRACTOR 2****Byrn & Associates (BAI)**

1.	Project Manager	\$130 / hr.
2.	Surveyor (RPLS)	\$126.50 / hr.
3.	Survey Tech	\$75.08 / hr.
4.	2-Person Crew	\$125 / hr.
5.	1-Person Crew	\$90 / hr.
6.	Clerk	\$55 / hr.

**MATERIAL TESTING****1. Field Technician (2 hr. minimum)**

1.1	Junior Soil Technician	\$40 / hr
1.2	Senior Technician (Soils or Concrete)	\$50 / hr
1.3	Concrete Technician (ACI Grade I)	\$48 / hr
1.4	Asphalt Technician	
	1.4.1 TxDOT Certified Technician (Level IA and IB)	\$48 / hr
	1.4.2 TxDOT Certified Technician (Level II)	\$65 / hr



**EXHIBIT III****2. Field Testing Equipment (2 hr. minimum, technician time not included)**

2.1 Vehicle	\$ .50 / mile
2.2 Concrete/Asphalt Coring Equipment	\$ / hr
2.2.1 Core Bit Charges	
2.2.1.1 3 inch diameter core	\$ / inch
2.2.1.2 4 inch diameter core (HMAC)	\$80 / inch
2.2.1.3 6 inch diameter core (concrete)	\$120 / inch

**3. Testing of Soils and Base Materials**

3.1 Sampling	\$100 / hr
3.2 Field Nuclear Density (TEX-115-E)	\$30 / ea
3.3 Sample Preparation (TEX-101-E)	\$50 / ea
3.4 Natural Moisture Content (TEX-103-E)	\$10 / ea
3.5 Sieve Analysis (TEX-110-E)	\$75 / ea
3.6 Atterberg Limits (Liquid and Plastic Limits) (TEX-104-E, TEX-105-E, TEX-106-E)	\$55 / ea
3.7 Percent Passing No. 200 Sieve (TEX-111-E)	\$75 / ea
3.8 Bar Linear Shrinkage of Soils (TEX-107-E) if required by spec	\$55 / ea
3.9 Moisture Density Relationship (TEX-113-E) Compaction Test	\$200 / ea
3.10 Moisture Density Relationship (TEX-114-E, Part I) Compaction Test	\$175 / ea
3.11 Moisture Density Relationship (TEX-114-E, Part II) Compaction Test	\$175 / ea
3.12 Texas Triaxial Compression Test on Base Material TEX-117-E, Part II;	\$2000
Including the following:	
3.13 Molding, Curing, and Testing 8 Specimens	\$1410 / ea
3.3 Sample Preparation (TEX-101-E)	\$50 / ea
3.5 Sieve Analysis (TEX-110-E)	\$75 / ea
3.6 Atterberg Limits (Liquid and Plastic Limits) (TEX-104-E, TEX-105-E, TEX-106-E)	\$55 / ea
3.8 Bar Linear Shrinkage of Soils (TEX-107-E)	\$55 / ea
3.9 Moisture Density Relationship (TEX-113-E) Compaction Test	\$200 / ea
3.14 Wet Ball Mill (TEX-116-E)	\$210 / ea
3.15 Soil Specific Gravity (TEX-108-E)	\$100 / ea
3.16 Soil Lime Compression Test (TEX-121-E)	\$1100 / ea
3.17 Resistivity of Soils (TEX-129-E)	\$300 / ea
3.18 Lime Series Curve (TEX-112-E)	\$300 / point
3.19 pH of Soil (TEX-128-E)	\$75 / ea

**EXHIBIT III****4. Testing of Concrete**

4.1 Sampling	\$45 / hr
4.2 Aggregate Gradation Analysis (TEX-401-A)	\$75 / ea
4.3 Specific Gravity of Aggregate (TEX-403-A) (Includes Absorption)	\$75 / ea
4.4 Unit Weight of Aggregate	\$75 / ea
4.5 Abrasion Test (TEX-410-A)	\$250 / ea
4.6 Decantation (TEX-406-A)	\$75 / ea
4.7 Organic Impurities (TEX-408-A)	\$80 / ea
4.8 Soundness, Sodium, or Magnesium (TEX-411-A)	\$50 / cyc
4.9 Concrete Cylinder Compressive Strength (TEX-418-A)	\$17 / ea
4.10 Beam Flexural Strength (TEX-420-A or TEX-448-A)	\$45 / ea
4.11 Coarse Aggregate Angularity (Superpave)	\$30 / ea
4.12 Fine Aggregate Angularity (Superpave)	\$55 / ea
4.13 Flat, Elongated Particles (TEX-224-F)	\$100 / ea
4.14 Deleterious Materials (Clay Lumps/Friable Part I) (TEX-413-A)	\$100 / ea
4.15 Sand Equivalent (Clay Content) (TEX-203-A)	\$60 / ea

**5. Testing of HMAC (Testing Performed at OVR Lab)**

5.1 Sampling	\$48 / hr
5.2 Specimen Molding, Bulk Density (3 per set)	\$80 / ea
5.3 Gradation and Asphalt Content (TEX-236-F)	\$160 / ea
5.4 Maximum Theoretical Specific Gravity, Rice Method (TEX-227-F)	\$60 / ea
5.5 Specific Gravity, Bulk	\$40 / ea
5.6 Sand Equivalent (TEX-203-F)	\$60 / ea

**6. Engineering Consultation**

6.1 Senior Consultant/Project Principal	\$150 / hr
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Note: Fees subject to 3% escalation on January 1st of each year starting January 1, 2013.

- » Minimum call-out charge for technician and equipment is 2 hours. Charges are accrued portal to portal. Technician time over 2 hours shall be documented on the daily report.
- » Transportation charges are applicable for all field testing assignments including sample pick up.

**EXHIBIT IV**

**COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES**

1. The fees described in Exhibits I and II to this Agreement shall provide compensation to ***Engineer*** for the Professional Engineering Services described in the Basic Scope of Services of the Agreement.
2. For the performance of work not described in the Basic Scope of Services of the Agreement, ***County*** shall pay and ***Engineer*** shall receive, under a negotiated contract modification, compensation based upon the method and rates set forth in Exhibits I and II to the Agreement.
3. The performance of any additional services must be authorized in writing in advance by the ***County Designee***.
4. In the event of any dispute over the classification of ***Engineer's*** services as either basic or additional services, the decision of the ***County Designee*** shall be final and binding.

## **EXHIBIT V**

**SERVICES TO BE PROVIDED BY COUNTY** The County will assist the Engineer by providing assistance, service, or data items as required to advance the completion of assigned work authorizations.

- Provide existing data files, to include but not limited to:
  - Survey data;
  - Roadway construction plans, design documents for the construction of *the Project*;
  - Right-of-Way mapping;
- Approved environmental documents.
- Applicable special specifications, special provisions, and unit price bid tabulation.

Provide timely review, comment or direction, as required, to aid the Engineer in completing an assigned task or maintaining the established project schedule. The County will provide, through contract with the contractor responsible for construction of *the Project*, the *Engineer* with:

- Field Office, Type B in accordance with Item 504 of TxDOT 2004 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges including:
  - Coordinate with all impacted utility companies.
  - Minimum of 3 desks, six chairs, two filing cabinets, a conference table, a minimum of 2 closets, and a storage cabinet.
  - Combination Color printer, Copy machine, and facsimile machine no older than two years old in the field office.
  - Four telephone lines.
  - Provide DSL or better internet service.
  - 120/240 volt electrical service consisting of a minimum of four 120 volt circuits with 20 amp breakers and no more than two grounded convenience outlets per circuit. Provide a minimum of 2 double convenience outlets per room inside the structure.
  - Support and tie down the portable structures for stability.
  - Provide a permanent, fully equipped, indoor restroom, with toilet and running water.
  - Provide monthly drinking water service.
  - Provide cleaning services as needed, but at least once a week. Provide sweeping and mopping of floors, cleaning the toilet and lavatory, and emptying wastebaskets.

**EXHIBIT VI**

**PROCEDURES FOR TERMINATION OR SUSPENSION**

Procedures for **Engineer** to follow upon receipt of Notice of Termination:

1. Upon receipt of a Notice of Termination and prior to the effective date of the termination, **Engineer** shall, unless the Notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of the Notice of Termination, **Engineer** shall submit a statement, showing in detail the services performed under this Agreement prior to the effective date of termination.
2. Copies of all Instruments of Service prepared under this Agreement prior to the effective date of termination shall be delivered to **County** as a pre-condition to final payment. The foregoing language notwithstanding, **County** and **Engineer** agree that **Engineer**, in its sole discretion, will be allowed to sign and seal such Instruments of Service, or place any other appropriate comment on the Instruments of Service, as appropriate for the phase of preparation of the Instruments of Service as more fully set out in Section 137.33 of the Texas Board of Professional Engineer's Rules Concerning the Practice of Engineering, effective as of the date of delivery of the Instruments of Service.
3. Upon the above conditions being met, **County** shall pay **Engineer** for approved services actually performed under this Agreement, less previous payments.
4. Failure by **Engineer** to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by **Engineer** of any and all rights or claims to collect the fee that **Engineer** may rightfully be entitled to for services performed under this Agreement.

Procedures for **Engineer** to follow upon receipt of Notice of Suspension:

1. Upon receipt of a Notice of Suspension and prior to the effective date of the suspension, **Engineer** shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall prepare a statement detailing the services performed under this Agreement prior to the effective date of suspension. Copies of all completed or partially completed Instruments of Service prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to **County**, but shall be retained by **Engineer** unless requested by **County**.
2. During the period of suspension, **Engineer** may submit the above-referenced statement to **County** for payment of the approved services actually performed under this Agreement, less previous payments.

Procedures for **Engineer** to follow upon exercise of right to terminate for substantial failure of **County** to perform:

1. In the event that **Engineer** exercises such right to terminate, within thirty (30) days after receipt by **County** of **Engineer's** Notice of Termination, **Engineer** shall submit a statement detailing the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed Instruments of Service shall be delivered to **County** as a pre-condition to final payment. Upon the above conditions being met, **County** shall pay **Engineer** for approved services actually performed under this Agreement, less previous payments. . The foregoing language notwithstanding, **County** and **Engineer** agree that **Engineer**, in its sole discretion, will be allowed to sign and seal such Instruments of Service, or place any other appropriate comment on the Instruments of Service, as appropriate for the phase of preparation of the Instruments of Service as more fully set out in Section 137.33 of the Texas Board of Professional Engineer's Rules Concerning the Practice of Engineering, effective as of the date of delivery of the Instruments of Service.
3. Failure by **Engineer** to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by **Engineer** of any and all rights or claims to collect the fee that **Engineer** may rightfully be entitled to for services performed under this Agreement.

**EXHIBIT VII**

**EQUAL OPPORTUNITY IN EMPLOYMENT**

- A. **Engineer** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. **Engineer** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. **Engineer** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- B. **Engineer** will, in all solicitations or advertisements for employees placed by or on behalf of **Engineer**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. **Engineer** will send to the labor union representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of **Engineer's** obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. **Engineer** will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23 CFR 710.405) and all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) and of the rules, regulations and relevant order of the Secretary of Labor. In the event that federal financial assistance is provided for the **Project**, **Engineer** shall comply with 49 CFR 26, TxDOT's Disadvantaged Business Enterprises Program and any Memorandum of Understanding between the **County** and TxDOT pertaining to such Disadvantaged Business Enterprise Program.
- E. **Engineer** will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto; and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of **Engineer's** non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and **Engineer** may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. **Engineer** will include the provisions of paragraph (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60), so that such provisions will be binding upon each subcontractor or vendor. **Engineer** will take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance: provided, however, that in the event **Engineer** becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by **County** or Federal Agency, **Engineer** may request **County** and United States to enter into such litigation to protect the interest of the United States.



**EXHIBIT VIII**  
**INSURANCE REQUIREMENTS**

During the life of this Agreement, **Engineer** agrees to provide and maintain the following insurance:

- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1 million per occurrence and \$2 million in the aggregate, including coverage on same for independent subcontractor(s). HAYS COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$1 million per occurrence and \$2 million in the aggregate. **Engineer** shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$1 million.
- E. In the event **Engineer** is self-insured in connection with any or all of the above-required insurance policies, **Engineer** shall submit proof of such self-insurance and all financial statements as reasonably required by the **County** in order to determine the acceptability of such self-insurance.

**Engineer** shall not commence any field work under this Agreement until he has obtained all required insurance and such insurance or self-insurance has been approved by **County**. **Engineer** shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved. Approval of the insurance by **County** shall not relieve or decrease the liability of **Engineer** hereunder.

The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. **Engineer** shall furnish **County** with a certification of coverage issued by the insurer. **Engineer** shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES REQUIRED PURSUANT TO PARAGRAPH B, ABOVE, SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

It is the intention of the **County** and the **County Designee**, and agreed to and hereby acknowledged by the **Engineer**, that no provision of this Professional Services Agreement shall be construed to require the **County** or the **County Designee** to submit to mandatory arbitration or mediation in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required under this Exhibit which absolutely requires arbitration or mediation of such claim, or as otherwise required by law or a court of law with jurisdiction over the provisions of this Agreement.

**EXHIBIT IX**  
**SCOPE OF SERVICES**  
**FOR PROFESSIONAL ENGINEERING SERVICES**

THE FOLLOWING SCOPE OF SERVICES IS INTENDED TO BE CONSISTENT WITH THE HAYS COUNTY PROFESSIONAL SERVICES AGREEMENT. TO THE EXTENT THE SCOPE IS INCONSISTENT WITH THE PROFESSIONAL SERVICES AGREEMENT, THE PROFESSIONAL SERVICES AGREEMENT WILL SUPERSEDE THE SCOPE AND WILL BE CONTROLLING.

THE ENGINEER SHALL PROVIDE EXPERT TESTIMONY IN ANY ADMINISTRATIVE OR COURT PROCEEDINGS THROUGH AN APPROPRIATE ENGINEERING PROFESSIONAL TO BE DETERMINED MUTUALLY BY COUNTY AND ENGINEER AS ADDITIONAL SERVICES AT THE RATE OF COMPENSATION SET FORTH IN EXHIBIT IV AND IN A MANNER CONSISTENT WITH THE TEXAS BOARD OF PROFESSIONAL ENGINEER'S RULES CONCERNING THE PRACTICE OF ENGINEERING, EFFECTIVE AS OF THE RELEVANT DATE.

The *Engineer* will provide Professional Engineering Services for the *Project*, as set forth below.

**I. PROJECT DESCRIPTION**

This project involves the construction of approximately 1.167 miles of FM 110 from McCarty Lane to just east of SH 123. The majority of the project provides for a 4 lane divided roadway. The proposed section at McCarty Lane includes a five-lane configuration with a continuous left turn lane separating the two lanes in each direction. The project includes constructing the entrance and exit ramps and the proposed widening and turnarounds of the ultimate configuration at SH 123. Construction elements consist of grading, lime treat subgrade, flex base, retaining walls, culverts, storm sewer and inlets, concrete curb and gutter, asphalt pavement, illumination, signing, pavement markings and markers, TCP, and SW3P.

**II. SERVICES TO BE PROVIDED BY THE ENGINEER**

The Services provided under this Agreement shall include coordination, reporting, liaison, inspection, testing, claims avoidance, problem-mitigating, quality assurance, and TxDOT / FHWA compliance for the construction of the Project by contactors separately employed by the County. The basic overall service to be delivered by the Engineer is to ensure the timely completion of the construction of the Project in conformance with the plans and specifications issued by the County, including, but not limited to, verifying that construction materials conform to Project specifications and are properly incorporated into the Project as required by the Project specifications. Safety of the public and the workers, construction and construction management cost control, dispute resolution and mitigation, and TxDOT/FHWA compliance are all important components of the daily construction management services and activities.

The Engineer shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction.

The Engineer is considered to be an extension of the staff of the County and shall be subject to oversight, monitoring, and direction of the County. The Engineer shall ensure the Project is constructed in conformance to all federal, state, and applicable local environmental laws, regulations, and commitments entered into by the County. The Services shall include but, shall not necessarily be limited, to the following:

**A. Review of Documents and Information**

**1. Review of County-furnished Documents**

The Engineer shall review and evaluate County-furnished documents provided under this Agreement. As part of that review effort, the Engineer shall meet with the County staff, as necessary, to obtain an understanding of the contents of the County-furnished documents. The Engineer shall identify in writing any additional information that may be required.

The Engineer shall perform a constructability review of the construction plans and provide written comments of items that warrant additional consideration.

The County-furnished documents shall include, as a minimum, the following:

- All project plans and specifications prepared by design engineers retained by the County.
- All applicable County design manuals.
- Final Environmental Impact Statement, Record of Decision, approved Reevaluation of the Final Environmental Impact Statement, and applicable Phase II Environmental Site Assessments.

**2. Site Familiarization**

The Engineer shall visit the Project site and become familiar with the natural characteristics of the area and the existing information and conditions related to the Project.

**B. Technical Support Services**

The Engineer shall provide technical support systems and services including document control, project cost control, cost estimates, and CPM schedule analysis.

**1. Document Control / Document Control Structure**

Provide a Quality Assurance Plan (QAP) explaining how the Engineer proposes to

manage the contract assignment and the planned interaction with the County's representatives. The QAP Manual shall contain the following Sections describing the Engineer's methods to produce quality in the execution of its services delivered under this Agreement.

- Introduction
- Definitions
- Acronyms
- Quality Assurance Plan
- Organizational Chart
- Management Responsibility
- Contact Information
- Quality Service Realization

The QAP shall contain procedures that shall define how the Engineer will perform in the following areas:

- Control of Documents
- Records Management
- Personnel Training
- Management Review
- Resource Planning
- Request for Information Management
- Construction Contract Change Order Preparation
- Field Monitoring and Inspection
- Material Sampling and Testing

If directed, the Engineer shall utilize TxDOT's Site Manager document control system to assure the appropriate control of documentation and reporting. The purpose of this system is to provide the County and TxDOT with the most accurate and current information in a timely manner, while avoiding the deferral of outstanding issues.

The Engineer shall keep complete and accurate records of documents received and issued by all parties involved in the construction management of the project. Reviews and comments on these documents by the Engineer and others shall also be recorded and distributed to the County.

## **2. Project Information Library**

The Engineer shall create and maintain a Project information library throughout the duration of the project to be delivered to the County at project completion. This library will contain all pertinent Project documentation and will include, but is not be limited to, copies of the following:

- The Agreement
- All records as detailed in the QAP
- All Project related contracts and amendments

- Project Diaries and correspondence
- Current construction plans and specifications
- Construction documents including addenda, change orders, time extensions, supplemental agreements, extra work orders, plans and specification revisions, and “as built” documentation
- Permits
- Contract budgets, estimates and schedules
- Reports of Contractor compliance with DBE and Wage Rate provisions
- Testing and inspection reports, maintained with user friendly access, in a readily retrievable format
- Submittals, RFI’s and shop drawings
- Progressive construction progress payments
- Barricade, TCP, and SW3P Inspections
- Reports and documents as required by TxDOT and FHWA as outlined in the “TxDOT’s Area Engineers and Inspector’s Contract Administration Handbook”
- Other information related to the project

#### **TxDOT / FHWA Compliance**

The Engineer shall maintain all project and inspection records to ensure compliance with TxDOT / FHWA regulations and requirements as outlined in TxDOT’s “Local Government Project Procedures (LGPP) Qualification for the Texas Department of Transportation” Manual. This may contain, but is not be limited to, the following for Contract Administration:

- Americans with Disabilities Act
- Change Orders
- Claims
- Contractor Purchase of Equipment for Local Government
- Convict (Inmate) Labor
- Differing Site Conditions
- Disadvantaged Business Enterprises (DBE), Historically Underutilized Businesses (HUB), and Small Business Enterprises (SBE)
- Environmental Concerns
- Equal Employment Opportunity Contract Provisions; Equal Employment Clauses
- Equipment Rental Rates
- False Statements
- Inspection
- Liquidated Damages
- Non-segregated facilities
- Payrolls
- Prevailing Minimum Wages
- Progress Payments
- Quality Assurance Program

- Retainage
- Records
- Safety Accident Prevention
- Salvage Credits
- Specification Compliance
- Statements and Payrolls
- Subcontracting
- Supervision and Staffing
- Termination of Contract
- Time Extensions
- Warranties and Warranty Clauses

Upon request by the County, the Engineer will review and evaluate the requirements associated with Bid Document Preparation, Letting and Award, and Contract Execution as outlined in TxDOT's "Local Government Project Procedures (LGPP) Qualification for the Texas Department of Transportation" Manual.

### **3. Contract Change Cost Estimating**

The Engineer shall develop independent and detailed estimates of cost for any change orders, extra work orders, or supplemental agreements on the Project.

### **4. Scheduling**

Evaluate and provide recommendations to the County on the approval of the contractor's CPM schedules. Scheduling for the Project shall be performed utilizing Primavera Project Management (P6) software in a manner which is compatible with and complementary of the requirements for Special Provision to Item 8, "Prosecution and Progress" of TxDOT's and the County's construction contracts.

### **5. Monthly Progress Report**

The Engineer shall provide project information to the County and/or County Designee detailing project update information during the first week of each month. This information will contain the following:

- Period covered
- General progress and status of Project construction
- Budget summary/cash flow information
- Schedule review and update
- Any major decision requiring input from the County, or other stakeholders
- Major milestones or other items of particular interest
- Progress photographs
- The format of the Monthly Progress data reporting shall be developed by the Engineer and submitted to the County for approval.

**C. Communication and Coordination**

**1. Public Relations Activities**

The Engineer shall assist the County in public relations activities as requested, including the preparation of Project information and attendance at internal or public meetings for the purpose of providing relevant Project information. Examples of such need would include public relations support related to activities associated with roadway closures or major traffic sequencing events impacting the traveling public and/or adjacent property owners.

**2. Project Coordination**

The Engineer will monitor construction or maintenance activities on other project(s) which may be under construction within the boundaries of or adjacent to the Project. The Engineer shall provide liaison services to promote coordination among the County, TxDOT, municipalities, the utility owners, and the contractors.

**3. Coordination with the Texas Department of Transportation (TxDOT)**

The Engineer shall review and, in conjunction with the County, meet with TxDOT as needed to determine any relevant issues, standard TxDOT forms, documents and reports that may be required in managing the Project.

**4. Permitting**

The Engineer shall assist the County in identifying any permits required for the construction of the Project and shall notify the County in writing of any needs relating to permit acquisition.

The Engineer shall monitor the contractors to ensure that all applicable permits required for the construction are obtained in a timely manner, while also assisting the County on an as requested basis in obtaining additional construction project related permits.

**5. Progress Review and Coordination Meetings**

The Engineer shall meet with the County on a monthly basis. These meetings shall serve as a forum for the exchange of information, coordination of work efforts, identification of critical issues, determination of action plans and schedules for resolving critical issues, schedules and budget considerations and discussion of other issues deemed appropriated by the County Responsible Person. The Engineer shall document these detailed meeting discussions.

**D. Construction Phase Services**

The Engineer will organize and maintain a competent, full-time construction management and inspection staff with clearly defined lines of authority and communication as

necessary to monitor construction activities and ensure contract compliance. During the construction of the Project the Engineer shall:

**1. Preconstruction Meeting**

Attend a preconstruction meeting for the Project.

**2. Construction Contractor Liaison**

Serve as a liaison among the construction contractors working on the Project, Design Engineers, and utilities companies to achieve maximum efficiency and continuity during construction.

**3. Construction Observation Responsibilities**

Provide a professional qualified field organization satisfactory to the County to monitor, test, observe and manage the construction of all elements of the Project in a manner commensurate with current TxDOT / FHWA standards.

**4. Construction Surveying**

Establish horizontal and vertical control in the field with data provided by the County at the onset of construction.

Review data provided by the County, verify the horizontal and vertical control in the field, and compare results to supplied data. Provide compliance/noncompliance report to the County.

Provide a survey crew to perform periodic conformance checks of horizontal and vertical results of constructed facilities on the Project. Provide compliance/noncompliance report to the County.

Perform surveys needed to determine work quantities and assist with change order designs.

**5. Daily Inspection and Reporting**

Maintain on a daily basis a complete and accurate inspection report documenting all activities and events related to the Project and a record of all work undertaken or completed by the contractor including quantities of pay items. Daily reports shall be furnished to the County and/or County Designee weekly, by Monday for work performed the preceding week.

**6. Engineer Diary Requirements**

Maintain detailed project diary for the FM 110 construction project. Diaries shall be furnished to the County at the conclusion of the project.



**7. Material Testing**

Coordinate and perform all material testing on the Project in accordance with the approved QAP. Results of tests shall be documented and reported within the established timeline. Nonconforming results shall immediately be reported to the appropriate party.

Review and approve fabrication inspection reports, and material and product suppliers' certificates of conformance for materials and appurtenances fabricated offsite.

Provide geotechnical expertise in evaluating soil conditions relative to subgrade treatment, nonconforming test results, change orders, and/or differing site conditions.

**8. Construction Nonconformances**

The Engineer shall be responsible for review and approval of resolutions on all Construction nonconformances.

**9. Contractor Coordination**

Monitor contractor compliance with Wage Rate and DBE requirements of construction contract provisions.

**10. Contractor Coordination**

Meet with contractor on a weekly basis for Project coordination and issue resolution. A two week schedule will be obtained from the contractor at these meetings. Meeting minutes shall be generated and distributed to the contractor and County Designee to document construction progress, issues discussed, decisions made, and items which remain unresolved.

**11. Project Files**

Maintain accurate and complete files of correspondence, telephone conversations, and other written documentation concerning construction activities. All records to be maintained as a part of the Project Information Library.

**12. Shop Drawing Submittals**

Log, monitor, and coordinate the contractors' submittal and receipt of fabrication plans, shop drawings, and product and/or material submittals to and from the County Designee.

**13. Request for Information (RFI)**

Log, monitor, and coordinate the contractors' requests for information. Manage the RFI process to ensure timely responses are provided to the contractor. All records to

be maintained as a part of the Project Information Library.

**14. Accident Reporting**

Report and record accidents in accordance with Section XI (L) of the Agreement. Photograph and document conditions around each accident site to the extent possible with particular emphasis on the location and legend of regulatory and construction signing and traffic control devices.

**15. Differing Site Conditions**

Report field conditions that vary from the design drawings to the County Designee as soon as differing conditions become evident. Make timely recommendations for design modifications to resolve conflicts.

**16. Condition Survey**

Prior to the commencement of construction activities, video the existing physical features and facilities in and along the entire length of the Project right-of-way to document the general site condition. Maintain a video camera at the Project at all times and record, by video, any unusual conditions and circumstances relating to construction activities. Perform and maintain a monthly video record of the entire project.

**17. Project Site Communications System**

Provide and maintain a radio or wireless telephone communication system adequate to allow prompt communication of all personnel with their senior staff personnel.

Provide vehicles, computers, and office supplies necessary to adequately and efficiently perform the described engineering services.

**18. Construction Contract Change Controls**

Negotiate and make recommendations for construction contract changes. Prepare and process change orders, supplemental agreements, extra work orders, force account documentation, and other similar items necessary to properly document changed conditions or modified construction activities, complying with requirements of applicable TxDOT / FHWA procedures.

**19. Monthly / Final Pay Estimates**

Review Contractor payment requests and provide recommendations of acceptance to the County on the monthly and final Contractor pay estimates.

**20. Claims Avoidance**

Act as liaison for and make sound claims avoidance recommendations to the County,

so as to proactively resolve potential and actual construction problems and conflicts. Provide negotiation assistance to the County on contractors' claims and make recommendations for resolutions of claims.

**21. Project Documentation Provisions**

Prepare and distribute necessary forms for monitoring and inspecting construction activities, test reports, etc., using the standardized forms required by TxDOT, complying with requirements of TxDOT / FHWA procedures.

**22. Record Drawings**

Establish and maintain throughout construction, a current set of contract documents (plan sheets and specifications) in the field office containing revised drawings and markups of changed conditions and field modifications. These records shall be used by the Engineer in reviewing and providing recommendation to the County on the acceptance of As-built drawings provided by the Contractor.

**23. Project Photograph Log**

Maintain a project photograph log to record construction activity and preconstruction conditions. Digital color photographs are to be taken monthly and shall be sufficient in quantities to document all construction activities on the Project. All photographs shall have an imprinted date and labeled with a detailed description. Digital photos shall be filed with the Project records and shall be provided to the County as requested. The Biweekly Project Update reporting shall include representative pictures.

Additional photographs shall be taken of unusual construction techniques, accidents, unsafe working conditions, damaged equipment or materials, vandalism, construction problems, potential construction claim events, or any other items deemed worthy of records.

**24. Utility Construction Coordination**

Monitor utility relocations/adjustments for compliance with approved plans for the Project.

Provide recommendations to the County when a utility conflict is encountered during construction. Make timely recommendations for design modifications to resolve conflicts.

**25. TCP Inspection**

Perform inspections in accordance with the QAP of the implemented Traffic Control Plan of the PS&E. Provide inspection and reports to the County Designee.

Provide advice to the County on modifications to the Traffic Control Plans provided by the Design Engineer.

Provide notification of lane closures received from the Contractor to TxDOT and the County Designee.

**26. Environmental Coordination**

Monitor construction activities to verify conformance with permit requirements and to confirm that the environmental commitments on the project are satisfied.

Verify contractors' compliance with SW3P and the TPDES Construction General Permit. Ensure that Best Management Practices (BMPs) in compliance with TCEQ requirements are in place and appropriate notifications filed prior to initiation of construction activities.

Conduct weekly inspections of all BMPs, construction exits, disturbed areas, and storage areas exposed to precipitation for evidence of, or the potential for, pollutants entering a Municipal Separate Storm Sewer System, streambed, or other conveyance. Prepare a report in accordance with associated regulations within 24 hours of the inspection. Provide a copy of the reports to the County Designee and maintain in the SW3P binder in accordance with associated regulations.

Revise or update the storm water pollution prevention plan in accordance with TPDES Permit TXR150000 Part III Section E.

Sign, Seal and Date changes to the Design Engineer's plan sheets representing the requirements of TPDES Permit TXR 150000 Part III Section F 1. (f), as necessary, to comply with TPDES TXR 150000 Part III Section E.

**27. Final Inspection Reporting**

Conduct final inspection of the completed work and make recommendations relative to its acceptance.

**28. Final Payment Determination**

Certify the accuracy of all final pay quantities and make recommendations relative to final payment to the contractors.

**29. Final Documentation**

Maintain detailed and accurate records that are compiled throughout the course of construction, so as to assure adequately detailed Record Drawing documentation of completed construction activities, as described above.

**EXHIBIT X**

**ENGINEER'S QUALIFICATIONS STATEMENT**

**EXHIBIT XI**

**MASTER PASS-THROUGH TOLL AGREEMENT**

HAYS COUNTY																										
CONTRACT NO.																										
WORK AUTHORIZATION NO.																										
FM 110																										
February 3, 2012																										
<b>FEE SUMMARY</b>																										
FAR Overhead Rate - On-Site	1.43																									
FAR Overhead Rate - Off-Site	1.68																									
Profit: <Enter your profit margin of 12% max>	10.0%																									
Multipier - On-Site	2.67																									
Multipier - Off-Site	2.95																									
On-Site Personnel	4,264	\$125,720	\$179,528	\$30,525	\$305,248	\$335,773																				
Off-Site Personnel	1,768	\$77,584	\$130,341	\$20,793	\$207,925	\$228,718																				
<b>Total</b>	<b>6,032</b>	<b>203,304</b>	<b>309,869</b>	<b>51,317</b>	<b>\$13,173</b>	<b>\$64,491</b>	<b>\$128,855</b>																			
<b>LABOR DETAIL</b>																										
	Name	RE	PE	Name	Chief	Name	Records	Name	Inspector	Name	Utility Coord.	Name	Electrician	Name	Scheduler	Name	Environmental	Name	Office Eng.	Name	Utility Insp.	Name	RPLS	Name	Survey Tech.	
ON-SITE PERSONNEL HOURS					2,136				2,000				16													
OFF-SITE PERSONNEL HOURS					600				576																	
<If off-site, please call reference from labor total below on this row>					320				2,000																	
<b>TOTAL LABOR HOURS</b>					320				2,576																	
<b>DIRECT HOURLY RATES</b>					\$ 68.00	\$ 48.00			\$25.00				\$43.00		\$55.00		\$43.00		\$25.00		\$40.00		\$1.42		\$2.00	
<b>DIRECT SALARIES (ON-SITE PERSONNEL)</b>					\$0	\$0			\$74,760				\$0		\$50,000		\$0		\$0		\$0		\$0		\$2,080	
<b>DIRECT SALARIES (OFF-SITE PERSONNEL)</b>					\$21,760	\$28,800			\$15,552				\$1,376		\$0		\$1,320		\$4,816		\$0		\$1,472		\$0	
<b>Task/Function Codes</b>																										
<Enter task numbers and descriptions from the scope of services and provide hours for each task by personnel>																										
A. Review of Documents & Information	32	40			16				16																	
B. Technical Support Services		224			280										72											
C. Communication and Coordination	176	112							2,000				16													
D. Construction Phase Services	112	224			1,984																					
<b>LABOR TOTAL:</b>																										
	320	600			2,136				2,000				32		72		24		112		16		32		96	
<b>DIRECT EXPENSES - LABOR (subcontractants)</b>																										
PaveTex Engineering & Testing (PTET)																										
Byrn & Associates, Inc. (BAI)																										
<b>DIRECT EXPENSES - NON LABOR</b>																										
On-Site Truck Requirements																										
Off-Site Truck Requirements																										
<b>TOTAL EXPENSES:</b>																										
<b>SUMMARY OF PROJECT COSTS</b>																										
Total Labor																										
Total Expenses																										
<b>TOTAL PROJECT COST</b>																										

## *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 fee schedule for services provided by the Development Services Department.**

**TYPE OF ITEM: ACTION**

**PREFERRED MEETING DATE REQUESTED: February 21, 2012**

**AMOUNT REQUIRED: N/A**

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

**REQUESTED BY: Clint Garza**

**SPONSORED BY: County Judge, Bert Cobb**

### SUMMARY:

The Development Services Department charges fees for the various services provided in the daily departmental operations. These services include Food/OSSF permitting & inspection, floodplain review, subdivision review, and GIS/Mapping Services.

Currently the fees charged for these services were approved on different dates and times resulting in numerous "approved" fee schedules. Court action to approve the attached schedule will reduce confusion among staff and consultants using dated information.

Nearly all fees have no change and fees that changed are listed below:

--Class "C" permit is a classification of permit issued to development in a floodplain that is not a single family residence. Historically this was simply included in the Class "B" permits group but 2009 changes to regulations required it be separated.

GIS/Mapping Fees have also been updated for the first time in 11 years.

Desc.	Old	New
Technical Services	\$25	\$30
Professional Services	\$35	\$50
Maps		
8.5 X 11	\$.25	\$.5
11 X 17	\$.5	\$1.00
Larger Maps	\$3 per ft.	\$.01 per sq. in



<b>Permitting/Construction</b>	
Development Permit Application	\$275 Single Family Residence \$500 Commercial Non-SFR
Floodplain Development Permit (SFR)	\$35 Class "A" \$150 Class "B"
Floodplain Development Permit (Non-SFR)	\$35 Class "A"
Includes improvements, alteration and fill	\$150 Class "B" \$150 Class "C"
Design Review Fees	\$100 Single Family Residence \$150 Commercial Non-SFR
Well Test	\$16
Reinspection Fee	\$50
Day Care Inspection	\$25
<b>Subdivisions</b>	
Plat Submittal with no Floodplain	\$500 + \$400 per lot
With Floodplain	Submittal fee plus \$300
Plat Submittal with 2 lots or less	\$500 + \$100 per lot
With Floodplain	plus \$300
Revised plat and cancellation	\$200 + \$50 per lot
Final Review Fee	\$100
Variance Request, per variance requested	\$100
Release of easement	\$100
Flood study review	based on actual cost of review
Public notification for plat revision or cancellation.	\$200 plus actual cost of notification.
*Notification includes certified mail and newspaper announcement.	
<b>Food Establishments</b>	
Food Establishment 1-5 Employees	\$100
Food Establishment 6-19 Employees	\$200
Food Establishment 20+ Employees	\$300
Permit Review Fee	1/2 of Permit Fee
Food Establishment Re-inspection Fee	\$50

<b>GIS/Mapping</b>	
<b>TECHNICAL SERVICES</b>	
Compile existing data into printed map	\$ 30/HOUR
Print saved map file	
New data research	
Data conversion or reformatting	
Report generation	
Scanning or digitizing	
<b>PROFESSIONAL SERVICES</b>	<b>\$ 50/HOUR</b>
Create new data	
Statistical analysis	
Programming	
GPS field data collection	
<b>PRINTED MAP PRICES (in addition to service fees)</b>	
8 ½ X 11	\$0.50
11 X 17	\$1.00
other sizes on plotter paper	24x36 - \$17.25
(costs based on appx. \$0.02 per square inch)	42x48 - \$40
<b>MISC</b>	
OSSF Registration Fee	\$20/ Annually

## *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:** Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, or value of real property related to the marketing and potential sale of County owned properties. Possible action may follow in open court.

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

**PREFERRED MEETING DATE REQUESTED: 2/21/12**

**AMOUNT REQUIRED:**

**LINE ITEM NUMBER OF FUNDS REQUIRED:**

**REQUESTED BY:**

**SPONSORED BY: Cobb**

