

**LOUIS R. RIGBY**  
Mayor  
**JOHN ZEMANEK**  
Councilmember At Large A  
**DOTTIE KAMINSKI**  
Councilmember At Large B  
**DANNY EARP**  
Mayor Pro-Tem  
Councilmember District 1



**CHUCK ENGELKEN**  
Councilmember District 2  
**DARYL LEONARD**  
Councilmember District 3  
**KRISTIN MARTIN**  
Councilmember District 4  
**JAY MARTIN**  
Councilmember District 5  
**MIKE CLAUSEN**  
Councilmember District 6

## **CITY COUNCIL MEETING AGENDA**

**Notice is hereby given of a Regular Meeting of the La Porte City Council to be held October 10, 2016, beginning at 6:00 PM in the City Hall Council Chambers, 604 W. Fairmont Parkway, La Porte, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action.**

- 1. CALL TO ORDER**
- 2. INVOCATION** – The invocation will be given by Thomas Park, Fairmont Park Church - Broadway.
- 3. PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance will be led by Councilmember Mike Clausen.
- 4. PUBLIC COMMENTS** (Limited to five minutes per person.)
- 5. CONSENT AGENDA** *(All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.)*
  - (a)** Consider approval or other action regarding minutes of the meeting held on September 26, 2016 - P. Fogarty
  - (b)** Consider approval or other action regarding change in City Council meeting dates for the months of November and December due to holiday schedule - P. Fogarty
  - (c)** Consider approval or other action regarding an Ordinance vacating, abandoning and closing the east/west alley in Block 185, Town of La Porte - T. Leach
  - (d)** Consider approval or other action authorizing the City Manager to sign an agreement for participation in the Regional DWI Task Force - K. Adcox
  - (e)** Consider approval or other action regarding a Resolution authorizing the City Manager to sign grant award for Speed and Intersection Traffic Control (STEP) Grant - K. Adcox
  - (f)** Consider approval or other action approving purchase of Equipment & Vehicles using the Houston Galveston Area Council and Texas Local Government Cooperative Purchasing methods for the Fiscal Year 2016-2017 Vehicle Replacement Program - S. Valiante
- 6. PUBLIC HEARINGS AND ASSOCIATED ORDINANCES**
  - (a)** Public hearing to receive comments regarding recommendation by the Planning and Zoning Commission to approve a Special Conditional Use Permit (SCUP) for the construction of a secondary dwelling unit for property located at 2711 Crescent Drive, La Porte; consider approval or other action regarding an Ordinance to approve SCUP #16-91000003, to allow development of one (1) secondary dwelling unit for property located at 2711 Crescent Drive, La Porte - R. Cramer

**7. AUTHORIZATIONS**

- (a) Consider approval or other action authorizing the Mayor to execute a Local Government Code Chapter 380 Agreement between the City of La Porte and Ybarra Restaurants, Inc., for waiver of payment of fees for closure of street right-of-way in connection with the construction of a new El Toro Restaurant - T. Leach
- (b) Consider approval or other action regarding an Ordinance vacating, abandoning, and closing a portion of the North 25th Street right-of-way - T. Leach

**8. DISCUSSION AND POSSIBLE ACTION**

- (a) Discussion and possible action regarding a matrix for Request for Proposals for collection services of delinquent ad valorem taxes - M. Dolby

**9. REPORTS**

- (a) Receive presentation for Procurement Methods - C. Daeumer

**10. ADMINISTRATIVE REPORTS**

- City Council Meeting, Monday, October 24, 2016

**11. COUNCIL COMMENTS** regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies. Council members Clausen, J. Martin, K. Martin, Kaminski, Zemanek, Leonard, Engelken, Earp and Mayor Rigby

**12. ADJOURN**

**The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code (the Texas open meetings laws).**

**In compliance with the Americans with Disabilities Act, the City of La Porte will provide for reasonable accommodations for persons attending public meetings. To better serve attendees, requests should be received 24 hours prior to the meeting. Please contact Patrice Fogarty, City Secretary, at 281.470.5019.**

**CERTIFICATION**

I certify that a copy of the October 10, 2016 , agenda of items to be considered by the City Council was posted on the City Hall bulletin board on October 4, 2016.

*Patrice Fogarty*



**Council Agenda Item  
October 10, 2016**

1. **CALL TO ORDER**
2. **INVOCATION** – The invocation will be given by Thomas Park, Fairmont Park Church - Broadway.
3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance will be led by Councilmember Mike Clausen.
4. **PUBLIC COMMENTS** (Limited to five minutes per person.)

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**Council Agenda Item  
October 10, 2016**

5. **CONSENT AGENDA** *(All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.)*
- (a) Consider approval or other action regarding minutes of the meeting held on September 26, 2016 - P. Fogarty
  - (b) Consider approval or other action regarding change in City Council meeting dates for the months of November and December due to holiday schedule - P. Fogarty
  - (c) Consider approval or other action regarding an Ordinance vacating, abandoning and closing the east/west alley in Block 185, Town of La Porte - T. Leach
  - (d) Consider approval or other action authorizing the City Manager to sign an agreement for participation in the Regional DWI Task Force - K. Adcox
  - (e) Consider approval or other action regarding a Resolution authorizing the City Manager to sign grant award for Speed and Intersection Traffic Control (STEP) Grant - K. Adcox
  - (f) Consider approval or other action approving purchase of Equipment & Vehicles using the Houston Galveston Area Council and Texas Local Government Cooperative Purchasing methods for the Fiscal Year 2016-2017 Vehicle Replacement Program - S. Valiante

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**MIKE CLAUSEN**  
Councilmember District 6

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF LA PORTE  
SEPTEMBER 26, 2016**

The City Council of the City of La Porte met in a regular meeting on **Monday, September 26, 2016**, at the City Hall Council Chambers, 604 West Fairmont Parkway, La Porte, Texas, at **6:00 p.m.** to consider the following items of business:

1. Mayor Rigby called the meeting to order at 6:00 p.m. Members of Council present: Councilmembers Engelken, Earp, J. Martin, K. Martin, Zemanek, Clausen, Leonard, and Kaminski. Also present were City Secretary Patrice Fogarty, City Manager Corby Alexander, and Assistant City Attorney Clark Askins.

2. **INVOCATION** – The invocation was given by Windell Gill, First Baptist Church.

3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by Councilmember Danny Earp.

4. **PRESENTATIONS, PROCLAMATIONS, and RECOGNITIONS** (Limited to five minutes per person.)

(a) Proclamation – Orange and White Day – Mayor Rigby

Mayor Rigby presented a proclamation to many representatives of La Porte Independent School District in honor of Orange and White Day.

5. **PUBLIC COMMENTS** (Limited to five minutes per person.)

Chuck Rosa, 812 S. Virginia St., addressed Council regarding the structure of the court system in the City and stated he believes the municipal court judges should be elected.

6. **CONSENT AGENDA** (*All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.*)

(a) Consider approval or other action regarding minutes of meeting held on September 12, 2016 – P. Fogarty

(b) Consider approval or other action regarding an Ordinance appointing a Presiding Judge and Alternate Judges for the La Porte Municipal Court of Record in the City of La Porte, Texas – Mayor Rigby

(c) Consider approval or other authorizing the Mayor to execute an agreement between the La Porte-Bayshore Chamber of Commerce and the City of La Porte for general promotional, tourism advertising services and programs – C. Alexander

- (d) Consider approval or other action authorizing the City Manager to execute a Routine Airport Maintenance Program (RAMP) grant agreement with Texas Department of Transportation Aviation Division – S. Valiante
- (e) Consider approval or other action awarding Bid # 16021 for State Highway Feeder Road Water Line Project – S. Valiante
- (f) Consider approval or other action authorizing the Mayor to execute an agreement between Highway 321 Volunteer Fire Department and the City of La Porte for the transfer of fire engine scheduled to be rotated out of service – T. Leach
- (g) Consider approval or other action regarding an Ordinance amending Chapter 34, “Environment,” of the Code of Ordinances of the City of La Porte, by amending Article II “Air Pollution,” Division 2, “Smoking,” relating to the prohibition of smoking and use of vaping products in certain public places within the city limits – R. Epting
- (h) Consider approval or other action regarding an Ordinance amending Chapter 50 “Parks and Recreation” of the Code of Ordinances of the City of La Porte by amending regulations pertaining to use of tobacco and vaping products at City parks – E. Epting

Councilmember Engelken made a motion to approve the Consent Agenda items pursuant to staff recommendations. Councilmember K. Martin seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

Prior to council action, Assistant City Attorney Clark Askins read the caption of **Ordinance 2016-3647: AN ORDINANCE APPOINTING A PRESIDING JUDGE AND ALTERNATE JUDGE FOR THE MUNICIPAL COURT OF RECORD IN THE CITY OF LA PORTE, TEXAS, FOR A TERM OF FOUR YEARS, EFFECTIVE OCTOBER 1, 2016, AND EXPIRING SEPTEMBER 30, 2020, CONTAINING A SEVERABILITY CLAUSE; CONTAINING A REPEALING CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

Prior to council action, Assistant City Attorney Clark Askins read the caption of **Ordinance 2016-3648: AN ORDINANCE AMENDING CHAPTER 34 “ENVIRONMENT” OF THE CODE OF ORDINANCES OF THE CITY OF LA PORTE, BY AMENDING ARTICLE II “AIR POLLUTION,” DIVISION 2. “SMOKING,” RELATING TO THE PROHIBITION OF SMOKING IN CERTAIN PUBLIC PLACES WITHIN THE CITY LIMITS; PROVIDING A REPEALING CLAUSE; CONTAINING A SEVERABILITY CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; PROVIDING THAT ANY PERSON VIOLATING THE TERMS OF THIS ORDINANCE SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND UPON CONVICTION SHALL BE FINED IN A SUM NOT TO EXCEED TWO THOUSAND DOLLARS; PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

Prior to council action, Assistant City Attorney Clark Askins read the caption of **Ordinance 2016-3649: AN ORDINANCE AMENDING CHAPTER 50 “ PARKS AND RECREATION OF THE CODE OF ORDINANCES OF THE CITY OF LA PORTE BY AMENDING REGULATIONS PERTAINING TO USE OF TOBACCO AND VAPING PRODUCTS AT CITY PARKS; PROVIDING A REPEALING CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; PROVIDING THAT ANY PERSON VIOLATING THE TERMS OF THIS ORDINANCE SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND UPON CONVICTION SHALL BE FINED IN A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS; PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

## 7. **AUTHORIZATIONS/ORDINANCES**

- (a) Consider approval or other action regarding an Ordinance approving and adopting the City of La Porte Texas’ Fiscal Year 2016-2017 Proposed Budget – M. Dolby (**This item was postponed at the September 12, 2016 City Council Meeting**)

Finance Director Michael Dolby presented a summary.

Councilmember Zemanek made a motion to approve an Ordinance approving and adopting the City of La Porte Texas’ Fiscal Year 2016-2017 Proposed Budget with additional changes regarding fencing. Councilmember J. Martin seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

Prior to council action, Assistant City Attorney Clark Askins read the caption of **Ordinance 2016-3650: AN ORDINANCE APPROVING AND ADOPTING THE BUDGET FOR THE CITY OF LA PORTE, TEXAS, FOR**

THE PERIOD OF OCTOBER 1, 2016, THROUGH SEPTEMBER 30, 2017; FINDING THAT ALL THINGS REQUISITE AND NECESSARY HAVE BEEN DONE IN PREPARATION AND PRESENTMENT OF SAID BUDGET; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

- (b) Consider approval or other action regarding a Resolution adopting the 2016 Appraisal Roll of the Harris County Appraisal District – M. Dolby **(This item was postponed at the September 12, 2016 City Council Meeting)**

Finance Director Michael Dolby presented a summary.

Councilmember Engelken made a motion to approve the Resolution adopting the 2016 Appraisal Roll. Councilmember Clausen seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

- (c) Consider approval or other action regarding an Ordinance establishing the tax rate for the current tax year (2016) for a total tax rate of \$0.71 per hundred dollar valuation – M. Dolby **(This item was postponed at the September 12, 2016 City Council Meeting)**

Finance Director Michael Dolby presented a summary.

Councilmember Leonard made a motion to approve an Ordinance establishing the tax rate for the current tax year (2016) for a total tax rate of \$0.71 per hundred dollar valuation. Councilmember Engelken seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

Prior to council action, Assistant City Attorney Clark Askins read the caption of **Ordinance 2016-3651: AN ORDINANCE LEVYING TAXES UPON TAXABLE PROPERTY LOCATED WITHIN AND SUBJECT TO TAXATION IN THE CITY OF LA PORTE, TEXAS; MAKING APPROPRIATIONS FOR SUPPORT, MAINTENANCE AND IMPROVEMENTS OF THE CITY GOVERNMENT OF SAID CITY OF LA PORTE, FINDING THAT ALL REQUIRED NOTICES HAVE BEEN PUBLISHED AND ALL REQUIRED HEARINGS HELD; CONTAINING A REPEALING CLAUSE; CONTAINING A SEVERABILITY CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

- (d) Consider approval or other action regarding an Ordinance repealing Ordinance No. 1583 and adopting an Ordinance establishing an Airport Advisory Board for the City of La Porte Municipal Airport – P. Fogarty

City Secretary Patrice Fogarty presented a summary.

Councilmember Earp made a motion to approve an Ordinance repealing Ordinance No. 1583 and adopting an Ordinance establishing an Airport Advisory Board for the City of La Porte Municipal Airport. Councilmember K. Martin seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

Prior to council action, Assistant City Attorney Clark Askins read the caption of **Ordinance 2016-3652: AN ORDINANCE REPEALING ORDINANCE NO. 1583, ADOPTED ON APRIL 25, 1988, WHICH ESTABLISHED AN AIRPORT ADVISORY BOARD FOR THE CITY OF LA PORTE MUNICIPAL AIRPORT; HEREIN ESTABLISHED AN AIRPORT ADVISORY BOARD FOR THE CITY OF LA PORTE; ESTABLISHING THE POWERS AND DUTIES OF THE BOARD; APPOINTING MEMBERS TO THE BOARD; CONTAINING A REPEALING CLAUSE; CONTAINING A SEVERABILITY CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

- (e) Consider approval or other action regarding an Ordinance terminating the contract with Perdue, Brandon, Fielder, Collins and Mott, LLP, for collection of delinquent municipal court fees and fines, and allowing court staff the opportunity to provide in-house collections – C. Haney

Court Administrator Cathy Haney presented a summary.

Councilmember Zemanek made a motion to approve an Ordinance terminating the contract with Perdue, Brandon, Fielder, Collins and Mott, LLP, for collection of delinquent municipal court fees

and fines, and allowing court staff the opportunity to provide in-house collections. Councilmember Leonard seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

Prior to council action, Assistant City Attorney Clark Askins read the caption of **Ordinance 2016-3653: AN ORDINANCE PROVIDING FOR THE TERMINATION OF THE CITY OF LA PORTE'S CONTRACT WITH PERDUE, BRANDON, FIELDER, COLLINS & MOTT, LLP FOR COLLECTION OF DELINQUENT MUNICIPAL COURT FEES AND FINES, AND REPEALING ORDINANCE 3191, WHICH AUTHORIZED THE IMPOSITION OF AN ADDITIONAL THIRTY PERCENT COLLECTION FEE ON ALL DEBTS AND ACCOUNTS RECEIVABLE MORE THAN SIXTY DAYS DUE AND REFERRED TO A PRIVATE COLLECTION FIRM, CONTAINING A REPEALING CLAUSE; CONTAINING A SEVERABILITY CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE.**

- (f) Hearing to consider approval or other action to revoke or suspend the existing massage business permit for Jing Day Spa located at 1309 Fairmont Parkway #0 and authorizing City Staff to nullify the accompanying zoning permit – T. Tietjens

Planning and Development Director Tim Tietjens presented a summary.

Charles Thompson, One Greenway Plaza, Suite 100, Houston, TX, attorney representing Jing Day Spa, spoke in opposition of revoking or suspending the existing massage business permit for Jing Day Spa located at 1309 Fairmont Parkway #0, and spoke in opposition to the nullification of the accompanying zoning permit. Discussion ensued.

Councilmember Zemanek made a motion to revoke the existing massage business permit for Jing Day Spa located at 1309 Fairmont Parkway #0 and authorize City Staff to nullify the accompanying zoning permit. Councilmember Leonard seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

- (g) Consider approval or other action regarding approval or denial of Altom Transport's exception request to the City of La Porte's current policy regarding use of industrial district water and sewer service – T. Tietjens

Planning and Development Director Tim Tietjens and Assistant Fire Chief Donald Ladd presented a summary.

Councilmember Engelken made a motion to deny Altom Transport's exception request to the City of La Porte's current policy regarding use of industrial district water and sewer service. Councilmember Zemanek seconded. **MOTION PASSED 7/1.** Councilmember Leonard had previously filed a Conflict of Interest Affidavit on September 12, 2016, and did not participate in any discussion or voting on this matter.

|          |  |
|----------|--|
| Ayes:    | Councilmembers J. Martin, Kaminski, Zemanek, K. Martin, Engelken, Clausen and Earp |
| Nays:    | Mayor Rigby  |
| Abstain: | Councilmember Leonard  |

## 8. REPORTS

- (a) Receive report of the La Porte Development Corporation Board – Councilmember Engelken

Councilmember Engelken provided a report of the La Porte Development Corporation Board meeting held prior to the City Council Meeting.

## 9. ADMINISTRATIVE REPORTS

City Manager Corby Alexander reported this is the last City Council meeting for Planning and Development Director Tim Tietjens and thanked him for his years of service and dedication and hard work in the community.

10. **COUNCIL COMMENTS** regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information.

Councilmember Earp congratulated Planning and Development Director Tim Tietjens and wished him well in his future endeavors; wished Court Administrator Cathy Haney a Happy Birthday and thanked Finance Director Michael Dolby for preparations of the budget; Councilmember Clausen thanked Planning and Development Director Tim Tietjens for his years of service; thanked Council for the Orange and White Day Proclamation and invited everyone to attend the La Porte Independent School District's 100<sup>th</sup> anniversary celebration; Councilmember J. Martin thanked Planning and Development Director Tim Tietjens for his years of service and commented he attended the La Porte Health and Safety Fair and it was well attended, and thanked Emergency Management Coordinator Kristin Gauthier and team for their hard work; Councilmembers K. Martin and Leonard thanked Planning and Development Director Tim Tietjens for his years of service and congratulated La Porte Independent School District on its 100<sup>th</sup> anniversary celebration; Councilmember Kaminski congratulated La Porte Independent School District on its 100<sup>th</sup> anniversary celebration; commented she will be celebrating her 50<sup>th</sup> high school reunion; thanked Planning and Development Director Tim Tietjens for his years of service and wished Cathy Haney a Happy Birthday; Councilmember Zemanek thanked Planning and Development Director Tim Tietjens for his years of service; Councilmember Engelken thanked Planning and Development Director Tim Tietjens for his years of service and wished him well in this future endeavors and wished Cathy Haney a Happy Birthday; and Mayor Rigby thanked Planning and Development Director Tim Tietjens for his years of service; wished City Planner Eric Ensey well on his move to Colorado; commented he attended the Bay Area Partnership 40<sup>th</sup> Anniversary, and it was well attended, with a great program; commented on how nice the Salute to Industry Banquet and Golf Tournament was and thanked Michael Dolby, Finance Director, and Staff for preparing the budget.

11. **ADJOURN** - There being no further business, Councilmember Engelken made a motion to adjourn the meeting at 7:08 p.m. Councilmember Leonard seconded. **MOTION PASSED UNANIMOUSLY 9/0.**

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Patrice Fogarty, City Secretary

Passed and approved on October 10, 2016.

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Mayor Louis R. Rigby

## REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: October 10, 2016 Appropriation  
Requested By: P. Fogarty Source of Funds: \_\_\_\_\_  
Department: City Secretary's Office Account Number: \_\_\_\_\_  
Report:  Resolution:  Ordinance:  Amount Budgeted: \_\_\_\_\_  
Other:  Amount Requested: \_\_\_\_\_  
Attachments : Budgeted Item:  YES  NO

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### SUMMARY & RECOMMENDATIONS

City Council has traditionally held one meeting per month during the months of November and December. Staff proposes for Council's consideration the following changes to the regular meetings schedule to accommodate the upcoming holidays:

- Conduct regular meeting on November 14, 2016
- Cancel the November 28, 2016, meeting due to the Thanksgiving holidays
  
- Conduct regular meeting on December 12, 2016
- Cancel the December 26, 2016, meeting due to the Christmas holidays

Should a need arise to conduct official business, a special called meeting would be scheduled.

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### Action Required of Council:

Consider approval or other action of amended meeting dates as follows:

- Cancel the November 28, 2016, meeting due to the Thanksgiving holidays
  
- Cancel the December 26, 2016, meeting due to the Christmas holidays

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### Approved for City Council Agenda

\_\_\_\_\_  
**Corby D. Alexander, City Manager**

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

## REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: October 10, 2016 Appropriation  
Requested By: Traci Leach Source of Funds: \_\_\_\_\_  
Department: Planning & Development Account Number: \_\_\_\_\_  
Report:  Resolution:  Ordinance:  Amount Budgeted: \_\_\_\_\_  
Other:  \_\_\_\_\_ Amount Requested: \_\_\_\_\_  
Budgeted Item:  YES  NO

**Attachments :**

1. Ordinance
2. Deed
3. Appraisal Summary
4. CenterPoint Energy Response
5. AT&T Response
6. Comcast Reponse
7. Area Map

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### SUMMARY & RECOMMENDATIONS

The City has received and processed an application from Mr. Ryan Schulman/La Porte Mini Storage to vacate, abandon and close the east/west alley in Block 185, Town of La Porte. Staff's review of the application has determined no City or franchised utilities exist within the closing area.

In accordance with Sections 62-32 of the City's Code of Ordinances, an appraisal of the subject alley has been obtained by the City in order to establish fair market value. The appraisal report has established a value of \$2.00 per square foot for the subject right-of-way. Closing fees in the amount of \$6,384.00 have been paid by the applicant and placed in escrow pending final consideration and action by Council.

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### Action Required of Council:

Consider approval of an ordinance or other action vacating, abandoning, and closing the east/west alley in Block 185, Town of La Porte, and authorize the City Manager to execute a deed to the applicant for the subject alley.

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**Approved for City Council Agenda**

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**Corby D. Alexander, City Manager**

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**Date**

ORDINANCE NO. 2016-\_\_\_\_\_

**AN ORDINANCE VACATING, ABANDONING AND CLOSING THE EAST/WEST ALLEY IN BLOCK 185, TOWN OF LA PORTE AND AUTHORIZING THE EXECUTION AND DELIVERY OF A DEED TO THE ADJOINING LANDOWNER, FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

WHEREAS, the City Council of the City of La Porte has been requested by the record owner of the property abutting the hereinafter described portion of the east/west alley in Block 185, Town of La Porte, and;

WHEREAS, the City Council of the City of La Porte has determined and does hereby find, determine, and declare that the hereinafter described portion of the east/west alley in Block 185, Town of La Porte is not suitable, needed, or beneficial to the public as a public road, street, or alley, and the closing of hereinafter described portion of the east/west alley in Block 185, Town of La Porte is for the protection of the public and for the public interest and benefit, and that the hereinafter described portion of the east/west alley in Block 185, Town of La Porte should be vacated, abandoned, and permanently closed.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE:**

**Section 1.** Under and by virtue of the power granted to the City of La Porte under its home rule charter and Chapter 253, Section 253.001, Texas Local Government Code, the hereinafter described portion of the east/west alley in Block 185, Town of La Porte is hereby permanently vacated, abandoned, and closed by the City of La Porte, being generally illustrated on Exhibit "A" incorporated herein, and further described to wit:

Being a 4,256 square foot tract of land out of Block 185, Town of La Porte, being more particularly described by metes and bounds as follows:

BEGINNING at the southwesterly corner of Lot 6, Block 185, Town of La Porte, said point also being located on the easternmost right-of-way line of North Utah Street (60' wide);

THENCE in a northeasterly direction along the northerly line of the east/west alley in Block 185, Town of La Porte, a distance of 266 feet to its intersection with the westerly

right-of-way line of the North Idaho Street Right-of-Way, said point also being located at the southeasterly corner of Lot 21, Block 185, Town of La Porte;

THENCE in a southeasterly direction along the westerly right-of-way line of North Idaho Street, a distance of 16 feet to its intersection with the southerly line of the east/west alley in Block 185, Town of La Porte, said point being located at the northeasterly corner of Lot 22, Block 185, Town of La Porte;

THENCE in a southwesterly direction along the southerly line of the east/west alley in Block 185, Town of La Porte, a distance of 266 feet to its intersection with the easterly right-of-way of North Utah Street, said point also being located at the northwesterly corner of Lot 5, Block 185, Town of La Porte;

THENCE in a northwesterly direction along the easterly right-of-way line of North Utah Street, a distance of 16 feet to the POINT OF BEGINNING of the herein described tract.

**Section 2.** The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

**Section 3.** This ordinance shall be effective from and after its passage and approval, and it is so ordered.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2016.

LA PORTE, TEXAS

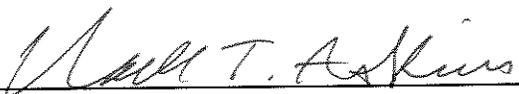
By:

\_\_\_\_\_  
Louis R. Rigby, Mayor

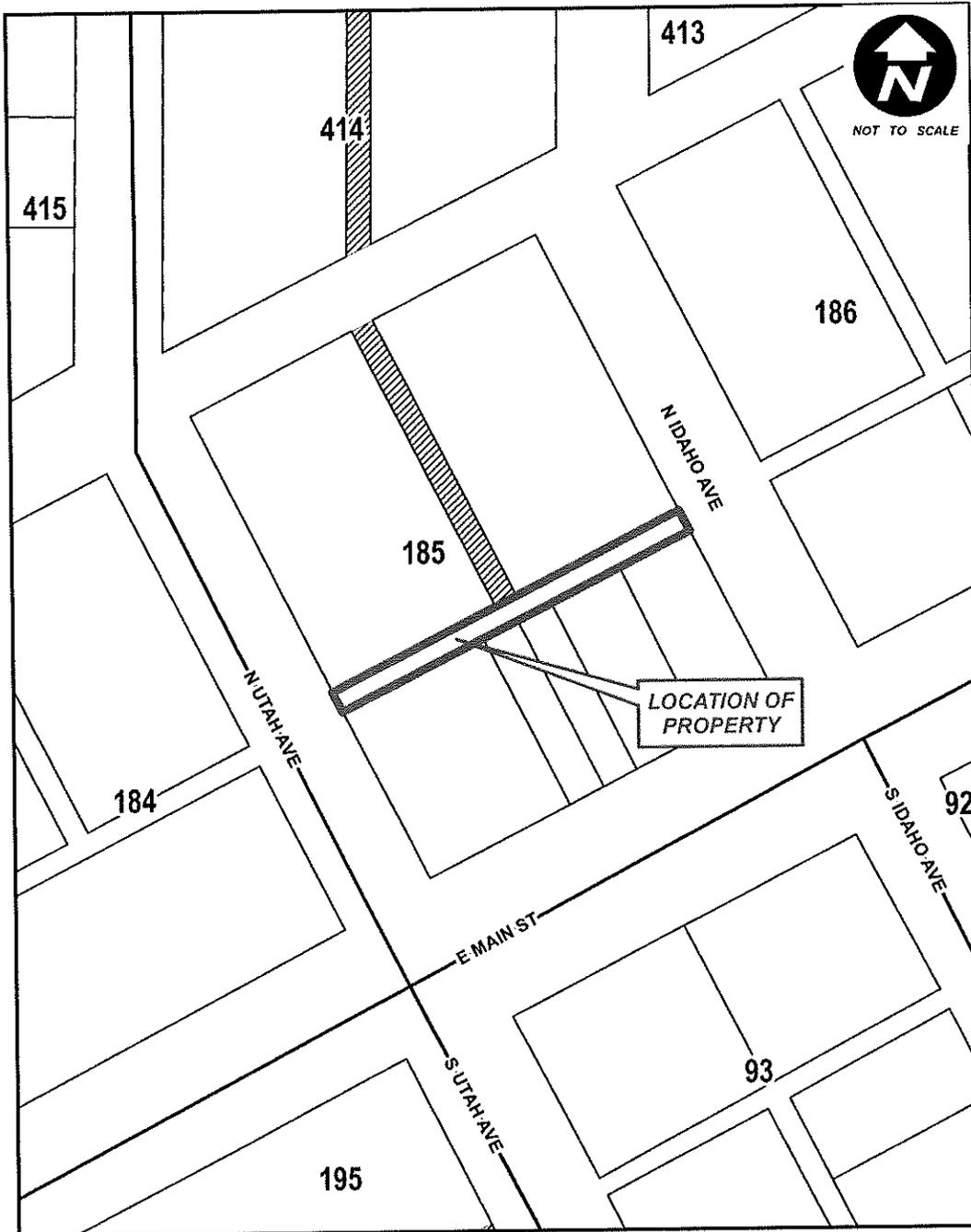
ATTEST:

\_\_\_\_\_  
Patrice Fogarty, City Secretary

APPROVED:

  
\_\_\_\_\_  
Clark T. Askins, Assistant City Attorney

### EXHIBIT "A" TO ORDINANCE



**DEED WITHOUT WARRANTY**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: October \_\_\_\_\_, 2016

Grantor: City of La Porte, Texas, a municipal corporation

Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

Grantee: La Porte Mini Storage, LLC

Mailing Address: 411 S. Utah St.  
La Porte, Texas 77571

Consideration: Ten and No/100 Dollars (\$10.00) cash  
and other good and valuable considerations

Property (including any improvements):

Being a 4,256 square foot tract of land out of Block 185, Town of La Porte, being more particularly described by metes and bounds as follows:

BEGINNING at the southwesterly corner of Lot 6, Block 185, Town of La Porte, said point also being located on the easternmost right-of-way line of North Utah Street (60' wide);

THENCE in a northeasterly direction along the northerly line of the east/west alley in Block 185, Town of La Porte, a distance of 266 feet to its intersection with the westerly right-of-way line of the North Idaho Street Right-of-Way, said point also being located at the southeasterly corner of Lot 21, Block 185, Town of La Porte;

THENCE in a southeasterly direction along the westerly right-of-way line of North Idaho Street, a distance of 16 feet to its intersection with the southerly line of the east/west alley in Block 185, Town of La Porte, said point being located at the northeasterly corner of Lot 22, Block 185, Town of La Porte;

THENCE in a southwesterly direction along the southerly line of the east/west alley in Block 185, Town of La Porte, a distance of 266 feet to its intersection with the easterly right-of-way of North Utah Street, said point also being located at the northwesterly corner of Lot 5, Block 185, Town of La Porte;

THENCE in a northwesterly direction along the easterly right-of-way line of North Utah Street, a distance of 16 feet to the POINT OF BEGINNING of the herein described tract, which was vacated, abandoned and closed by City of La Porte Ordinance No. 2016-\_\_\_\_\_, approved by the City Council of the City of La Porte, Texas on the \_\_\_\_ day of October, 2016.

Reservations from and Exception to Conveyance and Warranty: This conveyance is made subject to all and singular the restrictions, conditions, oil, gas, and other mineral reservations, easements, and covenants, if any, applicable to and enforceable against the above described property as reflected by the records of the county clerk of the aforesaid county.

Grantor for the consideration and subject to the reservations from and exceptions to conveyance, conveys to Grantee the property without express or implied warranty, and all warranties that might arise by common law and the warranties in §5.023 of the Texas Property Code (or its successor) are excluded.

Attest:

City of La Porte, Texas

\_\_\_\_\_  
Patrice Fogarty  
City Secretary

By: \_\_\_\_\_  
Corby D. Alexander  
City Manager

Approved:

\_\_\_\_\_  
Clark T. Askins  
Assistant City Attorney

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2016, by Corby D. Alexander, City Manager of the City of La Porte, Texas, a municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**R.C. Chuoke & Associates, Inc.**  
Appraisers & Consultants

P.O. Box 1447  
League City, Texas 77574

Office- 281-338-9633  
Fax- 281-338-9533

August 10, 2016

City of La Porte  
P.O. Box 1115  
La Porte, Texas 77572

RE: Restricted Appraisal regarding the estimated **Market Value** of the alley located in Block 185 in the Town of La Porte, Harris County, Texas.

Dear Sirs:

In accordance with your request, I have inspected the following described property for the purpose of estimating the **Market Value** following described property as of the date of this Restricted Appraisal. As per our agreement, the data and analysis is presented in a Restricted Appraisal format and this format is not intended to contain the full analysis.

**BRIEF LEGAL DESCRIPTION OF PROPERTY**

Known as the **entire alley in Block 185 in the Town of La Porte, Harris County, Texas Harris County, Texas.** (See site plan in addenda).

I hereby certify that I have personally inspected the property described via a street inspection and that all data gathered by my investigation is from sources believed reliable and true. In preparing this Restricted Appraisal, a study of comparable sales and other related market data was performed.

It should clearly be understood that this letter only constitutes only a statement of the final value and that does not presume to be the complete analysis of the subject property nor a complete appraisal format and is subject to the preparation of a detailed appraisal report.

.....Page 2 Continued.....

The market values in the subject neighborhood appear to vary generally from +-\$1.00 PSF to over \$4.00 PSF for tracts generally similar to the subject property with locations that range from primary to secondary type roadways. The area has general access public utilities. The subject site appears to be generally flat and level. The subject property is not located in the 100 year flood plain. The Highest and Best Use of the subject property is determined to be for use as an alleyways and street right of ways or for use by adjacent property owners due to its configuration. Adjacent property uses are commercial uses and vacant land in nature. The immediately surrounding property of the subject alley is currently used as part of a storage facility. The client and intended user of this appraisal is the City of La Porte only. The intended use is to estimate the current market value of the subject property of this analysis as described above for use by the client in right of way abandonment procedures. There has been no transfer of the subject property noted for the past 36 months per appraisal district records. The effective date of the appraisal is August 5, 2016. The effective date of the report is August 10, 2016. The estimated exposure time is up to 24 months.

After a review of the comparable sales it is my opinion the estimated unit value range of between **\$1.00 PSF to \$4.00 PSF** would be placed on the subject property with a mid-range value of **\$2.00 PSF** being indicated for the subject property before any discounting. Therefore the unit market value of the subject tract is estimated at **\$2.00 PSF which is based on 100% fee simple ownership with no discounting applied.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Chris Chuoke', written over a horizontal line.

Chris Chuoke, President  
R.C. CHUOKE & ASSOCIATES, INC.



June 13, 2016

Ryan Schulman  
LaPorte Mini Storage, LLC  
411 S. Utah Street  
LaPorte, Texas 77571

Re: Street & Alley Closure at 507 E. Main Street, LaPorte, Texas 77571  
R/W File # 95042

Dear Mr. Schulman:

The City of LaPorte, Texas has been asked to close and abandon the alley located south of and adjoining Lots 6 and 21, and located north of and adjoining Lots 1 through 5, and Lots 22 through 26 in Block 185, of the Town of LaPorte, a subdivision out of the Johnson Hunter League, Abstract No. 35, in Harris County, Texas, according to the map or plat thereof recorded in Volume 725, Page 253 of said county and state.

The City of LaPorte, Texas has been asked to close and abandon a portion of N. Idaho Avenue located between W. Polk Street and East Main Street.

CenterPoint Energy Houston Electric, LLC, CenterPoint Energy Resources Corporation, d/b/a CenterPoint Energy Texas Gas Operations and CenterPoint Energy Intrastate Pipelines, Inc., herein collectively called "CenterPoint Energy", has investigated the request and determined that it has no facilities located within the area to be abandoned. Therefore, CenterPoint Energy will interpose no objection to the request of the closures as highlighted on attached survey.

This letter of concurrence shall become null and void in the event two (2) years has transpired from the above date and this street/alley closure has not been completed. CenterPoint Energy respectfully requests that the City of LaPorte, Texas forward a copy of the final abandonment ordinance to CenterPoint Energy in order to complete our files and to update our map records.

Yours truly,

A handwritten signature in cursive script that reads 'Rosemary Valdez'.

Rosemary Valdez, SR/WA  
Right of Way Agent-713-207-6027

Enclosure-survey highlighting closures



AT&T Texas  
510 Arkansas Street  
Room 200  
South Houston, TX 77587

T: 713.943.4931  
F: 713.943.5699

June 23, 2016

Ryan Schulman  
La Porte Mini Storage LLC  
411 S. Utah Street  
La Porte, Texas 77571

**RE: "Consent to Abandon"** of the Alleys located at the address known as 507 East Main Street, Harris County, Texas. (R.O.W. Job # LP 00116-M)

Dear Mr. Schulman,

Southwestern Bell Telephone Company (SWBT) offers **No Objection** to the Abandonment of the alley from the southeast side of West Polk Street to its terminus and the alley from North Idaho Avenue to North Utah Avenue, located within Lot 1 through Lot 26, in Block 185, of TOWN OF LAPORTE, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 725, Page 253 of the Deed Records of Harris County, Texas, as shown on Survey prepared by Survey 1 Inc., dated July 2<sup>nd</sup>, 2007, job # 7-12-07, and as described in your Acceptance Letter dated May 29<sup>th</sup>, 2016.

I have included a Release of Easement document for the release of Southwestern Bell Telephone Company's interests in the Alley. The release is for the owner to keep and it will be the owner's responsibility to have the release recorded. If you have any questions or need any additional information please contact me by email at [sm8285@att.com](mailto:sm8285@att.com).

Sincerely,

Sonya Merrill  
Manager-Engineering Design  
Right-of-Way

Attachment:

**RELEASE OF  
EASEMENT RIGHTS**

STATE OF TEXAS           §

**KNOW ALL PERSONS BY THESE PRESENTS:**

COUNTY OF HARRIS       §

**WHEREAS, LA PORTE MINI STORAGE, LLC**, (hereinafter referred to as the “Owner”) is the Owner of the following described property in Harris County, Texas:

Being Lot 1 through Lot 26, in Block 185, of TOWN OF LAPORTE, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 725, Page 253 of the Deed Records of Harris County, Texas

**WHEREAS**, the above described property is subject to the certain Alleys, (“Easement”) which was platted and dedicated and filed for record with the Clerk of Real Property Records of Harris County, Texas for public utility purposes; and

**WHEREAS**, The Owner has requested that Southwestern Bell Telephone Company, release and abandon its rights for use of a portion the Easement in exchange for an easement conveyed to SWBT for its use.

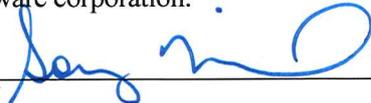
**NOW, THEREFORE**, in consideration of the premises, Southwestern Bell Telephone Company has RELEASED and does by these presents FOREVER RELEASES, all of the right of use that it may have to the following described portions of the previously described Easement:

Being the of the alley from the southeast side of West Polk Street to its terminus and the alley from North Idaho Avenue to North Utah Avenue, located within Lot 1 through Lot 26, in Block 185, of TOWN OF LAPORTE, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 725, Page 253 of the Deed Records of Harris County, Texas.

This Release is only for that portion of the dedicated easements described herein and only affects those rights which may be held by Southwestern Bell Telephone Company. Southwestern Bell Telephone Company retains the right of use of all other general utility easements and Southwestern Bell Telephone Company Easements dedicated within the herein described property and not being released by this document.

EXECUTED this 23<sup>rd</sup> day of June, 2016.

**SOUTHWESTERN BELL TELEPHONE COMPANY**  
a Delaware corporation.

By: 

Name: Sonya Merrill

Its: Manager-Engineering Right-of-Way

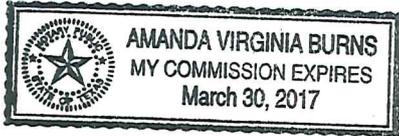
ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared 23<sup>rd</sup> June, 2015, known to me to be the Sonya Merrill, as Manager-Engineering of Southwestern Bell Telephone Company, a Delaware corporation.

Given under my hand and seal of office this the 23<sup>rd</sup> day of June, 2016.



*Amanda Virginia Burns*  
NOTARY PUBLIC STATE OF TEXAS  
*Amanda Virginia Burns*  
Printed Name of Notary



June 23, 2016

Mr. Ryan Schulman  
La Porte Mini Storage  
411 S. Utah Street  
La Porte, TX 77571

To Whom It May Concern:

Re: Comcast "Consent to Abandon" of the Alleys located at the address known as 507 East Main Street, Harris County, Texas. (R.O.W. Job # LP 00116-M)

Please accept this letter as notification that Comcast of Houston LLC, herein referred to as Comcast has no objection to the abandonment of the alley from southeast side off West Polk Street to its terminus and the alley from North Idaho Avenue to North Utah Avenue, located within Lot 1 through Lot 26, in Block 185, of Town of La Porte, an addition in Harris county, Texas, as shown on Survey prepared by Survey 1 Inc., dated July 2<sup>nd</sup>, 2007, job # 7-12-07 and described in your acceptance letter dated May 29, 2016, as Comcast has no facilities within said alleyway. Please reference the attached hereto survey as exhibit "A" as a pictorial depiction of the referenced alleyway to be released.

Please feel free to contact me at 713-637-5025 with any questions that you may have.

Sincerely,

A handwritten signature in cursive script that reads "Chris Grey". The signature is written in black ink and is positioned above the printed name and title.

Chris Grey  
Construction Supervisor, Design and Serviceability

# BLOCK 185, LA PORTE



**PROPOSED ALLEY CLOSING  
IN BLOCK 185, TOWN OF LP**

1 inch = 100 feet

## REQUEST FOR CITY COUNCIL AGENDA ITEM

|   |  |
|---|--|
| Agenda Date Requested: <u>October 10, 2016</u>  | <u>Appropriation</u>   |
| Requested By: <u>Ken Adcox</u>  | Source of Funds: <u>Grant</u>  |
| Department: <u>Police</u>   | Account Number: <u>03252535211020</u>  |
| Report: <input checked="" type="radio"/> Resolution: <input type="radio"/> Ordinance: <input type="radio"/> | Amount Budgeted: <u>\$6,000.00</u>   |
| Other: <input type="radio"/>  | Amount Requested: <u>\$5,000.00</u>  |
| <b>Attachments :</b>  | Budgeted Item: <input checked="" type="radio"/> YES <input type="radio"/> NO |

### **1. Regional DWI Task Force HGAC Agreement**

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#### **SUMMARY & RECOMMENDATIONS**

The La Porte Police Department has once again been invited to participate in the Regional DWI Task Force which is administered by Houston-Galveston Area Council (HGAC) and is awarded by TXDOT. This grant will be utilized for specific DWI enforcement during designated dates. This year's grant will allow the City to be reimbursed for expenses up to a maximum of five thousand dollars (\$5,000) in overtime costs, with City contributions for employee benefits, administrative and vehicle usage costs.

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#### **Action Required of Council:**

Consider approval or other action authorizing City Manager to sign agreement for participation in the Regional DWI Task Force.

---

#### **Approved for City Council Agenda**

\_\_\_\_\_  
**Corby D. Alexander, City Manager**

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

**HOUSTON-GALVESTON AREA COUNCIL  
GENERAL PROVISIONS  
INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement is made and entered into this 1st day of October, 2016, by and between the Houston-Galveston Area Council, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and The City of La Porte, hereinafter referred to as the Contractor, having its principal place of business at 604 Fairmont Parkway, La Porte, TX 77571.

**WITNESSETH:**

**WHEREAS**, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

**WHEREAS**, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

**NOW, THEREFORE**, H-GAC and the Contractor do hereby agree as follows:

**ARTICLE 1 LEGAL AUTHORITY**

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

**ARTICLE 2 APPLICABLE LAWS**

The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances and laws in effect or promulgated during the term of this Agreement. Such standards and laws shall include, to the extent applicable, the Uniform Grant and Contract Management Standards ("UGMS") promulgated by the State of Texas and the state and federal statutes referenced therein.

**ARTICLE 3 INDEPENDENT CONTRACTOR**

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee payrolls and claims arising therefrom. The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Agreement or which would adversely affect the contractor's ability to perform services under this Agreement.

#### **ARTICLE 4 WHOLE AGREEMENT**

The General Provisions, Special Provisions and Attachments, as provided herein, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

#### **ARTICLE 5 SCOPE OF SERVICES**

The services to be performed by the Contractor are outlined in the Special Provisions of this Agreement.

#### **ARTICLE 6 PERFORMANCE PERIOD**

This Agreement shall be performed during the period which begins **October 1, 2016** and ends **September 30, 2017**. The work under this Agreement shall begin immediately following a formal Notice to Proceed.

#### **ARTICLE 7 REPORTING REQUIREMENTS**

Reporting requirements are set forth in the Special Provisions of this Agreement. If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may withhold payments otherwise due and owing the Contractor hereunder. If H-GAC withholds such payments, it shall notify the Contractor of its decision and the reasons therefor. Payments withheld pursuant to this Article may be held by H-GAC until such time as the delinquent obligations for which funds are withheld are fulfilled by the Contractor. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

#### **ARTICLE 8 PAYMENTS**

The Contractor agrees that payments are predicated upon properly documented and verified proof of performance delivered and costs incurred by the Contractor in accordance with the terms of this Agreement and shall be paid in accordance with the Compensation Schedule in the Special Provisions.

#### **ARTICLE 9 NON FUNDING CLAUSE**

Each payment obligation of H-GAC created by this Agreement is conditioned upon the availability of state or federal funds appropriated or allocated for the payment of such obligations. H-GAC shall not be otherwise obligated or liable for any future payments due or for any damages as a result of interruption of payment or termination under this Article.

#### **ARTICLE 10 INSURANCE**

The Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as specified in the Special Provisions.

#### **ARTICLE 11 REPAYMENTS**

The Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to H-GAC any amounts determined by H-GAC, its independent auditors, or any agency of state or federal government to have been paid in violation of the terms of this Agreement.

#### **ARTICLE 12 SUBCONTRACTS**

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC.

The Contractor acknowledges that H-GAC is not liable to any subcontractor(s) of the Contractor.

The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor.

#### **ARTICLE 13 AUDIT**

As a recipient of state or federal assistance through this Agreement, the Contractor acknowledges that it is subject to the Single Audit Act of 1996, P.L. 98-502, (hereinafter referred to as "Audit Act"), OMB Circular No. A-133, and the State of Texas Single Audit Circular incorporated in UGMS.

The Contractor shall have an audit made in accordance with the Single Audit, requirements of the most recently adopted UGMS and OMB Circular A-133 for any of its fiscal years in which Contractor expends more than \$500,000 in state or federal financial assistance.

The Contractor will provide H-GAC a copy of the single audit, including management letter and reporting package required by federal and state rules within 30 days after receipt of the auditor's report, or nine months after the end of the audit period.

H-GAC reserves the right to conduct or cause to be conducted an independent audit of all funds received under this Agreement which may be performed by the local government audit staff, a certified public accountant firm, or other auditors as designated by the H-GAC. Such audit will be conducted in accordance with State law, regulations, and policy, and generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any costs disallowed or overpayment as a result of audit or inspection of records kept by the Contractor on work performed under this Agreement.

#### **ARTICLE 14 EXAMINATION OF RECORDS**

The Contractor shall maintain during the course of the work, complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas and the United State Government, shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises by authorized representatives of its own or any public accounting firm selected by it. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without

limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees to include in all its subcontracts permitted pursuant to Article 12 hereof, a provision to the effect that the subcontractor agrees that H-GAC and its duly authorized representatives shall, until the expiration of four (4) years after final payment under the subcontract or until all audit findings have been resolved, have access to and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving transactions relating to the subcontract.

#### **ARTICLE 15 RETENTION OF RECORDS**

The Contractor shall maintain all records pertinent to this Agreement, including but not limited to those records enumerated in Article 14, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than four (4) calendar years from the later of the date of acceptance of the final contract closeout or the date of the final audit required under Article 13 of this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular four (4) year period, whichever is later.

#### **ARTICLE 16 CHANGES AND AMENDMENTS**

Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation; provided if the Contractor may not legally comply with such change, the contractor may terminate its participation herein as authorized by Article 17.

H-GAC may, from time to time, require changes in the scope of the services of the Contractor to be performed hereunder. Such changes that are mutually agreed upon by and between H-GAC and the Contractor in writing shall be incorporated into this Agreement.

#### **ARTICLE 17 TERMINATION PROCEDURES**

The Contractor acknowledges that this Agreement may be terminated under the following circumstances:

A. Convenience

H-GAC may terminate this Agreement in whole or in part without cause at any time by written notice by certified mail to the Contractor whenever for any reason H-GAC determines that such termination is in the best interest of H-GAC. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within 30 day days of such termination reflecting the services actually performed which have not appeared on any prior invoice, such invoice shall be satisfactory to the Executive Director or his designee. H-GAC agrees to pay the Contractor, in accordance with the terms of the Agreement, for services actually performed and accruing to the benefit of H-GAC, less payment of any compensation previously paid.

The Contractor may cancel or terminate this Agreement upon thirty (30) days written notice by certified mail to H-GAC. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC. In the event of such termination prior to completion of the Agreement provided for herein, H-GAC agrees to pay services herein specified on a prorated basis for work actually performed and invoiced in accordance with the terms of this Agreement, less payment of any compensation previously paid.

B. Default

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreement that completion of the services herein specified within the agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period of ten (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

In the event of such termination, all services of the Contractor and its employees and subcontractors shall cease and the Contractor shall prepare a final invoice reflecting the services actually performed pursuant to the Agreement which have not appeared on any prior invoice. Such invoice must be satisfactory to the Executive Director of H-GAC or his designee. H-GAC agrees to pay the Contractor, in accordance with the terms of this Agreement, for services actually performed and accruing to the benefit of H-GAC as reflected on said invoice, less payment of any compensation previously paid and less any costs or damages incurred by H-GAC as a result of such default, including incremental costs that H-GAC will incur to have the Agreement completed by a person other than the contractor.

**ARTICLE 18 SEVERABILITY**

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

**ARTICLE 19 COPYRIGHTS**

The state or federal awarding agency and H-GAC reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state or federal government or H-GAC purposes:

- (a) The copyright of all maps, data, reports, research or other work developed under this Agreement; and
- (b) Any copyrights or rights of use to copyrighted material which the Contractor purchases with funding under this Agreement. All such data and material shall be furnished to H-GAC on request.

**ARTICLE 20 OWNERSHIP OF MATERIALS**

Except as may be specified in the Special Provisions, all data, reports, research, etc., developed by the Contractor as a part of its work under this Agreement shall become the property of the H-GAC upon completion of this Agreement, or

in the event of termination or cancellation hereof, at the time of payment under ARTICLE 8 for work performed. All such data and material shall be furnished to H-GAC on request.

**ARTICLE 21 FORCE MAJEURE**

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with the H-GAC.

**ARTICLE 22 NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

The Contractor agrees to comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Agreement; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement.

**ARTICLE 23 CONFLICT OF INTEREST**

No officer, member or employee of the Contractor or subcontractors, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

**ARTICLE 24 POLITICAL ACTIVITY; LOBBYING**

No funds provided under this Agreement may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with state or local legislators. The Contractor, if a recipient of federal assistance exceeding \$100,000 through an H-GAC subcontract, will comply with section 319, Public Law 101-121 (31 U.S.C. 1352).

**ARTICLE 25 SECTARIAN INVOLVEMENT PROHIBITED**

The Contractor shall ensure that no funds under this Agreement are used, either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction.

**ARTICLE 26 CRIMINAL PROVISIONS AND SANCTIONS**

The Contractor agrees that it will perform the Agreement activities in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of the funding entity. The Contractor agrees to promptly notify H-GAC of suspected fraud, abuse or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof and to notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence.

Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit in carrying out a full investigation of all such incidents.

**ARTICLE 27 TITLES NOT RESTRICTIVE**

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

**ARTICLE 28 ACKNOWLEDGEMENT OF FUNDING SOURCE**

The Contractor shall give credit to Federal Transit Administration (FTA), Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT), and H-GAC as the funding source for this Agreement in all oral presentations, written documents, publicity, and advertisements regarding any of the Contractor's activities which arise from this Agreement.

**ARTICLE 29 DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Agreement which are not disposed of by agreement shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H-GAC's final decision.

**ARTICLE 30 GOVERNING LAW; VENUE**

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas, unless the laws of the State of Texas specifically establish venue in some other county.

**ARTICLE 31 ORDER OF PRIORITY**

In the case of any conflict between the General Provision, the Special Provisions, and Attachments to this Agreement, the following order of priority shall be utilized: Special Provision, General Provisions, and Attachments.

H-GAC and the Contractor have executed the Agreement as of the date first written above.

\_\_\_\_\_  
Jack Steele, Executive Director  
Houston-Galveston Area Council

\_\_\_\_\_  
Corby Alexander  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **SPECIAL PROVISIONS**

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## 1. COMPENSATION

The Contractor shall be reimbursed by H-GAC for authorized costs in accordance with 48 CFR, Ch 1, Part 31 incurred in performance of the work set out in this contract as specifically described in Attachment A. Detailed records must be maintained to show actual time devoted and costs incurred.

The Contractor will submit a final invoice within 30 days after the completion of work. Invoices submitted after this time will not be honored unless prior arrangements are made and approved in writing by H-GAC.

- A. **Maximum Compensation.** The total reimbursement under this contract shall not exceed Five Thousand Dollars (\$5,000 ).
- B. **Travel Expenses and Subsistence.** The Contractor shall be paid the actual cost incurred by personnel working on this project for travel expenses and subsistence that are certified as being correct and necessary for and directly associated with performance of this Contract. In-state travel shall be reimbursed at rates established by the State Comptrollers Office: (<http://www.cpa.state.tx.us/>). Transportation costs shall be reimbursed for Coach or comparable airfare or for private automobile, whichever is less. Out-of-state travel shall be reimbursed not to exceed current Federal Per Diem rates as allowed by 41 CFR Part 301-7 and Chapter 301 Federal Travel Regulations; Maximum Per Diem rates; Final Rule. Rental vehicle expenses shall be reimbursed at actual cost of compact car or smaller, unless approved by H-GAC in advance. (Note: Itemized receipt(s) for food is necessary)
- C. **Method of Payment.** H-GAC will reimburse the Contractor for services rendered on the basis of allowable costs up to the amount specified in Section 1, Part A above. Reimbursement shall be made monthly within forty-five (45) days after the receipt of the Contractor's invoice and support documentation, except as stipulated in paragraph E below. An invoice must arrive each month whether or not any expenses have occurred. In addition to documentation for travel and equipment each invoice must be accompanied by a progress report as described in Section 6, Progress Reports, below.
- D. **Billings.** The Contractor shall submit a Request for Reimbursement reflecting the overtime worked within eighteen (18) days of an enforcement period. The Request for Reimbursement shall include the following set of reports, where applicable, reflecting the enforcement activities conducted as part of the Regional DWI Task Force grant:
  - i. Agency Enforcement Summary Sheet (which will serve as the Agency's Request for Reimbursement);
  - ii. Officers' Shift Reports;
  - iii. Official Timesheets and Overtime Slips from law enforcement agency;
  - iv. Shift Reports from agency computer-aided dispatch (CAD) systems reflecting time worked;
  - v. Financial printouts from agency accounting system;
  - vi. List of public events attended where DWI and the DWI Task Force were discussed
- E. **Matching Fund Certification.** The Contractor shall record and report benefits and taxes that have been paid on the overtime pay accrued by participating staff during the enforcement period, as well as the number of miles driven by participating staff in the vehicle used for the enforcement activities. The rates for these items are as follows:

- i. Retirement Match: **17.63 percent of wages - \$881.50**
- ii. Social Security Tax: **6.2 percent of wages - \$310.00**
- iii. Medicare Tax: **1.45 percent of wages - \$72.50**
- iv. Workers' Compensation: **1.71 percent of wages - \$85.50**
- v. Vehicle Mileage Rate: **\$0.54 per mile** (adjusted based on Comptroller's Rate)

These rates may be subject to change based on legislative or local governmental action. H-GAC must be notified of any change in the above-listed rates made by the Contractor.

## **2. CONTRACTOR PERSONNEL**

The Contractor agrees to assign qualified staff members including a Project Manager who shall be responsible for the task administration and work performance. The Project Manager shall be **Bennie Boles**. In the event the Project Manager becomes no longer available to this project, a substitution of like personnel with similar qualifications can only be made after obtaining prior written approval of H-GAC.

## **3. INSPECTION OF WORK**

H-GAC shall have the right to review and inspect the progress of the work described herein at all times.

## **4. PROPRIETARY RIGHTS**

Contractor agrees not to release data or information about the results of the project to any person outside of H-GAC without first obtaining written authorization to release such information from H-GAC. Contractor shall be permitted to list H-GAC as a client for marketing purposes.

## **5. INSURANCE**

H-GAC acknowledges that Contractor is governed by the Texas Tort Claims Act, which sets forth certain limitations and restrictions on the types of liability and the types of insurance coverage that can be required of Contractor. The Contractor represents to H-GAC that it either has adequate General Liability and Property insurance policies in place or sufficient resources to self-insure for all claims for which it may be responsible under the Texas Tort Claims Act. The Contractor further represents to H-GAC that it either has workers' compensation insurance in the amount required by statute or is entitled to self-insure for workers compensation coverage under Texas law and has elected to do so.

## **6. ACTIVITY REPORTS**

The Contractor shall submit to H-GAC activity reports as described in Section One, Parts D and E above. The reports shall reflect enforcement activities accomplished during the previous enforcement period. These reports will include, but not be limited to the list of items required under Section One, Part D.

## 7. DISADVANTAGED BUSINESS ENTERPRISES

- (1) Policy. It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.
- (2) DBE Obligation. The Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The Contractor shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of DOT-assisted contracts.

H-GAC has established a goal of 22% DBE participation in its FTA third party contracting opportunities. There, any contract issued under this Agreement will carry a 22% DBE participation goal.

## 8. TITLE VI ASSURANCE

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (a) Compliance with Regulations. The Contractor shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.
- (b) Nondiscrimination. The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, religion, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulation including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- (c) Solicitation for Subcontracts, including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under the subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, age, sex, or national origin.
- (d) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by H-GAC or the Department of Transportation (DOT) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a Contractor and is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to H-GAC or the Department of Transportation, as

appropriate and shall set forth what efforts it has made to obtain the information.

- (e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the District shall impose such contract sanctions as it or the Department of Transportation may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
  - (2) Cancellation, termination, or suspension of the Contract, in whole or in part.
- (f) Incorporation of Provisions. The Contractor shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant hereto. The Contractor shall take such action with respect to any subcontract or procurement as H-GAC may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request H-GAC to enter into such litigation to protect the interests of H-GAC and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **9. COMPLIANCE WITH LAWS**

The Contractor 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, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

## **10. ENERGY POLICY**

Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

## **11. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT REQUIREMENTS**

Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under nonexempt federal contracts, grants or loans, of facilities included on the EPA list for Violating Facilities.

## **12. DEBARRED BIDDERS**

Contractor, including any of its officers or holders of a controlling interest, is obligated to inform H-GAC whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform H-GAC.

### **13. DRUG-FREE WORKPLACE**

The Contractor agrees that if the Contractor is a recipient of more than \$25,000 in federal assistance through an H-GAC subcontract, the Contractor shall provide a "drug-free" workplace in accordance with the Drug-free Workplace Act (DFWA), March 18, 1989. For purposes of this Section, "drug-free" means a worksite at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance. The Contractor shall:

1. Publish a policy statement prohibiting the manufacture, distribution, dispensation, possession, or use of a controlled substance and notify employees of the consequences for violating this prohibition;
2. Establish a drug-free awareness program;
3. Provide each employee with a copy of its policy statement; and
4. Notify employees that, as a condition of employment, the employee must adhere to the terms of the statement and must notify the employer of any criminal drug offense within five days of conviction.

**OPERATIONS GUIDELINES/SCOPE OF SERVICES  
REGIONAL DWI TASK FORCE  
RESPONSIBILITIES OF PARTICIPATING AGENCIES:**

The following are a list of expectations for officers and agencies interested in participating in the Regional DWI Task Force. This list is based on TxDOT's requirements for Selective Traffic Enforcement Program (STEP) Grants:

- A. H-GAC will serve as the administrator of the STEP Grant. H-GAC will be responsible for the following activities in the grant's administration:
  - 1. Setting up pre-Task Force meetings with participating agencies to discuss participation, protocols, and operational specifics;
  - 2. Setting up post-Task Force meetings to debrief enforcement activities;
  - 3. Determining how many officers will be participating on an enforcement weekend;
  - 4. Collecting requests for reimbursement, along with associated backup documentation;
  - 5. Submitting requests for reimbursement to TxDOT;
  - 6. Reimbursing agencies for work performed upon receipt of funds from TxDOT;
  - 7. Report on Task Force performance to TxDOT and to Task Force members.
  
- B. Task Force activities will occur during the following periods:
  - 1. Halloween – October 23 - November 2, 2016 (depending on agreement timing)
  - 1a Thanksgiving – November 20 – 30, 2016 (depending on agreement timing)
  - 2. Christmas/New Years – December 15, 2016 - January 1, 2017
  - 3. Spring Break/Rodeo/St. Patrick's Day – March 4-21, 2017
  - 4. Memorial Day – May 22 - June 4, 2017
  - 5. July 4<sup>th</sup> – June 24 - July 5, 2017
  - 6. Labor Day – August 18 - September 3, 2017
  
- C. Participating agencies will be expected to assist H-GAC in carrying out all performance measures established in the grant, including fulfilling the law enforcement objectives by implementing the Operational Plan contained in this Grant Agreement.
  
- D. Participating agencies will be expected to submit all required reports to H-GAC fully completed with the most current information, and within the required times, as defined in the agency's Agreement with H-GAC and as required by TxDOT. This includes reporting to H-GAC on progress, achievements, and problems in post-operational Performance Reports and attaching necessary source documentation to support all costs claimed in Requests for Reimbursement (RFR).

- E. Participating agencies will be expected to attend H-GAC and TxDOT grant management training, when required.
- F. Participating agencies will be expected to attend meetings according to the following:
  - 1. H-GAC will arrange for Task Force meetings in order to meet with participating agencies prior to an enforcement event to discuss procedures, protocols, and operational specifics relating to the event (e.g. enforcement area determination, intake facility locations, etc.). Depending on the enforcement wave timing, two waves may be addressed at the same meeting.
  - 2. H-GAC will arrange for Task Force meetings to meet with participating agencies to present status of activities and to discuss problems and the schedule for the following enforcement event's work.
  - 3. H-GAC's project director or other appropriate qualified persons will be available to represent participating agencies at meetings requested by the TxDOT.
- G. Participating agencies will be expected to support grant enforcement efforts with public information and education (PI&E) activities. Salaries being claimed for PI&E activities must be included in the budget.
- H. Participating agencies must maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project and adhere to the respective overtime policies established by each agency.
- I. Participating agencies, to comply with TxDOT matching fund requirements, will supply the following information (if applicable) associated with the time worked by agency personnel:
  - 1. Retirement match paid by agency
  - 2. Workers Compensation insurance
  - 3. Social Security Tax
  - 4. Medicare Tax
  - 5. Health Insurance
  - 6. Vehicle Mileage for shift
  - 7. Indirect Costs
- J. Participating agencies will be expected to ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the use of federal funds to support personnel or any activity already supported by local or state funds, or other sources of agency revenue.
- K. Participating agencies will be expected to ensure that each officer working on the STEP project will complete an officer's daily report form. The form should include at a minimum: name, date, badge or identification number, mileage (including starting and ending mileage), hours worked, type of citation issued or arrest made, officer and supervisor signatures. Each officer will need to complete an overtime slip from his or her agency as well, which must be approved by the supervisor.

- L. Participating agencies will be required to identify a supervising officer for each shift being worked by the agency.
- M. Participating agencies will be expected to ensure that no officer above the rank of Lieutenant (or equivalent title) will be reimbursed for enforcement duty, unless the participating agency received specific written authorization from both H-GAC and TxDOT, through eGrants system messaging, prior to incurring costs.
- N. Participating agencies must submit a summary reimbursement request form to H-GAC within eighteen (18) days of the end of the enforcement weekend for reimbursement. With this reimbursement request form shall be attached all of the agency's daily report forms, copies of overtime slips, and copies of the agency's CAD system shift report for the shifts worked. The reimbursement submission must be certified by the agency's financial officer. Failure to submit this information in a timely manner will hold up reimbursements for all participating agencies.
- O. Participating agencies may work additional STEP enforcement hours on holidays or special events not covered under the Operational Plan. However, additional work must be approved in writing by H-GAC and TxDOT, through eGrants system messaging, prior to enforcement. Additional hours must be reported in the Performance Report for the time period for which the additional hours were worked.
- P. An enforcement shift shall be no longer than **eight (8) hours**. Shift length will be determined prior to the shift. However, if an officer makes a STEP-related DWI arrest during the shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest.
- Q. Participating agencies should have a safety belt use policy. If a participating agency does not have a safety belt use policy in place, a policy should be implemented, and a copy maintained for verification during the grant year.
- R. Officers working DWI enforcement must be trained in the National Highway Traffic Safety Administration/International Association of Chiefs of Police Standardized Field Sobriety Testing (SFST).
- S. Participating agencies should have a procedure in place for contacting and using drug recognition experts (DREs) when necessary.
- T. Participating agencies will be expected to follow its own policies and procedures, as well as to enforce and comply with all federal, state, and local laws and regulations.
- U. This grant is a multi-agency effort, requiring all participants to make a diligent effort to patrol and apprehend offenders. Failure of a participating agency to do so may result in the overall non-achievement of goals, jeopardizing the future ability of being awarded similar grants in the future. If it is deemed that an agency is not actively pursuing the goals of the Program, the Agency, pursuant to Section 17 of the General Provisions of this Agreement, may terminate the Agreement.

## REQUEST FOR CITY COUNCIL AGENDA ITEM

|  |  |  |
|--|--|--|
| Agenda Date Requested:                   | <u>October 10, 2016</u>  | Appropriation  |
| Requested By:                            | <u>Ken Adcox</u>   | Source of Funds: <u>Grant Fund</u>   |
| Department:                              | <u>Police</u>  | Account Number: <u>03252535211020</u>  |
| Report: <input checked="" type="radio"/> | Resolution: <input type="radio"/> Ordinance: <input type="radio"/> | Amount Budgeted: <u>\$49,088.00</u>  |
| Other: <input type="radio"/>             |  | Amount Requested: <u>\$49,996.75</u>   |
|  |  | Budgeted Item: <input checked="" type="radio"/> YES <input type="radio"/> NO |

### Attachments :

1. Resolution
2. Texas Traffic Safety Program Grant Agreement
3. Email with STEP Year-End Statistical Report

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### SUMMARY & RECOMMENDATIONS

The La Porte Police Department has made its annual application for the TXDOT "S.T.E.P." grant concerning overtime reimbursement for Speed and Intersection Control for the fiscal year 2016/2017. This will mark the seventh year for which the department has applied for the grant. TXDOT has preliminarily approved the award and forwarded the attached grant agreement for City Council's consideration and approval.

The grant will reimburse the City up to \$49,996.75 (which is greater than what was originally anticipated and budgeted in the Grant Fund) with matching contributions from the City of \$51,361.20. The City's matching funds have been included in the department's operations budget.

Although the grant pays only base salary, as in past years, the police department will continue to meet the match through administrative costs, employee benefits, mileage, fuel, and City funded Speed and Intersection Control overtime.

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### Action Required of Council:

Consider approval or other action of a Resolution authorizing the City Manager to sign grant award and other documents for Speed and Intersection Traffic Control STEP grant.

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### Approved for City Council Agenda

\_\_\_\_\_  
Corby D. Alexander, City Manager

\_\_\_\_\_  
Date



## RESOLUTION

\* \* \* \*

**WHEREAS**, injuries and deaths from traffic crashes bring loss and suffering to the citizens of this community; and

**WHEREAS**, the cost of such injuries brings economic hardship to families; and

**WHEREAS**, the community's health care system and emergency response resources are significantly impacted by injuries of traffic crashes; and

**WHEREAS**, research shows that speed is a causative factor in many traffic crashes; and

**WHEREAS**, failure to obey traffic control devices, signs and signals at intersections causes many traffic crashes; and

**WHEREAS**, the National Highway Traffic Safety Administration statistics have shown that reducing speed limit and traffic control violators prevents crashes, saves lives and reduces non-fatal injuries while resulting in economic savings to society;

**WHEREAS**, the Speed/Intersection Traffic Control STEP includes public education and intensified law enforcement to get the community to comply with speed limits and traffic control devices, signs and signals;

**NOW THEREFORE, BE IT RESOLVED** that The City of La Porte approves the City Manager to execute all documents for the Speed/ITC STEP Grant for October 1, 2016 through September 30, 2017; joining public and private sector leaders across Texas supporting the campaign; urging all residents and visitors of La Porte to abide by traffic laws, to protect life and the quality of life in this community.

Signed by:

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Authorized Official

**ATTEST:**

**APPROVED:**

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*City Secretary*

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*Mayor, City of La Porte*

# **Texas Traffic Safety eGrants**

## **Fiscal Year 2017**

**Organization Name:** City of La Porte - Police Department

**Legal Name:** City of La Porte

**Payee Identification Number:** 17460015526006

**Project Title:** STEP Comprehensive

**ID:** 2017-LaPorte-S-1YG-0037

**Period:** 10/01/2016 to 09/30/2017

**FOR REVIEW ONLY - NOT A LEGAL DOCUMENT**

**TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT**

THE STATE OF TEXAS  
THE COUNTY OF TRAVIS

THIS AGREEMENT IS MADE BY and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the Department and the, **City of La Porte** hereinafter called the Subgrantee, and becomes effective then fully executed by both parties. For the purpose of this agreement, the Subgrantee is designated as a(n) **Local Government/Transit District**.

AUTHORITY: Texas Transportation Code, Chapter 723, the Traffic Safety Act of 1967, and the Highway Safety Performance Plan for the Fiscal Year 2017.

Name of the Federal Agency: **National Highway Traffic Safety Administration**

CFDA Number: **20.600**  
CFDA Title: **State and Community Highway Safety Grant Program**  
Funding Source: Section **402**  
DUNS: **010804755**  
FAIN: **18X9204020TX17**

Project Title: **STEP Comprehensive**  
Description:  
This project is **Not Research and Development**

Grant Period: This Grant becomes effective on **10/01/2016** or on the date of final signature of both parties, whichever is later, and ends on **09/30/2017** unless terminated or otherwise modified.

Total Awarded: **\$101,357.95**  
Amount Eligible for Reimbursement by the Department: **\$49,996.75**  
Match Amount provided by the Subgrantee: **\$51,361.20**

**FOR REVIEW ONLY - NOT A LEGAL DOCUMENT**

**TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT**

The signatory of the Subgrantee hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into this agreement on behalf of the organization.

**Subgrantee Signature**

By checking this box, I agree to use electronic signatures. Furthermore, I confirm that I have signature authority to execute this document and it is an electronic representation of my signature for all purposes when I use it on documents, including legally binding contracts—just the same as a pen-and-paper signature.

Name:

Title:

Date:

**TxDOT Signature**

By checking this box, I agree to use electronic signatures. Furthermore, I confirm that I have signature authority to execute this document and it is an electronic representation of my signature for all purposes when I use it on documents, including legally binding contracts—just the same as a pen-and-paper signature.

Name:

Title:

Date:

**FOR REVIEW ONLY - NOT A LEGAL DOCUMENT**

**GRANT AGREEMENT GENERAL TERMS AND CONDITIONS**

Definitions: For purposes of these Terms and Conditions, the "Department" is also known as the "State" and the "prospective primary participant" and the "Subgrantee" is also known as the "Subrecipient" and "prospective lower tier participant"

**ARTICLE 1. COMPLIANCE WITH LAWS**

The Subgrantee shall comply with all federal, state, and local laws, statutes, codes, 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, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, and licensing laws and regulations. When required, the Subgrantee shall furnish the Department with satisfactory proof of compliance.

**ARTICLE 2. STANDARD ASSURANCES**

The Subgrantee assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 2 CFR, Part 200; and the Department's Traffic Safety Program Manual, as they relate to the application, acceptance, and use of federal or state funds for this project. Also, the Subgrantee assures and certifies that:

- A. It possesses legal authority to apply for the grant; and that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained in the application, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide any additional information that may be required.
- B. It and its subcontractors will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and in accordance with that Act, no person shall discriminate, on the grounds of race, color, sex, national origin, age, religion, or disability.
- C. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended; 42 USC (United States Code) §§4601 et seq.; and United States Department of Transportation (USDOT) regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR, Part 24, which provide for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.
- D. It will comply with political activity (Hatch Act) (applies to subrecipients as well as States). The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- E. It will comply with the federal Fair Labor Standards Act's minimum wage and overtime requirements for employees performing project work.

- F. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- G. It will give the Department the access to and the right to examine all records, books, papers, or documents related to this Grant Agreement.
- H. It will comply with all requirements imposed by the Department concerning special requirements of law, program requirements, and other administrative requirements.
- I. It recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to this Grant Agreement. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 USC §§4321 et seq.; the Clean Air Act, as amended, 42 USC §§7401 et seq. and sections of 29 USC; the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et seq.; the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§9601 et seq. The Subgrantee also recognizes that the U.S. Environmental Protection Agency, USDOT, and other federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect this Project. Thus, it agrees to comply, and assures the compliance of each contractor and each subcontractor, with any federal requirements that the federal government may now or in the future promulgate.
- J. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 USC §4012a(a). Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where that insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any form of direct or indirect federal assistance.
- K. It will assist the Department in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470 et seq.), Executive Order 11593, and the Antiquities Code of Texas (National Resources Code, Chapter 191).
- L. It will comply with Chapter 573 of the Texas Government Code by ensuring that no officer, employee, or member of the Subgrantee's governing board or the Subgrantee's subcontractors shall vote or confirm the employment of any person related within the second degree of affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise that person. This prohibition shall not apply to the employment of a person described in Section 573.062 of the Texas Government Code.
- M. It will ensure that all information collected, assembled, or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Chapter 552 of the Texas Government Code, unless otherwise expressly provided by law.

- N. If applicable, it will comply with Chapter 551 of the Texas Government Code, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

### **ARTICLE 3. COMPENSATION**

- A. The method of payment for this agreement will be based on actual costs incurred up to and not to exceed the limits specified in the Project Budget. The amount included in a Project Budget category will be deemed to be an estimate only and a higher amount can be reimbursed, subject to the conditions specified in paragraph B of this Article. If the Project Budget specifies that costs are based on a specific rate, per-unit cost, or other method of payment, reimbursement will be based on the specified method.
- B. All payments will be made in accordance with the Project Budget.
1. The Subgrantee's expenditures may overrun a budget category (I, II, or III) in the approved Project Budget without a grant (budget) amendment, as long as the overrun does not exceed a total of five (5) percent of the maximum amount eligible for reimbursement (TxDOT) in the attached Project Budget for the current fiscal year. This overrun must be off-set by an equivalent underrun elsewhere in the Project Budget.
  2. If the overrun is five (5) percent or less, the Subgrantee must provide written notification to the Department, through the TxDOT Electronic Grants Management System (eGrants), prior to the Request for Reimbursement being approved. The notification must indicate the amount, the percent over, and the specific reason(s) for the overrun.
  3. Any overrun of more than five (5) percent of the amount eligible for reimbursement (TxDOT) in the attached Project Budget requires an amendment of this Grant Agreement.
  4. The maximum amount eligible for reimbursement shall not be increased above the Grand Total TxDOT Amount in the approved Project Budget, unless this Grant Agreement is amended, as described in Article 5 of this agreement.
  5. For Selective Traffic Enforcement Program (STEP) grants only: In the Project Budget, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or B, "PI&E Activities," to exceed the TxDOT amount listed in Subcategory C, "Other." Also, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or C, "Other," to exceed the TxDOT amount listed in Subcategory B, "PI&E Activities." The TxDOT amount for Subcategory B, "PI&E Activities," or C, "Other," can only be exceeded within the five (5) percent flexibility, with underrun funds from Budget Categories II or III.
- C. To be eligible for reimbursement under this agreement, a cost must be incurred in accordance with the Project Budget, within the time frame specified in the Grant Period of this Grant Agreement, attributable to work covered by this agreement, and which has been completed in a manner satisfactory and acceptable to the Department.
- D. Federal or TxDOT funds cannot supplant (replace) funds from any other sources. The term "supplanting," refers to the use of federal or TxDOT funds to support personnel or an activity already supported by local or state funds.

- E. Payment of costs incurred under this agreement is further governed by the cost principles outlined in 2 CFR Part 200.
- F. The Subgrantee agrees to submit monthly Requests for Reimbursement, as designated in this Grant Agreement, within thirty (30) days after the end of the billing period. The Request for Reimbursement and appropriate supporting documentation must be submitted through eGrants.
- G. The Subgrantee agrees to submit the final Request for Reimbursement under this agreement within forty-five (45) days of the end of the grant period.
- H. Payments are contingent upon the availability of appropriated funds.
- I. Project agreements supported with federal or TxDOT funds are limited to the length of this Grant Period specified in this Grant Agreement. If the Department determines that the project has demonstrated merit or has potential long-range benefits, the Subgrantee may apply for funding assistance beyond the initial agreement period.

Preference for funding will be given to projects based on (1) proposed cost sharing and (2) demonstrated performance history.

#### **ARTICLE 4. LIMITATION OF LIABILITY**

Payment of costs incurred under this agreement is contingent upon the availability of funds. If at any time during this Grant Period, the Department determines that there is insufficient funding to continue the project, the Department shall notify the Subgrantee, giving notice of intent to terminate this agreement, as specified in Article 11 of this agreement. If at the end of a federal fiscal year, the Department determines that there is sufficient funding and performance to continue the project, the Department may notify the Subgrantee to continue this agreement.

#### **ARTICLE 5. AMENDMENTS**

This agreement may be amended prior to its expiration by mutual written consent of both parties, utilizing the Grant Agreement Amendment in eGrants. Any amendment must be executed by the parties within the Grant Period, as specified in this Grant Agreement.

#### **ARTICLE 6. ADDITIONAL WORK AND CHANGES IN WORK**

- A. If the Subgrantee is of the opinion that any assigned work is beyond the scope of this agreement and constitutes additional work, the Subgrantee shall promptly notify the Department in writing through eGrants. If the Department finds that such work does constitute additional work, the Department shall advise the Subgrantee and a written amendment to this agreement will be executed according to Article 5, Amendments, to provide compensation for doing this work on the same basis as the original work. If performance of the additional work will cause the maximum amount payable to be exceeded, the work will not be performed before a written grant amendment is executed.
- B. If the Subgrantee has submitted work in accordance with the terms of this agreement but the Department requests changes to the completed work or parts of the work which involve changes to the original scope of services or character of work under this agreement, the

Subgrantee shall make those revisions as requested and directed by the Department. This will be considered as additional work and will be paid for as specified in this Article.

- C. If the Subgrantee submits work that does not comply with the terms of this agreement, the Department shall instruct the Subgrantee to make any revisions that are necessary to bring the work into compliance with this agreement. No additional compensation shall be paid for this work.
- D. The Subgrantee shall make revisions to the work authorized in this agreement that are necessary to correct errors or omissions, when required to do so by the Department. No additional compensation shall be paid for this work.
- E. The Department shall not be responsible for actions by the Subgrantee or any costs incurred by the Subgrantee relating to additional work not directly associated with or prior to the execution of an amendment.

#### **ARTICLE 7. REPORTING AND MONITORING**

- A. Not later than thirty (30) days after the end of each reporting period, the Subgrantee shall submit a performance report through eGrants. Reporting periods vary by project duration and are defined as follows:
  - 1. For short term projects, the reporting period is the duration of the project. Subgrantee shall submit a performance report within 30 days of project completion.
  - 2. For longer projects, the reporting period is monthly. Subgrantee shall submit a performance report within 30 days of the completion of each project month and within 30 days of project completion.
  - 3. For Selective Traffic Enforcement Program (STEP) Wave projects, the reporting period is each billing cycle. Subgrantee shall submit a performance report within 30 days of the completion of each billing cycle.
- B. The performance report will include, as a minimum: (1) a comparison of actual accomplishments to the objectives established for the period, (2) reasons why established objectives and performance measures were not met, if appropriate, and (3) other pertinent information, including, when appropriate, an analysis and explanation of cost underruns, overruns, or high unit costs.
- C. The Subgrantee shall promptly advise the Department in writing, through eGrants, of events that will have a significant impact upon this agreement, including:
  - 1. Problems, delays, or adverse conditions, including a change of project director or other changes in Subgrantee personnel, that will materially affect the ability to attain objectives and performance measures, prevent the meeting of time schedules and objectives, or preclude the attainment of project objectives or performance measures by the established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Department or federal assistance needed to resolve the situation.
  - 2. Favorable developments or events that enable meeting time schedules and objectives sooner than anticipated or achieving greater performance measure output than

originally projected.

- D. The Subgrantee shall submit the Final Performance Report through eGrants within thirty (30) days after completion of the grant.

#### **ARTICLE 8. RECORDS**

The Subgrantee agrees to maintain all reports, documents, papers, accounting records, books, and other evidence pertaining to costs incurred and work performed under this agreement (called the "Records"), and shall make the Records available at its office for the time period authorized within the Grant Period, as specified in this Grant Agreement. The Subgrantee further agrees to retain the Records for four (4) years from the date of final payment under this agreement, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

Duly authorized representatives of the Department, the USDOT, the Office of the Inspector General, Texas State Auditor, and the Comptroller General shall have access to the Records. This right of access is not limited to the four (4) year period but shall last as long as the Records are retained.

#### **ARTICLE 9. INDEMNIFICATION**

- A. To the extent permitted by law, the Subgrantee, if other than a government entity, shall indemnify, hold, and save harmless the Department and its officers and employees from all claims and liability due to the acts or omissions of the Subgrantee, its agents, or employees. The Subgrantee also agrees, to the extent permitted by law, to indemnify, hold, and save harmless the Department from any and all expenses, including but not limited to attorney fees, all court costs and awards for damages incurred by the Department in litigation or otherwise resisting claims or liabilities as a result of any activities of the Subgrantee, its agents, or employees.
- B. To the extent permitted by law, the Subgrantee, if other than a government entity, agrees to protect, indemnify, and save harmless the Department from and against all claims, demands, and causes of action of every kind and character brought by any employee of the Subgrantee against the Department due to personal injuries to or death of any employee resulting from any alleged negligent act, by either commission or omission on the part of the Subgrantee.
- C. If the Subgrantee is a government entity, both parties to this agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

#### **ARTICLE 10. DISPUTES AND REMEDIES**

This agreement supersedes any prior oral or written agreements. If a conflict arises between this agreement and the Traffic Safety Program Manual, this agreement shall govern. The Subgrantee shall be responsible for the settlement of all contractual and administrative issues arising out of procurement made by the Subgrantee in support of work under this agreement. Disputes concerning performance or payment shall be submitted to the Department for settlement, with the Executive Director or his or her designee acting as final referee.

#### **ARTICLE 11. TERMINATION**

- A. This agreement shall remain in effect until the Subgrantee has satisfactorily completed all services and obligations described in this agreement and these have been accepted by the Department, unless:
1. This agreement is terminated in writing with the mutual consent of both parties; or
  2. There is a written thirty (30) day notice by either party; or
  3. The Department determines that the performance of the project is not in the best interest of the Department and informs the Subgrantee that the project is terminated immediately.
- B. The Department shall compensate the Subgrantee for only those eligible expenses incurred during the Grant Period specified in this Grant Agreement that are directly attributable to the completed portion of the work covered by this agreement, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The Subgrantee shall not incur nor be reimbursed for any new obligations after the effective date of termination.

#### **ARTICLE 12. INSPECTION OF WORK**

- A. The Department and, when federal funds are involved, the USDOT, or any of their authorized representatives, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this agreement and the premises in which it is being performed.
- B. If any inspection or evaluation is made on the premises of the Subgrantee or its subcontractor, the Subgrantee shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in a manner that will not unduly delay the work.

#### **ARTICLE 13. AUDIT**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

#### **ARTICLE 14. SUBCONTRACTS**

A subcontract in excess of \$25,000 may not be executed by the Subgrantee without prior written concurrence by the Department. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this agreement. No subcontract will relieve the Subgrantee of its responsibility under this agreement.

#### **ARTICLE 15. GRATUITIES**

- A. Texas Transportation Commission policy mandates that employees of the Department shall not accept any benefit, gift, or favor from any person doing business with or who, reasonably speaking, may do business with the Department under this agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.
- B. Any person doing business with or who reasonably speaking may do business with the Department under this agreement may not make any offer of benefits, gifts, or favors to Department employees, except as mentioned here above. Failure on the part of the Subgrantee to adhere to this policy may result in termination of this agreement.

#### **ARTICLE 16. NONCOLLUSION**

The Subgrantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. If the Subgrantee breaches or violates this warranty, the Department shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, contingent fee, or gift.

#### **ARTICLE 17. CONFLICT OF INTEREST**

The Subgrantee represents that it or its employees have no conflict of interest that would in any way interfere with its or its employees' performance or which in any way conflicts with the interests of the Department. The Subgrantee shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Department's interests.

#### **ARTICLE 18. SUBGRANTEE'S RESOURCES**

- A. The Subgrantee certifies that it presently has adequate qualified personnel in its employment to perform the work required under this agreement, or will be able to obtain such personnel from sources other than the Department.
- B. All employees of the Subgrantee shall have the knowledge and experience that will enable them to perform the duties assigned to them. Any employee of the Subgrantee who, in the opinion of the Department, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.
- C. Unless otherwise specified, the Subgrantee shall furnish all equipment, materials, supplies, and other resources required to perform the work.

#### **ARTICLE 19. PROCUREMENT AND PROPERTY MANAGEMENT**

The Subgrantee shall establish and administer a system to procure, control, protect, preserve,

use, maintain, and dispose of any property furnished to it by the Department or purchased pursuant to this agreement in accordance with its own procurement and property management procedures, provided that the procedures are not in conflict with (1) the Department's procurement and property management standards and (2) the federal procurement and property management standards provided by 2 CFR §§ 200.310-.316, 200.318-.324.

#### **ARTICLE 20. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Upon completion or termination of this Grant Agreement, whether for cause or at the convenience of the parties, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc. prepared by the Subgrantee, and equipment and supplies purchased with grant funds shall, at the option of the Department, become the property of the Department. All sketches, photographs, calculations, and other data prepared under this agreement shall be made available, upon request, to the Department without restriction or limitation of their further use.

- A. Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any databases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.
- B. All rights to Department. The Department shall own all of the rights (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests in and to all data, and other information developed under this contract and versions thereof unless otherwise agreed to in writing that there will be joint ownership.
- C. All rights to Subgrantee. Classes and materials initially developed by the Subgrantee without any type of funding or resource assistance from the Department remain the Subgrantee's intellectual property. For these classes and materials, the Department payment is limited to payment for attendance at classes.

#### **ARTICLE 21. SUCCESSORS AND ASSIGNS**

The Department and the Subgrantee each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of the other party in respect to all covenants of this agreement. The Subgrantee shall not assign, sublet, or transfer interest and obligations in this agreement without written consent of the Department through eGrants.

#### **ARTICLE 22. CIVIL RIGHTS COMPLIANCE**

- A. Compliance with regulations: The Subgrantee shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (USDOT): 49 CFR, Part 21; 23 CFR, Part 200; and 41 CFR, Parts 60-74, as they may be amended periodically (called the "Regulations"). The Subgrantee agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60).
- B. Nondiscrimination: (applies to subrecipients as well as States) The State highway safety agency and Subgrantee will comply with all Federal statutes and implementing regulations relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil

Rights Act of 1964 (Pub. L. 88-352), which prohibits discrimination on the basis of race, color or national origin (and 49 CFR Part 21); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (Pub. L. 101-336), as amended (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disabilities (and 49 CFR Part 27); (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Civil Rights Restoration Act of 1987 (Pub. L. 100-259), which requires Federal-aid recipients and all subrecipients to prevent discrimination and ensure nondiscrimination in all of their programs and activities; (f) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (h) Sections 523 and 527 of the Public Health Service Act of 1912, as amended (42 U.S.C. 290dd-3 and 290ee-3), relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601, et seq.), relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the application.

- C. Solicitations for subcontracts, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Subgrantee for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Subgrantee of the Subgrantee's obligations under this agreement and the regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, religion, or disability.
- D. Information and reports: The Subgrantee shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the USDOT to be pertinent to ascertain compliance with the Regulations or directives. Where any information required of the Subgrantee is in the exclusive possession of another who fails or refuses to furnish this information, the Subgrantee shall certify that to the Department or the USDOT, whichever is appropriate, and shall set forth what efforts the Subgrantee has made to obtain the requested information.
- E. Sanctions for noncompliance: In the event of the Subgrantee's noncompliance with the nondiscrimination provision of this agreement, the Department shall impose such sanctions as it or the USDOT may determine to be appropriate.
- F. Incorporation of provisions: The Subgrantee shall include the provisions of paragraphs A. through E. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives. The Subgrantee shall take any action with respect to any subcontract or procurement that the Department may direct as a means of enforcing those provisions, including sanctions for noncompliance. However, in the event a Subgrantee becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Subgrantee may request the Department to enter into litigation to protect the interests of the state; and in addition, the

Subgrantee may request the United States to enter into such litigation to protect the interests of the United States.

**ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Subgrantee shall adopt, in its totality, the Department's federally approved DBE program.
- C. The Subgrantee shall set an appropriate DBE goal consistent with the Department's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Subgrantee shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Subgrantee shall follow all other parts of the Department's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address <http://www.txdot.gov/business/partnerships/dbe.html>
- E. The Subgrantee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Subgrantee shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of USDOT-assisted contracts. The Department's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Subgrantee of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).
- F. Each contract the Subgrantee signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.

**ARTICLE 24. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (applies to subrecipients as well as States)**

Instructions for Primary Certification

- 1. By signing and submitting this proposal, the prospective primary participant is providing the

certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and coverage sections of 49 CFR Part 29. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions*

(1) The prospective primary participant certifies to the best of its knowledge and belief, that its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal 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 record, making false statements, or receiving stolen property;

(c) 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 paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this

transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below)

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:*

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**ARTICLE 25. CERTIFICATION REGARDING FEDERAL LOBBYING** (applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

In executing this agreement, each signatory certifies to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

**ARTICLE 26. CHILD SUPPORT CERTIFICATION**

Under Section 231.006, Texas Family Code, the Subgrantee certifies that the individual or business entity named in this agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this agreement may be terminated and payment may be

withheld if this certification is inaccurate. If the above certification is shown to be false, the Subgrantee is liable to the state for attorney's fees and any other damages provided by law or the agreement. A child support obligor or business entity ineligible to receive payments because of a payment delinquency of more than thirty (30) days remains ineligible until: all arrearages have been paid; the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) of Section 231.006, Texas Family Code, as part of a court-supervised effort to improve earnings and child support payments.

**ARTICLE 27. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT REQUIREMENTS**

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:  
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and  
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B. The Subgrantee agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (48 CFR subpt. 4.11) if this award provides for more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM web-site at: <https://www.sam.gov>
  2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
  3. Report the total compensation and names of its top five (5) executives to the State if:
    - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
    - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

**ARTICLE 28. SINGLE AUDIT REPORT**

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.
- B. If threshold expenditures of \$750,000 or more are met during the Subgrantee's fiscal year, the Subgrantee must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at [singleaudits@txdot.gov](mailto:singleaudits@txdot.gov)
- C. If expenditures are less than \$750,000 during the Subgrantee's fiscal year, the Subgrantee must submit a statement to TxDOT's Audit Office as follows: "We did not meet the

\$750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY\_\_\_\_\_."

- D. For each year the project remains open for federal funding expenditures, the Subgrantee will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

**ARTICLE 29. BUY AMERICA ACT** (applies to subrecipients as well as States)

The State and Subgrantee will comply with the provisions of the Buy America Act (49 U.S.C. 5323(j)), which contains the following requirements:

Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

**ARTICLE 30. RESTRICTION ON STATE LOBBYING** (applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

**ARTICLE 31. NONGOVERNMENTAL ENTITY'S PUBLIC INFORMATION**

*[This article applies only to non-profit entities.]*

The Subgrantee is required to make any information created or exchanged with the Department pursuant to this Grant Agreement and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the Department. [SB-1368, 83rd Texas Legislature, Regular Session, Effective 9/1/13]

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**RESPONSIBILITIES OF THE SUBGRANTEE**

- A. Carry out all performance measures established in the grant, including fulfilling the law enforcement objectives by implementing the Operational Plan contained in this Grant Agreement.
- B. Submit all required reports to the Department (TxDOT) fully completed with the most current information, and within the required times, as defined in Article 3 and Article 7 of the General Terms and Conditions of this Grant Agreement. This includes reporting to the Department on progress, achievements, and problems in monthly Performance Reports and attaching necessary source documentation to support all costs claimed in Requests for Reimbursement (RFR).
- C. Attend grant related training as requested by the Department.
- D. Attend meetings according to the following:
  - 1. The Department will arrange for meetings with the Subgrantee to present status of activities and to discuss problems and the schedule for the following quarter's work.
  - 2. The project director or other appropriate qualified persons will be available to represent the Subgrantee at meetings requested by the Department.
- E. Support grant enforcement efforts with public information and education (PI&E) activities. Salaries being claimed for PI&E activities must be included in the budget.
- F. When applicable, all newly developed PI&E materials must be submitted to the Department for written approval, through the TxDOT Electronic Grants Management System (eGrants) system messaging, prior to final production. Refer to the Traffic Safety Program Manual regarding PI&E procedures.
- G. For out of state travel expenses to be reimbursable, the Subgrantee must have obtained the written approval of the Department, through eGrants system messaging, prior to the beginning of the trip. Grant approval does not satisfy this requirement.
- H. Maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project.
- I. Ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the use of federal funds to support personnel or any activity already supported by local or state funds.
- J. Ensure that each officer working on the STEP project will complete an officer's daily report form. The form should include at a minimum: name, date, badge or identification number, type of grant worked, grant site number, mileage (including starting and ending mileage), hours worked, type of citation issued or arrest made, officer and supervisor signatures.

- K. All STEP agencies must provide the following provision in all daily activity report forms:  
"I understand that this information is being submitted to support a claim against a federally-funded grant program. False statements on this form may be prosecutable under 18 USC 1001. This information on this form is true, correct, and complete to the best of my knowledge and ability."
- L. Ensure that no officer above the rank of Lieutenant (or equivalent title) will be reimbursed for enforcement duty, unless the Subgrantee received specific written authorization from the Department, through eGrants system messaging, prior to incurring costs.
- M. Subgrantee may work additional STEP enforcement hours on holidays or special events not covered under the Operational Plan. However, additional work must be approved in writing by the Department, through eGrants system messaging, prior to enforcement. Additional hours must be reported in the Performance Report for the time period for which the additional hours were worked.
- N. If an officer makes a STEP-related arrest during the shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest.
- O. Subgrantees with a traffic unit will utilize traffic personnel for this grant, unless such personnel are unavailable for assignment.
- P. Prior to conducting speed enforcement, the Subgrantee must select and survey enforcement sites that comply with existing state mandated speed limits in accordance with the Texas Transportation Code, Sections 545.352 through 545.356.
- Q. Officers assigned to speed sites should be trained in the use of radar or laser speed measurement devices.
- R. The Subgrantee should have a safety belt use policy. If the Subgrantee does not have a safety belt use policy in place, a policy should be implemented, and a copy maintained for verification during the grant year.
- S. Officers working DWI enforcement must be trained in the National Highway Traffic Safety Administration/International Association of Chiefs of Police Standardized Field Sobriety Testing (SFST). In the case of a first year subgrantee, the officers must be trained, or scheduled to be SFST trained, by the end of the grant year. For second or subsequent year grants, all officers working DWI enforcement must be SFST trained.
- T. The Subgrantee should have a procedure in place for contacting and using drug recognition experts (DREs) when necessary.
- U. The Subgrantee is encouraged to use the DWI On-line Reporting System available through the Buckle Up Texas Web site at [www.buckleuptexas.com](http://www.buckleuptexas.com).

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**RESPONSIBILITIES OF THE DEPARTMENT**

- A. Monitor the Subgrantee's compliance with the performance obligations and fiscal requirements of this Grant Agreement using appropriate and necessary monitoring and inspections, including but not limited to:
1. review of periodic reports
  2. physical inspection of project records and supporting documentation
  3. telephone conversations
  4. e-mails and letters
  5. quarterly review meetings
  6. eGrants
- B. Provide program management and technical assistance.
- C. Attend appropriate meetings.
- D. Reimburse the Subgrantee for all eligible costs as defined in the project budget. Requests for Reimbursement will be processed up to the maximum amount payable as indicated in the project budget.
- E. Perform an administrative review of the project at the close of the grant period to:
1. Ascertain whether or not the project objectives were met
  2. Review project accomplishments (performance measures completed, targets achieved)
  3. Account for any approved Program Income earned and expended
  4. Identify exemplary performance or best practices

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**PROGRAM ELEMENT SELECTION**

**YEAR LONG**

|         |   |
|---------|---|
| DWI     | DWI: Driving While Intoxicated                              |
| X Speed | Speed: Speed Enforcement                                    |
| OP      | OP: Occupant Protection (Safety Belt and Child Safety Seat) |
| X ITC   | ITC: Intersection Traffic Control                           |
| DD      | DD: Distracted Driving                                      |

**WAVE**

|       |   |
|-------|---|
| DWI   | Jurisdiction wide (DWI enforcement effort must be focused at locations where there is an over-representation of alcohol-related crashes and/or DWI arrests)                               |
| Speed | Jurisdiction wide (Speed enforcement should be focused on areas where there is at least a 50% noncompliance with the posted speed limits and/or a higher number of speed-related crashes) |
| OP    | Jurisdiction wide   |
| DD    | Jurisdiction wide   |

**CMV**

|               |  |
|---------------|--|
| Speed,OP&HVMV | CMV: Commercial Motor Vehicle; HVMV: Hazardous Moving Violations |
|---------------|--|

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**GOALS AND STRATEGIES**

**Goal:** To increase effective enforcement and adjudication of traffic safety-related laws to reduce crashes, fatalities, and injuries.

**Strategies:** Increase and sustain high visibility enforcement of traffic safety-related laws.  
Increase public education and information campaigns regarding enforcement activities.

**Goal:** To reduce the number of speed-related crashes, injuries, and fatalities.

**Strategy:** Increase and sustain high visibility enforcement of speed-related laws.

**Goal:** To reduce intersection-related motor vehicle crashes, injuries, and fatalities.

**Strategy:** Increase and sustain high visibility enforcement of Intersection Traffic Control (ITC) laws.

**Goal:** To reduce Distracted Driving motor vehicle crashes, injuries, and fatalities.

**Strategies:** Increase and sustain high visibility enforcement of state and local ordinances on cellular and texting devices.  
Increase public information and education on Distracted Driving related traffic issues.

I agree to the above goals and strategies.

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**BASELINE INFORMATION**

**Baseline Year (12 months)**

From 1/1/2015 to 12/31/2015

**Baseline Measure**

**Baseline Number**

Number of speed citations

2003

Number of Intersection Traffic Control (ITC)  
citations

478

Number of Distracted Driving Citations

0

**Baseline  
Number**

**Month/Year of Survey**

Percentage of speed compliance

22 %

10/2015

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**LAW ENFORCEMENT OBJECTIVE/PERFORMANCE MEASURE**

| <b>Objective/Performance Measure</b>                                | <b>Target Number</b> |
|---|----------------------|
| <b>1. Number and type citations/arrests to be issued under STEP</b> |                      |
| a. Increase speed citations by                                      | 2900                 |
| b. Increase ITC citations by  | 480                  |
| c. Increase Distracted Driving citations by                         |                      |
| <b>2. Proposed total number of traffic-related crashes</b>          |                      |
| a. Reduce the number of speed-related crashes to                    | 12                   |
| b. Reduce the number of ITC-related crashes to                      | 42                   |
| <b>3. Increase speed compliance</b>                                 |                      |
| a. Increase the Speed compliance rate to                            | 23%                  |
| <b>4. Number of Enforcement Hours</b>                               | 1300                 |

**Step Indicator** 2.97

**Note:** Nothing in this agreement shall be interpreted as a requirement, formal or informal, that a peace officer issue a specified or predetermined number of citations in pursuance of the Subgrantee's obligations hereunder. Department and Subgrantee acknowledge that Texas Transportation Code Section 720.002 prohibits using traffic-offense quotas and agree that nothing in this Agreement is establishing an illegal quota.

In addition to the STEP enforcement activities, the subgrantee must maintain baseline non-STEP funded citation and arrest activity due to the prohibition of supplanting.

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**PI&E OBJECTIVE/PERFORMANCE MEASURE**

| <b>Objectives/Performance Measure</b>   | <b>Target Number</b> |
|---|----------------------|
| <b>Support Grant efforts with a public information and education (PI&amp;E) program</b> |                      |
| a. Conduct presentations  | 4                    |
| b. Conduct media exposures (e.g. news conferences, news releases, and interviews)       | 10                   |
| c. Conduct community events (e.g. health fairs, booths)                                 | 3                    |
| d. Produce the following number of public information and education materials           | 0                    |
| e. Number of public information and education materials distributed                     | 1000                 |

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Page Title: ITC Page 1

| <u>Site Number</u> | <u>Type (Speed, OP, ITC)</u> | <u>Site Description (include Miles Per Hour)</u> | <u>Survey Results (Compliance Percentage)</u> | <u>Enforcement Period (Days &amp; Times)</u> |
|--------------------|------------------------------|--|---|--|
| 1. ITC 1           | ITC                          | HWY 146 FRONTAGE RDS @ W FAIRMONT PKWY           | %   | MON-SUN 24 HOURS                             |
| 2. ITC 2           | ITC                          | HWY 146 FRONTAGE RDS @ SPENCER HWY               | %   | MON-SUN 24 HOURS                             |
| 3. ITC 3           | ITC                          | HWY 146 FRONTAGE RDS @ BARBOURS CUT BLVD         | %   | MON-SUN 24 HOURS                             |
| 4. ITC 4           | ITC                          | SPENCER @ 16TH                                   | %   | MON-SUN 24 HOURS                             |
| 5. ITC 5           | ITC                          | W FAIRMONT PKWY @ 16TH                           | %   | MON-SUN 24 HOURS                             |
| 6. ITC 6           | ITC                          | HWY 146 @ MCCABE                                 | %   | MON-SUN 24 HOURS                             |
| 7. ITC 7           | ITC                          | MCCABE @ S. BROADWAY                             | %   | MON-SUN 24 HOURS                             |

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Operational Plan

Page Title: ITC PAGE 2

| <u>Site Number</u> | <u>Type (Speed, OP, ITC)</u> | <u>Site Description (include Miles Per Hour)</u> | <u>Survey Results (Compliance Percentage)</u> | <u>Enforcement Period (Days &amp; Times)</u> |
|--------------------|------------------------------|--|---|--|
| 1. ITC 8           | ITC                          | HWY 146 @ Wharton Weems                          | %   | MON-SUN 24 HOURS                             |
| 2. ITC 9           | ITC                          | WHARTON WEEMS @ S. BROADWAY                      | %   | MON-SUN 24 HOURS                             |
| 3. ITC 10          | ITC                          | W FAIRMONT PKWY @ UNDERWOOD                      | %   | MON-SUN 24 HOURS                             |
| 4. ITC 11          | ITC                          | SPENCER HWY @ UNDERWOOD                          | %   | MON-SUN 24 HOURS                             |
| 5. ITC 12          | ITC                          | SPENCER HWY @ BAY AREA BLVD                      | %   | MON-SUN 24 HOURS                             |
| 6. ITC 13          | ITC                          | W FAIRMONT PKWY @ FARRINGTON                     | %   | MON-SUN 24 HOURS                             |
| 7. ITC 14          | ITC                          | SPENCER HWY @ FARRINGTON                         | %   | MON-SUN 24 HOURS                             |

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Operational Plan

Page Title: ITC PAGE 3

| <u>Site Number</u> | <u>Type (Speed, OP, ITC)</u> | <u>Site Description (include Miles Per Hour)</u> | <u>Survey Results (Compliance Percentage)</u> | <u>Enforcement Period (Days &amp; Times)</u> |
|--------------------|------------------------------|--|---|--|
| 1. ITC 15          | ITC                          | FARRINGTON @<br>COLLINGSWOOD                     | %   | MON - SUN 24<br>HOURS                        |
| 2. ITC 16          | ITC                          | SPENCER HWY @<br>MYRTLE CREEK                    | %   | MON - SUN 24<br>HOURS                        |
| 3. ITC 17          | ITC                          | W FAIRMONT PKWY @<br>BROOKWOOD                   | %   | MON - SUN 24<br>HOURS                        |
| 4. ITC 18          | ITC                          | SPENCER @<br>VALLEYBROOK                         | %   | MON - SUN 24<br>HOURS                        |
| 5. ITC 19          | ITC                          | BARBOURS CUT BLVD @<br>N BROADWAY                | %   | MON - SUN 24<br>HOURS                        |
| 6. ITC 20          | ITC                          | W FAIRMONT PKWY @<br>WILLMONT                    | %   | MON - SUN 24<br>HOURS                        |
| 7. ITC 21          | ITC                          | FLEETWOOD DR @<br>SPRUCE DR NORTH                | %   | MON - SUN 24<br>HOURS                        |

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Page Title: ITC PAGE 4

| <u>Site Number</u> | <u>Type (Speed, OP, ITC)</u> | <u>Site Description (include Miles Per Hour)</u> | <u>Survey Results (Compliance Percentage)</u> | <u>Enforcement Period (Days &amp; Times)</u> |
|--------------------|------------------------------|--|---|--|
| 1. ITC 22          | ITC                          | MYRTLE CREEK @ CANYON SPRINGS                    | %   | MON - SUN 24 HRS                             |
| 2. ITC 23          | ITC                          | MYRTLE CREEK @ WILLOW CREEK                      | %   | MON - SUN 24 HRS                             |
| 3. ITC 24          | ITC                          | VALLEYBROOK @ CATLETT                            | %   | MON - SUN 24 HRS                             |
| 4. ITC 25          | ITC                          | W FAIRMONT @ CANADA                              | %   | MON - SUN 24 HRS                             |
| 5. ITC 26          | ITC                          | W FAIRMONT @ LUELLA                              | %   | MON - SUN 24 HRS                             |
| 6. ITC 27          | ITC                          | W. FAIRMONT @ BAY PARK                           | %   | MON - SUN 24 HRS                             |
| 7. ITC 28          | ITC                          | W FAIRMONT @ DRIFTWOOD                           | %   | MON - SUN 24 HRS                             |

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Page Title: ITC PAGE 5

| <u>Site Number</u> | <u>Type (Speed, OP, ITC)</u> | <u>Site Description (include Miles Per Hour)</u> | <u>Survey Results (Compliance Percentage)</u> | <u>Enforcement Period (Days &amp; Times)</u> |
|--------------------|------------------------------|--|---|--|
| 1. ITC 29          | ITC                          | DRIFTWOOD @ MESQUITE                             | %   | MON - SUN 24 HRS                             |
| 2. ITC 30          | ITC                          | SENS RD @ AVE L                                  | %   | MON - SUN 24 HRS                             |
| 3. ITC 31          | ITC                          | SENS RD @ AVE H                                  | %   | MON - SUN 24 HRS                             |
| 4. ITC 32          | ITC                          | SENS RD @ AVE P                                  | %   | MON - SUN 24 HRS                             |
| 5. ITC 33          | ITC                          | VENTURE @ SOMERTON                               | %   | MON - SUN 24 HRS                             |
| 6. ITC 34          | ITC                          | VENTURE @ BROOKWOOD                              | %   | MON - SUN 24 HRS                             |
| 7. ITC 35          | ITC                          | MYRTLE CREEK @ STONE CREEK                       | %   | MON - SUN 24 HRS                             |

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Page Title: ITC PAGE 6

| <u>Site Number</u> | <u>Type (Speed, OP, ITC)</u> | <u>Site Description (include Miles Per Hour)</u> | <u>Survey Results (Compliance Percentage)</u> | <u>Enforcement Period (Days &amp; Times)</u> |
|--------------------|------------------------------|--|---|--|
| 1. ITC 36          | ITC                          | CHOCTAW @ CANIFF                                 | %   | MON - SUN 24 HRS                             |
| 2. ITC 37          | ITC                          | PECAN CROSSING @ MAHAN                           | %   | MON - SUN 24 HRS                             |
| 3. ITC 38          | ITC                          | PECAN CROSSING @ W FAIRMONT                      | %   | MON - SUN 24 HRS                             |
| 4. ITC 39          | ITC                          | WEST G @ ANY INTERSECTING STREET                 | %   | MON - SUN 24 HRS                             |
| 5. ITC 40          | ITC                          | W FAIRMONT @ PARK                                | %   | MON - SUN 24 HRS                             |
| 6. ITC 41          | ITC                          | PARK @ SAN JACINTO                               | %   | MON - SUN 24 HRS                             |
| 7. ITC 42          | ITC                          | KING WILLIAM DR @ ANY INTERSECTING STREET        | %   | MON - SUN 24 HRS                             |

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Operational Plan

Page Title: SPEED PAGE 1

| <u>Site Number</u> | <u>Type (Speed, OP, ITC)</u> | <u>Site Description (include Miles Per Hour)</u>   | <u>Survey Results (Compliance Percentage)</u> | <u>Enforcement Period (Days &amp; Times)</u> |
|--------------------|------------------------------|--|---|--|
| 1. 1               | SPEED                        | ST HWY 146 FRONTAGE RD<br>1500-900 BLKS SOUTH; 900 -<br>1500 BLKS NORTH; 40 MPH 3.1<br>Miles | 20%   | MON - SUN 24<br>HOURS                        |
| 2. 2               | SPEED                        | ST HWY 146 CITY LIMIT TO CITY<br>LIMIT; 60 MPH APPROX 5.5<br>MILES                           | 14%   | MON - SUN 24<br>HOURS                        |
| 3. 3               | SPEED                        | ST HWY 225 FRONTAGE RD;<br>CITY LIMIT TO CITY LIMIT; 50 MPH<br>3 miles                       | 32%   | MON - SUN 24<br>HOURS                        |
| 4. 4               | SPEED                        | ST HWY 225; CITY LIMIT TO CITY<br>LIMIT; 65 MPH APPROX 3 MILES                               | 18%   | MON - SUN 24<br>HOURS                        |
| 5. 5               | SPEED                        | SOUTH 8TH ST, 100-1000 BLKS;<br>30 MPH APPROX 0.9 MILES                                      | 2%  | MON - SUN 24<br>HOURS                        |
| 6. 6               | SPEED                        | SPENCER HWY 1000-1900<br>BLKS (W MAIN); 35 MPH<br>APPROX 1 MILE                              | 13%   | MON - SUN 24<br>HOURS                        |
| 7. 7               | SPEED                        | EAST MAIN 100-900 BLKS; 30<br>MPH APPROX 0.5 MILE  | 14%   | MON - SUN 24<br>HOURS                        |

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Operational Plan

Page Title: SPEED PAGE 2

| <u>Site Number</u> | <u>Type (Speed, OP, ITC)</u> | <u>Site Description (include Miles Per Hour)</u>         | <u>Survey Results (Compliance Percentage)</u> | <u>Enforcement Period (Days &amp; Times)</u> |
|--------------------|------------------------------|--|---|--|
| 1. 8               | SPEED                        | W FAIRMONT PKWY 1300-1600 BLKS 35 MPH APPROX 0.3 MILE    | 13%   | MON - SUN 24 HOURS                           |
| 2. 9               | SPEED                        | SENS RD 1000-2300 BLKS 40 MPH; 1 MILE                    | 25%   | MON - SUN 24 HOURS                           |
| 3. 10              | SPEED                        | E FAIRMONT PKWY 100-300 BLKS SCHOOL ZONE 20 MPH 0.2 MILE | 29%   | DURING SCHOOL ZONE HOURS                     |
| 4. 11              | SPEED                        | CANADA RD 3100-3900 BLKS 35 MPH APPROX 0.5 MILE          | 16%   | MON - SUN 24 HOURS                           |
| 5. 12              | SPEED                        | LUELLA BLVD 3100-3900 BLKS; 30 MPH APPROX 0.5 MILE       | 14%   | MON - SUN 24 HOURS                           |
| 6. 13              | SPEED                        | ...  | %   | MON - SUN 24 HOURS                           |
| 7.                 |                              |  | %   |  |

FOR REVIEW ONLY - NOT A LEGAL DOCUMENT

**BUDGET SUMMARY**

| Budget Category   |                                      | TxDOT       | Match       | Total        |
|---|--------------------------------------|-------------|-------------|--------------|
| <b>Category I - Labor Costs</b>   |                                      |             |             |              |
| (100)   | Salaries:                            | \$49,996.75 | \$22,680.85 | \$72,677.60  |
| (200)   | Fringe Benefits:                     | \$0         | \$20,175.35 | \$20,175.35  |
|   | <b>Sub-Total:</b>                    | \$49,996.75 | \$42,856.20 | \$92,852.95  |
| <b>Category II - Other Direct Costs</b>   |                                      |             |             |              |
| (300)   | Travel:                              | \$0         | \$8,505.00  | \$8,505.00   |
| (400)   | Equipment:                           | \$0         | \$0         | \$0          |
| (500)   | Supplies:                            | \$0         | \$0         | \$0          |
| (600)   | Contractual Services:                | \$0         | \$0         | \$0          |
| (700)   | Other Miscellaneous:                 | \$0         | \$0         | \$0          |
|   | <b>Sub-Total:</b>                    | \$0         | \$8,505.00  | \$8,505.00   |
| <b>Total Direct Costs:</b>  |                                      | \$49,996.75 | \$51,361.20 | \$101,357.95 |
| <b>Category III - Indirect Costs</b>  |                                      |             |             |              |
| (800)   | Indirect Cost Rate:                  | \$0         | \$0         | \$0          |
| <b>Summary</b>  |                                      |             |             |              |
|   | <b>Total Labor Costs:</b>            | \$49,996.75 | \$42,856.20 | \$92,852.95  |
|   | <b>Total Direct Costs:</b>           | \$0         | \$8,505.00  | \$8,505.00   |
|   | <b>Total Indirect Costs:</b>         | \$0         | \$0         | \$0          |
| <b>Grand Total</b>  |                                      | \$49,996.75 | \$51,361.20 | \$101,357.95 |
|   | <b>Fund Sources (Percent Share):</b> | 49.33%      | 50.67%      |              |
| Salary and cost rates will be based on the rates submitted by the Subgrantee in its grant application in Egrants. |                                      |             |             |              |

**Texas Department Of Transportation - Traffic Safety  
Electronic Signature Authorization Form**

This form identifies the person(s) who have the authority to sign grant agreements and amendments for the Grant ID listed at the bottom of the page.

**Name Of Organization:** City of La Porte

**Project Title:** STEP Comprehensive

|   |  |
|---|--|
| <b>Authorizing Authority</b><br>The signatory of the Subgrantee hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into the agreement on behalf of the organization. I authorize the person(s) listed under the section "Authorized to Electronically Sign Grant Agreements and Amendments" to enter into an agreement on behalf of the organization. |  |
| <b>Name:</b>  |  |
| <b>Title:</b>   |  |
| <b>Signature:</b>   |  |
| <b>Date:</b>  |  |
| Under the authority of Ordinance or Resolution Number (if applicable)   |  |

|  |   |              |
|--|---|--------------|
| <b>Authorized to Electronically Sign Grant Agreements and Amendments</b><br>List Subgrantee Administrators who have complete authority to enter into an agreement on behalf of the organization. |   |              |
|  | <b>Print Name of Subgrantee Administrator in TxDOT Traffic Safety eGrants</b> | <b>Title</b> |
| 1.   | UPCHURCH, MARCUS  | Sgt.         |
| 2.   |   |              |
| 3.   |   |              |

## Harris, Sharon

---

**From:** Adcox, Kenith  
**Sent:** Monday, October 03, 2016 11:12 AM  
**To:** Alexander, Corby; Adcox, Kenith; Harris, Sharon  
**Subject:** 2016 STEP Year-end Statistical Report

Sir,  
As requested below please find the overall year-end activity for our STEP Program. The numbers below exclusively represent activity worked by officers while engaged in program (overtime) STEP hours.

As you will see, our department significantly exceeded our pre-established STEP Goals for both speeding and intersection traffic control enforcement for the year. Officers worked a total of 1753.5 hours of STEP and wrote a total of 4580 citations, for an average of 2.6 citations per hour worked. Warnings are not tracked.

Please let me know if you have any further questions or need additional information.

Respectfully,

Ken Adcox, Chief of Police  
La Porte Police Department  
3001 North 23rd St.  
La Porte, TX 77571  
Off: 281-842-3101, Fax: 281-470-1590

[This email and any files transmitted with it may contain PRIVILEGED or CONFIDENTIAL information and may be read or used only by the intended recipient. If you are not the intended recipient of the email or any of its attachments, please be advised that you have received this email in error and that any use, dissemination, distribution, forwarding, printing, or copying of this email or any attached files is strictly prohibited. If you have received this email in error, please immediately purge it and all attachments and notify the sender by reply email or contact the sender at the number listed.]

---

**From:** Upchurch, Marcus  
**Sent:** Monday, October 03, 2016 10:59 AM  
**To:** Adcox, Kenith <AdcoxK@laportetx.gov>  
**Subject:** 2016 STEP

Our 2016 STEP Stats

| Citations                    | Goal | Actual | Over Goal % |
|------------------------------|------|--------|-------------|
| Speed Citations              | 3100 | 4085   | 31.77%      |
| Intersection Traffic Control | 450  | 495    | 10%         |

Total Number of STEP hours 1753.5

Marcus Upchurch

La Porte Police Department  
Traffic Sergeant  
281 842 3171

“I prefer dangerous freedom over peaceful slavery.”  
– Thomas Jefferson

## REQUEST FOR CITY COUNCIL AGENDA ITEM

|  |
|--|
| Agenda Date Requested: <u>October 10, 2016</u>   |
| Requested By: <u>Sharon Valiante</u>   |
| Department: <u>Public Works</u>  |
| Report: <input checked="" type="checkbox"/> Resolution: <input type="checkbox"/> Ordinance: <input type="checkbox"/> |

|   |
|---|
| <b><u>Budget</u></b>                      |
| Source of Funds: <u>Motor Pool/Patrol</u> |
| Account Number: <u>Various 009/001</u>    |
| Amount Budgeted: \$ <u>1,064,526.01</u>   |
| Amount Requested: \$ <u>1,065,632.21</u>  |
| Budgeted Item: <b>YES</b>                 |

Exhibits: 2 Summary of Vehicle Replacement

Exhibits: 3 BuyBoard Price Sheets

Exhibits 4 HGAC Buy Price Sheet – Concrete Mixer Truck Unit

Exhibits 5 Cemen Tech Silo-HGAC-CT270S

### SUMMARY & RECOMMENDATION

Competitive quotes were received through the Texas BuyBoard and HGAC Cooperative Purchasing Programs for vehicles eligible for replacement or to be added in the FY16 - FY17 Vehicle Replacement Program. There are four full size sedans and one sport utility vehicle that will be replaced with five sport utility vehicles, and one one-half ton pickup replaced with a crew cab pickup<sup>1</sup>. Replacement with the same type vehicle include four sedans, five pickups, one one-ton truck with flat bed, four one-ton trucks with utility beds, one 24 passenger bus, and two 12-yard dump trucks . There are three new purchases approved as part of the FY 16-FY17 budget that will be new additions to the City’s Fleet; a Meter Reader Truck, a Cementech Mobile Concrete Dispenser and a Cementech Cement Silo.

| VENDOR                  | BUDGET ITEM   | BUDGETED     | BID          | USER      |
|-------------------------|---|--------------|--------------|-----------|
| Caldwell Country        | 5 - SUV's (Replacements)                              | 184,206.00   | 163,599.00   | PD        |
| Caldwell Country        | 1 – Pickup (Replacements)                             | 17,548.01    | 24,607.00    | PD        |
| Grapevine Dodge         | 4 – Sedans (Replacements)                             | 106,142.00   | 96,132.00    | PD        |
| Chastang Ford           | 5 – Pickups (4 Replacement;<br>1 New)                 | 92,977.00    | 103,507.00   | PW,PK,UB* |
| Chastang Ford           | 5 – One ton flat & utility beds<br>(Replacements)     | 159,987.00   | 165,564.00   | PW,PK     |
| Texas Bus Sales         | 1 – 24 Passenger Bus<br>(Replacements)                | 91,660.00    | 95,356.21    | PK        |
| Freightliner Austin     | 2 – 12 Yard Dump Trucks                               | 184,006.00   | 182,862.00   | PW        |
| Houston<br>Freightliner | 1 – Cementech R089 Mobile<br>Concrete Dispenser (New) | 200,000.00   | 206,760.00   | PW*       |
| Houston<br>Freightliner | 1 – Cementech Cement Silo<br>(New)                    | 28,000.00    | 27,245.00    | PW*       |
|                         | <b>TOTAL</b>  | 1,064,526.01 | 1,065,632.21 |           |

<sup>1</sup> Additional funding through Police division budget.

\*Utility Billing – New; Meter Reader Truck; PW – New; to serve Concrete Repair Program; (New = Additions to the Fleet)

Changes in equipment type, size, and design modification requested by Departments include:

- Replacing four full size sedans with four sport utility vehicles

- Replacing a conventional cab pickup with a crew cab pickup

**Miscellaneous:**

- The vehicles to be purchased with this agenda request will replace existing vehicles that are now at the end of their service lives, one additional new vehicle (Utility Billing) that has been funded by the division through the Motor Pool in previous budgets, and two new vehicles/equipment (Public Works) with funding from the Vehicle Replacement Fund.
- The “Budgeted” amount listed in the table for the replacement vehicles represents the total funds deposited by each department through FY 2016 in the form of “lease fees” paid by the department over the lease term designated for each vehicle. Additional funding is provided through the respective Departmental/Divisional budgets.
- The “Budgeted” amount listed in the table for the New Public Works vehicles/equipment are the funding amounts approved by Council for the FY 16-FY 17 budget for new purchases. The Division will pay lease fees over the life of the units to establish a “Budgeted” amount for future replacements.
- The Purchasing Division of the Finance Department has reviewed the recommendation for vehicle purchases and is in support of this recommendation. Pricing was checked on both BuyBoard Programs.

**Action Required by Council:**

1. Consider approval or other action to award purchase of five sport utility vehicles, and one pickup to Caldwell Country (\$188,206.00).
2. Consider approval or other action to award purchase of four sedans to Grapevine Dodge (\$96,132.00)
3. Consider approval or other action to award purchase of five pickups and five – one ton trucks with flat or utility beds to Chastang Ford (\$269,071.00).
4. Consider approval or other action to award purchase of one – 24 passenger bus to Texas Bus Sales (\$95,356.21)
5. Consider approval or other action to award purchase of two – 12 yard dump trucks to Freightliner of Austin (\$182,862.00)
6. Consider approval or other action to award purchase of one - Cementech R089 Mobile Concrete Dispenser and one - Cementech Cement Silo to Houston Freightliner (\$234,005.00)

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**Approved for City Council Agenda**

---

**Corby D. Alexander, City Manager**

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**Date**

**CITY OF LA PORTE  
SUMMARY OF VEHICLE REPLACEMENTS  
FISCAL YEAR 2016-17**

| <b>Account Number</b> | <b>Amount</b>       | <b>Unit</b> | <b>Description</b>                      |
|-----------------------|---------------------|-------------|---|
| 009-5059-522-8050     | 79,974              | 59-35       | 2009 F450 AMB Cab & Chasis              |
| 009-5252-521-8050     | 29,187              | 52-10       | 2011 Ford Police Interceptor            |
| 009-5253-521-8050     | 37,987              | 53-10       | 2009 Ford Police Interceptor            |
| 009-5253-521-8050     | 37,987              | 53-14       | 2010 Ford Police Interceptor            |
| 009-5253-521-8050     | 37,987              | 53-24       | 2010 Ford Police Interceptor            |
| 009-5253-521-8050     | 37,987              | 53-72       | 2009 Ford Police Interceptor            |
| 009-5256-521-8050     | 19,504              | 56-03       | 2010 Ford Fusion                        |
| 009-5256-521-8050     | 19,504              | 56-04       | 2011 Ford Fusion                        |
| 009-5256-521-8050     | 17,548              | 56-17       | 2007 Ford 1/2 Ton Pickup                |
| 009-5256-521-8050     | 32,258              | 56-25       | 2010 Ford Expedition                    |
| 009-5258-521-8050     | 37,987              | 58-42       | 2008 Chevy Impala Interceptor           |
| 009-6049-551-8050     | 4,403               | 49-17       | 2011 Spreader                           |
| 009-6049-551-8050     | 10,608              | 49-20       | 2011 326 Z-Turn                         |
| 009-6049-551-8050     | 10,610              | 49-27       | 2012 326 Z-Turn                         |
| 009-6049-551-8050     | 10,610              | 49-28       | 2013 326 Z-Turn                         |
| 009-6049-551-8050     | 6,682               | 49-29       | 2011 Core Harvester                     |
| 009-6049-551-8050     | 21,385              | 49-32       | 2011 Truckster                          |
| 009-6049-551-8050     | 44,876              | 49-34       | 2011 Fairway Mower                      |
| 009-6049-551-8050     | 44,883              | 49-35       | 2011 Fairway Mower                      |
| 009-6049-551-8050     | 8,055               | 49-50       | 2004 Fairway Aerator                    |
| 009-6049-551-8050     | 23,120              | 49-54       | 2005 John Deere Truckster/Sprayer Combo |
| 009-6049-551-8050     | 9,331               | 49-55       | 2005 John Deere 200 gal. Sprayer        |
| 009-6049-551-8050     | 33,451              | 49-57       | 2011 Greens Mower                       |
| 009-6049-551-8050     | 9,392               | 49-86       | 2001 Aerway Turf Slicer                 |
| 009-6147-515-8050     | 18,655              | New         | 2017 Pickup Truck                       |
| 009-7071-531-8050     | 228,000             | New         | Concrete Mixer                          |
| 009-7071-531-8050     | 31,546              | 71-14       | 2006 Chevy 1 Ton 9Ft Flat Bed           |
| 009-7071-531-8050     | 91,561              | 71-33       | 2004 GMC Dump Truck                     |
| 009-7071-531-8050     | 92,445              | 71-59       | 2004 Ford 750 Dump Truck                |
| 009-7072-532-8050     | 21,288              | 72-14       | 2004 Chevy 1/2 Ton Pickup w/Lift        |
| 009-7074-534-8050     | 32,417              | 74-18       | 2005 Ford 1 Ton With Service Body       |
| 009-8080-552-8050     | 31,922              | 80-17       | 2006 Chevy 1 Ton With Service Body      |
| 009-8080-552-8050     | 17,093              | 80-29       | 2004 Chevy 1/2 Ton Pickup               |
| 009-8080-552-8050     | 14,104              | 80-71       | 2009 Kubota Z-Turn 326P                 |
| 009-8080-552-8050     | 14,104              | 80-98       | 2010 Kubota Z-Turn 326P                 |
| 009-8082-551-8050     | 91,660              | 82-11       | 2006 Aero Elite Passenger Bus           |
| 009-7084-533-8050     | 17,287              | 84-18       | 2002 Chevy 1/2 Ton Pickup               |
| 009-7085-533-8050     | 33,690              | 85-38       | 2008 Chevy 1 Ton With Service Body      |
| 009-7086-532-8050     | 30,412              | 86-39       | 2008 Chevy 1 Ton With Service Body      |
| 009-7087-532-8050     | 18,654              | 87-14       | 2005 Ford 1/2 Ton Pickup                |
| 009-9092-524-5050     | 19,444              | 92-11       | 2004 Ford Escape                        |
|                       | <b>\$ 1,429,598</b> |             |   |

53-10 53-24  
53-14 53-72



**CONTRACT PRICING WORKSHEET**  
For MOTOR VEHICLES Only

Contract No.: VE11-15

VE11-15

Date Prepared: 9/8/2016

9/8/2016

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

|                 |                      |              |                            |
|-----------------|----------------------|--------------|----------------------------|
| Buying Agency:  | CITY OF LA PORTE     | Contractor:  | CALDWELL COUNTRY CHEVROLET |
| Contact Person: | MIKE COLLINS         | Prepared By: | AVERYT KNAPP               |
| Phone:          |                      | Phone:       | 979-567-6116               |
| Fax:            |                      | Fax:         | 979-567-0853               |
| Email:          | RICEG@LAPORTE.TX.GOV | Email:       | AKNAPP@CALDWELLCOUNTRY.COM |

|               |     |              |                                  |
|---------------|-----|--------------|----------------------------------|
| Product Code: | A17 | Description: | 2017 CHEVROLET TAHOE PPV CC15706 |
|---------------|-----|--------------|----------------------------------|

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 31969

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable. (Note: Published Options are options which were submitted and priced in Contractor's bid.)

| Description                    | Cost | Description                        | Cost |
|--------------------------------|------|------------------------------------|------|
| LH SPOTLIGHT 7X6               | 490  |                                    |      |
| SINGLE KEY 6E2                 | 25   |                                    |      |
| HGAC PUBLISHED OPTION DISCOUNT | -25  |                                    |      |
|                                |      | Subtotal From Additional Sheet(s): |      |
|                                |      | Subtotal B: 490                    |      |

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary. (Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

| Description | Cost | Description                        | Cost |
|-------------|------|------------------------------------|------|
|             |      | Subtotal From Additional Sheet(s): |      |
|             |      | Subtotal C: 0                      |      |

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 0%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C):

|                   |   |                          |       |   |             |        |
|-------------------|---|--------------------------|-------|---|-------------|--------|
| Quantity Ordered: | 4 | X Subtotal of A + B + C: | 32459 | = | Subtotal D: | 129836 |
|-------------------|---|--------------------------|-------|---|-------------|--------|

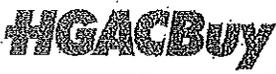
E. H-GAC Order Processing Charge (Amount Per Current Policy): Subtotal E: \$600

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

| Description | Cost | Description          | Cost |
|-------------|------|----------------------|------|
|             |      | DELIVERY             | 285  |
|             |      | EXTERIOR COLOR BLACK | INCL |
|             |      | Subtotal F: 285      |      |

Delivery Date: Q4-2016 G. Total Purchase Price (D+E+F): 130721

56-25



**CONTRACT PRICING WORKSHEET**  
For MOTOR VEHICLES Only

|               |         |                |          |
|---------------|---------|----------------|----------|
| Contract No.: | VE11-15 | Date Prepared: | 9/8/2016 |
|---------------|---------|----------------|----------|

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

|                 |                     |              |                            |
|-----------------|---------------------|--------------|----------------------------|
| Buying Agency:  | CITY OF LA PORTE    | Contractor:  | CALDWELL COUNTRY CHEVROLET |
| Contact Person: | MIKE COLLINS        | Prepared By: | AVERYT KNAPP               |
| Phone:          |                     | Phone:       | 979-567-6116               |
| Fax:            |                     | Fax:         | 979-567-0853               |
| Email:          | RICEG@LAPORTETX.GOV | Email:       | AKNAPP@CALDWELLCOUNTRY.COM |

|               |     |              |                                  |
|---------------|-----|--------------|----------------------------------|
| Product Code: | A17 | Description: | 2017 CHEVROLET TAHOE PPV CCI5706 |
|---------------|-----|--------------|----------------------------------|

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 31969

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

| Description                    | Cost | Description                        | Cost |
|--------------------------------|------|------------------------------------|------|
| SINGLE KEY 6E2                 | 25   |                                    |      |
| HGAC PUBLISHED OPTION DISCOUNT | -1   |                                    |      |
|                                |      | Subtotal From Additional Sheet(s): |      |
|                                |      | Subtotal B:                        | 24   |

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

| Description | Cost | Description                        | Cost |
|-------------|------|------------------------------------|------|
|             |      | Subtotal From Additional Sheet(s): |      |
|             |      | Subtotal C:                        | 0    |

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 0%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts: (A+B+C)

|                   |   |                          |       |   |             |       |
|-------------------|---|--------------------------|-------|---|-------------|-------|
| Quantity Ordered: | 1 | X Subtotal of A + B + C: | 31993 | = | Subtotal D: | 31993 |
|-------------------|---|--------------------------|-------|---|-------------|-------|

E. H-GAC Order Processing Charge (Amount Per Current Policy): Subtotal E: \$600

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

| Description | Cost | Description          | Cost |
|-------------|------|----------------------|------|
|             |      | DELIVERY             | 285  |
|             |      | EXTERIOR COLOR BLACK | INCL |
|             |      | Subtotal F:          | 285  |

Delivery Date: Q4-2016 G. Total Purchase Price (D+E+F): 32878

Additional funds in Police budget

56-17



**CONTRACT PRICING WORKSHEET**  
For MOTOR VEHICLES Only

Contract No.:

VE11-15

Date Prepared:

9/7/2016

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

|                 |                        |              |                            |
|-----------------|------------------------|--------------|----------------------------|
| Buying Agency:  | CITY OF LA PORTE       | Contractor:  | CALDWELL COUNTRY CHEVROLET |
| Contact Person: | DOUG DITRICH           | Prepared By: | AVERYT KNAPP               |
| Phone:          | 281-842-3116           | Phone:       | 979-567-6116               |
| Fax:            |                        | Fax:         | 979-567-0853               |
| Email:          | DITRICH@LAPORTE.TX.GOV | Email:       | AKNAPP@CALDWELLCOUNTRY.COM |

|               |     |              |  |
|---------------|-----|--------------|--|
| Product Code: | A32 | Description: | 2016 CHEVROLET 1500 SILVERADO 4X2 CREW CAB CC15543 |
|---------------|-----|--------------|--|

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 23380

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable. (Note: Published Options are options which were submitted and priced in Contractor's bid.)

| Description                            | Cost | Description                        | Cost |
|--|------|------------------------------------|------|
| POWER CONV PACKAGE W/KEYLESS ENTRY PCR | 360  |                                    |      |
| HGAC PUBLISHED OPTION DISCOUNT         | 18   |                                    |      |
|  |      | Subtotal From Additional Sheet(s): |      |
|  |      | Subtotal B: 342                    |      |

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary. (Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

| Description | Cost | Description                        | Cost |
|-------------|------|------------------------------------|------|
|             |      | Subtotal From Additional Sheet(s): |      |
|             |      | Subtotal C: 0                      |      |

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 0%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C):

|                   |   |                          |       |   |             |       |
|-------------------|---|--------------------------|-------|---|-------------|-------|
| Quantity Ordered: | 1 | X Subtotal of A + B + C: | 23722 | = | Subtotal D: | 23722 |
|-------------------|---|--------------------------|-------|---|-------------|-------|

E. H-GAC Order Processing Charge (Amount Per Current Policy) Subtotal E: \$600

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

| Description | Cost | Description          | Cost |
|-------------|------|----------------------|------|
|             |      | DELIVERY             | 285  |
|             |      | EXTERIOR COLOR WHITE | INCL |
|             |      | Subtotal F: 285      |      |

Delivery Date: **90 DAYS APPX** G. Total Purchase Price (D+E+F): 24607















THE SMART PURCHASING SOLUTION

|  |                           |               |   |                |          |
|--|---------------------------|---------------|---|----------------|----------|
| <b>CONTRACT PRICING WORKSHEET</b><br>For MOTOR VEHICLES Only   |                           | Contract No.: | BT01-14   | Date Prepared: | 8/2/2016 |
| <i>This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents <b>MUST</b> be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.</i> |                           |               |   |                |          |
| Buying Agency:   | City of La Porte TX       | Contractor:   | Texas Bus Sales   |                |          |
| Contact Person:  | Debra Kuykendall          | Prepared By:  | Darryl Rickaway   |                |          |
| Phone:   | 281-470-5147              | Phone:        | 713-681-3600  |                |          |
| Fax:   |                           | Fax:          | 713-682-8737  |                |          |
| Email:   | kuykendalld@laportetx.gov | Email:        | darryl.r@texasbussales.com                                  |                |          |
| Product Code:  | <b>LDC</b>                | Description:  | <b>Aero Elite F550 320 - 24 Pass. w/2 Wheelchair spaces</b> |                |          |

|  |  |          |             |
|--|--|----------|-------------|
| A. Product Item Base Unit Price Per Contractor's H-GAC Contract: |  | Total A: | \$71,055.00 |
|--|--|----------|-------------|

|  |  |                                      |            |
|--|--|--------------------------------------|------------|
| B. Published Options - Itemized on attached additional sheet(s) which include Option Code in description if applicable. (Note: Published Options are options which were submitted and priced in Contractor's bid.) |  | Subtotal B From Additional Sheet(s): | \$8,653.00 |
|--|--|--------------------------------------|------------|

|  |  |                                      |            |
|--|--|--------------------------------------|------------|
| C. Unpublished Options - Itemized on attached additional sheet(s). (Note: Unpublished options are items which were not submitted and priced in Contractor's bid.) Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). |  | Subtotal C From Additional Sheet(s): | \$8,900.00 |
|  |  | Total % of Unpublished Options:      | 11.17%     |

|   |  |                        |             |
|---|--|------------------------|-------------|
| D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C) |  | Subtotal of A + B + C: | \$88,608.00 |
|   |  | X Quantity Ordered:    | 1           |
|   |  | Subtotal D:            | \$88,608.00 |

|  |  |          |          |
|--|--|----------|----------|
| E. H-GAC Order Processing Charge (Amount Per Current Policy) |  | Total E: | \$600.00 |
|--|--|----------|----------|

|   |  |                                      |            |
|---|--|--------------------------------------|------------|
| F. Trade-Ins / Other Allowances / Special Discounts / Freight / Installation - Itemized on attached additional sheet(s) |  | Subtotal F From Additional Sheet(s): | \$6,148.21 |
|---|--|--------------------------------------|------------|

|                         |  |                     |             |
|-------------------------|--|---------------------|-------------|
| G. Total Purchase Price |  | Total from (D+E+F): | \$95,356.21 |
|-------------------------|--|---------------------|-------------|

|  |  |           |
|--|--|-----------|
| Estimated number of days until delivery. |  | 180 - 210 |
|--|--|-----------|

|                 |                                  |
|-----------------|----------------------------------|
| Acceptance Date | SIGNATURE (Authorized Signature) |
|                 |                                  |

**ELDORADO NATIONAL KS**  
Type IIIHD Transit Bus  
Aero Elite F550 320 - 20 Pass. w/2 Wheelchair spaces

**STANDARD EQUIPMENT**

**CHASSIS**

Ford F-550 Super Duty "Cab & Chassis", 19,500 GVWR, 201" wheelbase  
6.8 liter, 3-valve V10 gasoline engine, 305 horsepower @ 4250 RPMs  
TorqShift® 5-speed Automatic Transmission w/ overdrive & external cooler  
Heavy Duty OEM Alternator (225 amps)  
Stationary elevated idle control (SEIC)\*  
Tilt steering column  
Steel belted radial tires (225/70R19.5)  
Dual batteries  
Four (4) wheel disc brakes w/ABS  
40gallon fuel tank  
In dash a/c, heat, & defrost  
Black rubber flooring in cab area

**AERO ELITE BODY:**

29"x 41" tinted T-slide passenger windows positioned at each row  
30" manual entry door (29" clear width)  
Left hand entry hand rail in step well, stanchions & modesty panel  
White step safety nosing  
Color, number & function coded computer tested electrical wiring  
Interior central power panel  
Easy access driver control console, located for safety  
*Trac-Lock, adjustable track seating*  
Black RCA transit grade floor rubber w/ ribbed aisle  
Contoured exterior mirrors w/ convex lens in a resin injection-molded housing  
Interior courtesy lights  
Exterior D.O.T. clearance lights  
Durable fiberglass sidewall panels  
*CRASH TESTED, impact resistant, non corrosive composite body*  
Bright white exterior finish w/ durable Gelcoated exterior finish  
3/4" sealed & undercoated exterior grade plywood floor  
40,000 lb. load bearing structural steel floor under structure

**AIR CONDITIONING:**

Rear Air Conditioning system rated at 90,000 BTU's with:

- Dual compressors, chassis supplied plus an auxiliary dedicated to rear system
- Three fan skirt mounted condenser unit rated at 78,000 BTU's/2,775 CFM's
- Rear evaporator, rated at 90,000 BTU's/2,400 CFM's

**GENERAL & SAFETY FEATURES:**

Exterior entry door light  
Auxiliary high idle control  
Reverse alarm  
Right & left hand entry hand rail in step well  
Overhead handrail  
Driver's passenger view mirror  
First aid kit, fire extinguisher, & reflector kit

**SEATING:**

Freedman low back passenger seats with:

- Commercial grade fabric or vinyl upholstery
- Freedman high back reclining driver's seat w/ armrests

**PARATRANSIT:**

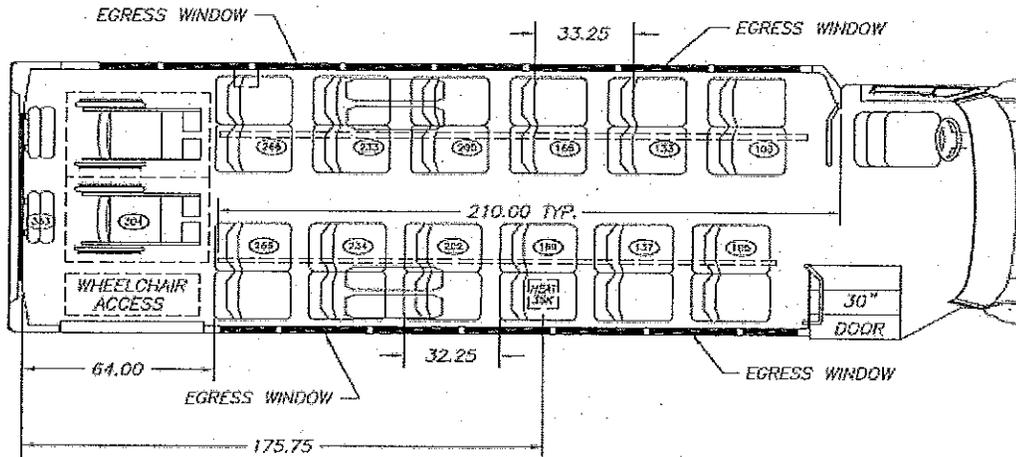
ADA compliance features with:

- Double outward opening wheelchair lift door
- Fully automatic wheelchair lift
- Transmission interlock
- Interior and exterior lights in the lift area
- Retractable (4) point wheelchair securement tie downs
- Priority seating decals
- Freedman flip seats over the wheelchair positions w/seatbelt

**EXTERIOR**

Bright white exterior w/ durable gel coat finish  
Area around windows painted black

**INTERIOR LAYOUT:**



**PRICING**

**Base Contract Price Is \$ 71,055.00**  
Base selling price is F.O.B. Salina, Kansas.

**MANUFACTURER'S PUBLISHED OPTIONS**

| QTY | OPT#S      | DESCRIPTION   | UNIT PRICE | EXTENDED |
|-----|------------|---|------------|----------|
| 0   | 6.7 ENGINE | 6.7L Power Stroke® V8 Turbo Diesel Engine in Lieu of V10 Gas ( <i>F550 Chassis Only</i> ). TorqShift® Heavy-Duty 6-speed Select Shift Automatic Transmission™. Dual Extra Heavy Duty OEM Alternator ( <i>total of 320amps</i> ) | 8,520.00   |          |
| 1   | 3411000Y   | Heavy Duty Rear Door W/Upper Window   | \$540.00   | 540.00   |
| 1   | 3030E      | 30" Electric Entry Door in lieu of Manual Door  | \$295.00   | 295.00   |
| 1   | 3550000N   | Window Each Side of Rear Door   | \$180.00   | 180.00   |
| 1   | 4167301G   | ACT 9333 Max 125,000 BTU a/c System   | \$4,250.00 | 4,250.00 |
| 1   | 5300165Y   | Passenger Overhead Storage Compartment  | \$1,200.00 | 1,200.00 |
| 1   | 5560020Y   | Driver's Storage Compartment - Over Windshield  | \$125.00   | 125.00   |
| 24  | 6718000Y   | Retractable Seat Belts w/ Underseat Retractors  | \$48.00    | 1,152.00 |
| 1   | 7157000V   | LED Exterior Light Package  | \$300.00   | 300.00   |
| 1   | 73403200   | Gray Transit Grade Floor Rubber w/ Ribbed Aisle   | \$250.00   | 250.00   |
| 1   | 761700CM   | Spare Tire Ship Loose   | \$280.00   | 280.00   |
| 1   | 772000CM   | Modesty Panel, Drivers Option   | \$50.00    | 50.00    |
| 1   | 8470000M   | Tie Down Belt Storage Box   | \$31.00    | 31.00    |

**Total Cost of Manufacturer's Published Options**

**\$ 8,653.00**

**UNPUBLISHED OPTIONS**

|   | OPT#S | DESCRIPTION                     | UNIT PRICE | EXTENDED |
|---|-------|---------------------------------|------------|----------|
| 1 | SPO-1 | Liquid Spring Suspension System | 8,900.00   | 8,900.00 |

**Total Cost of Unpublished Optional Equipment**

**\$ 8,900.00**

**NON-EQUIPMENT CHARGES**

| QTY | OPT#S    | DESCRIPTION                           | UNIT PRICE | EXTENDED |
|-----|----------|---------------------------------------|------------|----------|
| 1   | DI Tax   | Dealer Inventory Tax                  | 189.91     | 189.91   |
| 1   | Freight  | Delivery from manufacturing plant     | 1,070.00   | 1,070.00 |
| 1   | PDI & MR | Pre-Delivery Inspection & Make Ready  | 625.00     | 625.00   |
| 1   | NEI-1    | 6% Model Year Price Increase for 2017 | 4,263.30   | 4,263.30 |

**Total Cost of Non-equipment Charges**

**\$ 6,148.21**



# FREIGHTLINER OF AUSTIN

1701 Smith Rd. (Hwy. 183 So.)  
Austin, Texas 78721

Bus: 512-389-0000  
FAX: 512-389-2663  
Wats: 1-800-395-2005

71-33  
71-59

INV.

|                                     |  |                           |             |
|-------------------------------------|--|---------------------------|-------------|
| PURCHASING NAME<br>CITY OF LA PORTE |  | TELEPHONE<br>281-471-5020 |             |
| ADDRESS<br>604 W. FAIRMONT PARKWAY  |  | CITY<br>LA PORTE          | STATE<br>TX |
|                                     |  | ZIP CODE<br>77571         |             |

I/We Hereby Purchase from You, Under the Terms and Conditions Specified, the Following:

|   |                      |                     |                                       |               |
|---|----------------------|---------------------|---------------------------------------|---------------|
| YEAR<br>2017  | MAKE<br>FREIGHTLINER | MODEL/BODY<br>M2106 | VIN<br>ORDER                          | LICENSE PLATE |
| A documentary fee is not an official fee, a documentary fee is not required by law but may be charged to buyers for handling documents and performing services relating to the the closing of a sale. Buyers may avoid payment of the fee to the seller by handling the documents and performing the services relating to the closing of the sale. A documentary fee may not exceed \$50.00. This notice is required by law.  |                      |                     | MILEAGE:                              |               |
| El cobro documental no es un cobro oficial. El cobro documental no es un requisito bajo la ley, pero se le puede cobrar. Al comprador por el rendimiento de los servicios relacionados con la completacion de la venta y por completar los documentos. El comprador puede evitar el pago al vendedor de este costo si el comprador mismo se encarga de manejar los documentos y de los servicios necesarios para la completacion de la venta. El cobro documental no puede sobrepasar los \$50.00 (U.S.) Este aviso es requerido bajo la ley. |                      |                     | BUY BOARD CONTRACT #430-13            |               |
|   |                      |                     | CHASSIS SELLING PRICE \$77,111.00X(2) | \$ 154,222.00 |
|   |                      |                     | WARREN DUMP BODY \$14,240.00 X(2)     | \$ 28,480.00  |
|   |                      |                     | BUY BOARD FEE                         | \$ 400.00     |
|   |                      |                     | QUOTE GOOD UNTIL 12-31-2016           |               |
| <b>Disclaimer of Warranties</b>   |                      |                     |                                       |               |
| Any warranties on the products sold hereby are those made by the factory. The Seller, Freightliner of Austin, hereby expressly disclaims all warranties, either expressed or implied including any implied warranty of merchantability or fitness for a particular purpose, and Freightliner of Austin, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this vehicle.   |                      |                     |                                       |               |
|   |                      |                     | CUSTOMER SIGNATURE                    |               |
|   |                      |                     | SALESMAN SIGNATURE KEVIN KRIEG        |               |

CONTRACTUAL DISCLOSURE STATEMENT FOR USED VEHICLE ONLY. \*The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.\*

|          |          |
|----------|----------|
| MILEAGE: | TRADE-IN |
|----------|----------|

|          |          |            |     |               |
|----------|----------|------------|-----|---------------|
| YEAR     | MAKE     | MODEL/BODY | VIN | LICENSE PLATE |
| MILEAGE: | TRADE-IN |            |     |               |
| YEAR     | MAKE     | MODEL/BODY | VIN | LICENSE PLATE |

|                   |                |                       |                        |
|-------------------|----------------|-----------------------|------------------------|
|                   |                | TOTAL                 | \$ 182,862.00          |
| PAYOFF TO:        |                | Trade Allowance       | N/A                    |
| ADDRESS:          |                | Trading Difference    | N/A                    |
| TELEPHONE: / FAX: |                | Sales Tax             | N/A                    |
| GOOD UNTIL:       |                | Vehicle Inventory Tax | N/A                    |
| QUOTED BY:        |                | License Fee           | N/A                    |
| SHOW LIEN TO:     |                | Body Type:            | Documentary Fee        |
| ADDRESS:          |                | License WL:           | Federal Excise Tax     |
|                   |                | State Insp.:          | TOTAL SALE PRICE       |
| DATED:            | LIEN AMOUNT \$ | License:              | Payoff on Trade        |
| DRAFT FOR \$      |                | Title:                | Ext. Service Agreement |
| DRAFT THRU:       |                | Transfer:             | Less Deposit           |
| ADDRESS:          |                | Total Balance Due     | \$ 182,862.00          |

Full disclosure required by federal regulation 'Z', The Consumer Protection Act and The Texas Consumer Credit Code, will be made prior to consummation of a credit sale. This written order completes the entire agreement pertaining to this purchase and no other agreement of any kind, verbal understanding or promise whatsoever, will be recognized. It is expressly agreed that the purchaser acquires no right, title or interest in or to the property which he agrees to purchase hereunder until such property is delivered to him/her and either the full price is paid in cash or satisfactory deferred payment agreement is executed by the parties hereto, the terms of which shall thereafter be controlling, and a clear title is furnished to dealer for the used vehicle or trucks involved, if any. THIS IS NOT A CONDITIONAL SALES CONTRACT, BUT IS A BUYER'S ORDER. All new vehicles carry the standard factory warranty. It is understood there is no guarantee on the above described new or used vehicle other than appears on this Buyer's Order. Mileage, if used vehicle model is not guaranteed and a verbal agreement by the Salesman will not be considered binding on the Seller. It is agreed that neither Freightliner of Austin nor the manufacturer will be



# Quote WTLLC00007024 Page 1 of 2 Date 8/23/2016

Warren Truck and Trailer, LLC  
 15768 US HIGHWAY 271 NORTH  
 Talco TX 75487

Phone (888) 734-4400  
 Fax (903) 379-4400  
 WarrenTruckAndTrailer.com

| Bill To   | Ship To  | Contact                              |
|---|--|--------------------------------------|
| Freightliner of Austin d/b/a FOA Body & Equipment<br>1701 SMITH ROAD<br>AUSTIN TX 78721 | FREIGHTLINER OF AUSTIN, TX<br>1701 SMITH ROAD<br>AUSTIN TX 78721 | KEVIN K.<br>(512) 389-0000 Ext. 0000 |

| Purchase Order No. | Customer ID    | Salesperson ID  | Shipping Method | Payment Terms | Req Ship Date | Master No. |
|--------------------|----------------|---|-----------------|---------------|---------------|------------|
|                    | FRE721         | MACK  | DELIVERED       | Net30         | 0/0/0000      | 10,011,720 |
| QTY                | Item Number    | Description   | UOM             | Unit Price    | Ext. Price    |            |
| 2                  | FLS-13.5-4248  | DUMP BODY - FRAMELESS - 13.5'<br><b>CITY OF LAPORTE</b><br>Yardage: 12/14<br>Floor Material: 3/16 A1011<br>Front / Material: 48" 10 GA A1011<br>Side / Material: 42" 10 GA A1011<br>Vertical Side Brace: Yes<br>Horizontal Brace: Yes<br>Hoist / Cylinder: VTLW-63110<br>Hydraulics: Yes          | EA              | \$13,590.00   | \$27,180.00   |            |
| 2                  | TAILGATE       | Air Operated: Yes<br>Panel: 9<br>Material: 10 GA A1011<br>Height: 48<br>Slope: None<br>Chains: 5/16"<br>Double Acting: Yes<br>High Lift Gate: No<br>Side Swing - Ground Operated: No<br>Center Opening: No<br>Material Gate: None<br>Water Tight: None  | Each            | \$0.00        | \$0.00        |            |
| 2                  | DB OPTIONS # 1 | Cabshield: Variable Width-1/2 (24")<br>Asphalt Apron: None<br>Body Lights: LED Yes  | Each            | \$0.00        | \$0.00        |            |
| 2                  | INSTALL        | Hydraulic Hoses/Fittings: Yes<br>Pump: 22 gal w/air shift CW (400-80263)<br>Console: Clutch Shift Air<br>Conspicuity Tape: No<br>Mudflaps and Brackets: Yes<br>Chrome Turnouts: No<br>Splash/Gravel Guards: No<br>Side Boards: Formed Metal -2x6x3/16<br>Covers: No<br>Delivery Fuel/Charges: Yes | Each            | \$0.00        | \$0.00        |            |
| 2                  | PAINT          | Color: Warren STOCK COLOR   | Each            | \$0.00        | \$0.00        |            |
| 2                  | PTO            | POWER TAKE OFF<br>PTO Muncie CS Series (Auto)   | EA              | \$0.00        | \$0.00        |            |



# Quote WTTLLC00007024 Page 2 of 2 Date 8/23/2016

Warren Truck and Trailer, LLC  
 15768 US HIGHWAY 271 NORTH  
 Talco TX 75487

Phone (888) 734-4400  
 Fax (903) 379-4400  
 WarrenTruckAndTrailer.com

| Purchase Order No. | Customer ID     | Salesperson ID  | Shipping Method | Payment Terms | Req Ship Date | Master No. |
|--------------------|-----------------|---|-----------------|---------------|---------------|------------|
|                    | FRE721          | MACK  | DELIVERED       | Net30         | 0/0/0000      | 10,011,720 |
| QTY                | Item Number     | Description   | UOM             | Unit Price    | Ext. Price    |            |
| 2                  | ADD'L EQUIPMENT | SIDE MOUNT OIL TANK w/ 3-LINE SYSTEM AND RETURN LINE FILTER   | Each            | \$0.00        | \$0.00        |            |
| 2                  | TARP SYSTEM     | TARP system - installed<br>Installed<br>Donovan "BULLET" Electric System<br>HD, Bent, Aluminum Side Arms<br>Cab Operated<br>84" x 18' Mesh Tarp | EA              | \$0.00        | \$0.00        |            |
| 2                  | DELIVERY        | DELIVERY OF COMPLETED UNIT TO FREIGHTLINER OF AUSTIN<br><br>DELIVERY CHARGES SHOWN IN FREIGHT COLUM BELOW                                       | Each            | \$0.00        | \$0.00        |            |

Quotation reviewed and accepted by:  
 (signed) \_\_\_\_\_  
 Please fax back to us for entry as an order  
 NOTE: Quotation good for 10 days only  
*\* ASSOC quote  
 to Freightliner*

|                    |                    |
|--------------------|--------------------|
| Subtotal           | \$27,180.00        |
| Misc               | \$0.00             |
| Tax                | \$0.00             |
| Ship & Handling    | \$1,300.00         |
| Trade In Allowance | \$0.00             |
| <b>Total</b>       | <b>\$28,480.00</b> |



**CONTRACT PRICING WORKSHEET**  
For MOTOR VEHICLES Only

Contract No.:

HT06-16

Date Prepared:

21-Sep

**This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.**

|                 |                        |              |                              |
|-----------------|------------------------|--------------|------------------------------|
| Buying Agency:  | City of LaPorte        | Contractor:  | Houston Freightliner, Inc    |
| Contact Person: | Michael Collins        | Prepared By: | Michael McCarthy             |
| Phone:          | 281-470-5114           | Phone:       | 713-580-8122                 |
| Fax:            |                        | Fax:         | 713-955-6282                 |
| Email:          | Collinsm@laportetx.gov | Email:       | Mike.McCarthy@STRHouston.com |

|               |    |              |                             |
|---------------|----|--------------|-----------------------------|
| Product Code: | D7 | Description: | 2017 Freightliner M2-106-80 |
|---------------|----|--------------|-----------------------------|

**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** 69353

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.**  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

| Description                        | Cost | Description                               | Cost   |
|------------------------------------|------|---|--------|
| Cummins ISL 350 HP                 | 2030 | 315/80R22/5 Front Tires                   | 623    |
| Allison 3000 RDS Auto Transmission | 6146 | Air Driver Seat                           | 165    |
| 20000 LB Front Axle                | 3325 | Air Cab Suspension                        | 118    |
| 46,000 LB Rear Axle                | 1880 |   |        |
| Bendix AD-9 Air Dryer              | 290  |   |        |
| 46,000 LB TuffTrac RR Suspension   | 2728 | Cementech R089 Mobile Concrete Dispenser  | 98109  |
| <b>Air Conditioner</b>             | 850  |   |        |
| 237" Wheelbase                     | 1028 |   |        |
| 1/4" Frame Liner                   | 650  |   |        |
| AM/FM Radio                        | 225  | <b>Subtotal From Additional Sheet(s):</b> |        |
| <b>7/16x3-9/16x11-1/8 Frame</b>    | 560  | <b>Subtotal B:</b>                        | 118727 |

**C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

| Description            | Cost  | Description                               | Cost  |
|------------------------|-------|---|-------|
| Cementech CT-270S Silo | 27245 |   |       |
|                        |       | <b>Subtotal From Additional Sheet(s):</b> | 0     |
|                        |       | <b>Subtotal C:</b>                        | 27245 |

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). **For this transaction the percentage is:** 14%

**D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)**

|                   |   |                          |        |   |             |        |
|-------------------|---|--------------------------|--------|---|-------------|--------|
| Quantity Ordered: | 1 | X Subtotal of A + B + C: | 215325 | = | Subtotal D: | 215325 |
|-------------------|---|--------------------------|--------|---|-------------|--------|

**E. H-GAC Order Processing Charge (Amount Per Current Policy)** Subtotal E: 1500

**F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

| Description                       | Cost   | Description        | Cost   |
|-----------------------------------|--------|--------------------|--------|
| Discount                          | -12065 |                    |        |
| Freight from Cementech to LaPorte | 2000   |                    |        |
|                                   |        | <b>Subtotal F:</b> | -10065 |

**Delivery Date:** 2/1/2017 **G. Total Purchase Price (D+E+F):** 206760

- \* 270 Barrel (1080 cu foot capacity)
- \* 8' 6" Width X 18' 0" Sidewall
- \* 3' 6" Ground Clearance to Discharge
- \* 32' Overall Height
- \* 7,000 lbs Empty Weight
- \* Outside Ladder and Full Circumference Safety Railing
- \* 150 square foot baghouse with air vibrator
- \* 4" fill pipe with aluminum adapters
- \* Eight externally mounted air pads with manifold
- \* Access Manhole
- \* View windows to see cement levels
- \* Unit is sand blasted then standard primer and paint applied
- \* Pressure Relief Pop off valve
- \* Standard Power
  
- \* Optional: Urethane primer and paint available



Leaders in Volumetric Proportioning and  
 Continuous Mixing Systems  
 1700 N 14th Street  
 Indianola, IA 50125 | 800.247.2464  
 www.cementtech.com

**Purchase Order**

Quote Id: 2,305  
 Quote Date: 09/22/2016  
 Sales Person: Brad Ross

**Sold To:**  
 HGAC CONTRACT/CITY OF  
 9550 North Loop East  
  
 Houston, TX 77029

**PO Quote Contact:**  
 Name: Houston Freightliner-Mike McCar  
 Phone: 832-233-1099  
 Email: Mike.Mccarthy@strhouston.

**Ship To:**

**CT-270S**

| Option Name  | Description  | Qty | Price    |
|--|--|-----|----------|
| 6 FT. VINYL DISCHARGE SOCK WITH CLAMP                    | 6 FT. VINYL DISCHARGE SOCK WITH CLAMP  | 1   | 57.00    |
| 7" DIA 17' LONG INTERNAL DISCHARGE AUGER WITH 5 HP DRIVE | 7" INTERNAL DISCHARGE AUGER WITH 5 HP 3 PHASE ELECTRIC MOTOR. THIS OPTION INSTALLS AN INTERNAL AUGER DISCHARGE ON A STRAIGHT LEG BASE SILO.  | 1   | 4,441.00 |
| AIR PANEL AND PLUMBED AIR SYSTEM                         | AIR PANEL AND PLUMBED AIR SYSTEM   | 1   | 950.00   |
| TIE DOWN KIT 'L' BOLTS                                   | TIE DOWN KIT 'L' BOLTS. QTY 4. 1 1/4" x 15". INCLUDES NUTS AND WASHERS. MUST BE CAST INTO FOUNDATION AT CONCRETE PLACEMENT. CONSULT LOCAL ENGINEER FOR FOUNDATION REQUIREMENTS. 1463-900 | 1   | 229.00   |
| FREIGHT TO LAPORTE, TX                                   | FREIGHT TO LAPORTE, TX   | 1   | 2,598.00 |

Approved By: \_\_\_\_\_  
 Approve Date: \_\_\_\_\_

|                            |                    |
|----------------------------|--------------------|
| <b>Base Product Price:</b> | \$18,970.00        |
| <b>Optional Equipment:</b> | \$8,275.00         |
| <b>Sub Total</b>           | <b>\$27,245.00</b> |
| <b>Mixer FET:</b>          | \$0.00             |
| <b>Freight:</b>            | \$0.00             |
|                            | <b>\$27,245.00</b> |
| <b>Units Ordered:</b>      | <b>1</b>           |

**FOB:** FOB – Indianola, IA

**Additional PO Instruction:**

Customer to supply motor starter and main disconnect.

**TOTAL PURCHASE PRICE : \$27,245.00**



Leaders in Volumetric Proportioning and  
 Continuous Mixing Systems  
 1700 N 14th Street  
 Indianola, IA 50125 | 800.247.2464  
 www.cementtech.com

**Purchase Order**

Quote Id: 2,305  
 Quote Date: 09/22/2016  
 Sales Person: Brad Ross

**ADDITIONAL TERMS AND CONDITIONS OF SALE**

1. **Parties.** Cemen Tech, Inc., is identified herein as “seller”. The party purchasing the items described is identified as “purchaser”.
2. **Prices.** Prices quoted by the seller are guaranteed for ninety (90) days from the Quote Date on the front of the purchase order. Prices are subject to change on purchase orders received in our office thereafter. Payment of the purchase price is to be performed at seller’s place of business. 1700 North 14<sup>th</sup> Street, Indianola, Iowa.
3. **Acceptance.** The purchase order is subject to approval and acceptance by the seller at its office in Indianola, Iowa.
4. **Taxes.** Purchaser is responsible for the payment of all sales and use taxes.
5. **Warranties.** The seller warrants that it will repair or replace, without charge, any part that is defective in workmanship or material and is returned to seller at Indianola, Iowa, freight prepaid, within three hundred sixty-five (365) days of delivery to the purchaser. SELLER MAKES NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO MERCHANTABILITY OR AS TO THE FITNESS FOR ANY PARTICULAR USE OR PURPOSE, EXCEPT THE ABOVE EXPRESS WARRANTY, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY, ARISING FROM THE USE OF SUCH EQUIPMENT OR FOR CONSEQUENTIAL DAMAGES. Purchaser’s exclusive remedy shall be repair or replacement of defective parts and in no event whatsoever shall seller be otherwise liable.
6. **Payment and Interest.** Payment is due in full on delivery unless otherwise provided in the written agreement between the parties. Interest on any unpaid balance shall accrue at lesser of 1.5% per month (18% annually), or the maximum legal rate, until the balance is paid in full.
7. **Attorney(s) fees and expenses.** Purchaser shall pay seller’s reasonable attorney’s fees and expenses incurred in enforcing or defending this agreement and claims related thereto.
8. **Business use.** Purchaser warrants that the subject equipment is being purchased for use primarily in business, and **not** for personal, family or household purposes.
9. **Representations.** This purchase order constitutes the complete agreement between the parties and cannot be amended or modified except by a written statement signed by the parties. Sales representatives do not have authority to amend, modify, or waive the printed terms and conditions stated herein.
10. **Captions.** Captions appearing herein are for convenience purposes only and do not alter or affect the interpretation or construction of any paragraph herein.
11. **Savings clause.** If any provision herein is deemed to be unconscionable or unenforceable for any reasons, the remaining provisions of the agreement shall remain in force, or the agreement shall be cancelled at the sole discretion of the seller.
12. **Place of contracting.** This purchase order is deemed by the parties to have been accepted and entered into in the State of Iowa and will be interpreted under the laws of the State of Iowa.
13. **Venue.** The parties hereby agree that Warren County, Iowa, is an appropriate and convenient forum for any action brought to enforce the terms and conditions of this agreement.

**Accepted By: Cemen Tech, Inc.**

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

**Authorized By:** \_\_\_\_\_  
 (Authorized Signature)

**Authorized By:** \_\_\_\_\_  
 (Authorized Signature)

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

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

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

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

## REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: October 10, 2016 Appropriation  
Requested By: Ryan Cramer Source of Funds: N/A  
Department: Planning & Development Account Number: \_\_\_\_\_  
Report:  Resolution:  Ordinance:  Amount Budgeted: \_\_\_\_\_  
Other:  \_\_\_\_\_ Amount Requested: \_\_\_\_\_  
Budgeted Item:  YES  NO

### Attachments :

1. Ordinance
2. P&Z Recommendation Letter
3. SCUP Application
4. Area Map
5. Land Use and Zoning Map
6. Public Response Letters

---

### SUMMARY & RECOMMENDATIONS

The applicants (Kenneth and Joanne Humphries) are seeking approval of a Special Conditional Use Permit (SCUP) to allow construction of a secondary dwelling unit for a “mother-in-law” unit at the property addressed 2711 Crescent Drive and further described as Tract 1 Crescent View Subdivision and is 33,241 square feet in area.

The site is zoned R-1 and contains an existing single family residential house. The applicant desires to construct an 880 square foot secondary dwelling on their property. This structure would house a garage and storage on the first floor and a “mother-in-law” suite on the second floor. The city’s residential use table (Section 106-331) allows for secondary dwelling units in the R-1 district through consideration of a Special Conditional Use Permit. Although the zoning ordinance does not contain a definition of a secondary dwelling unit, a “mother-in-law suite” is commonly categorized as a secondary dwelling unit. There is currently a trend across the country to allow for secondary dwelling units on lots as mother-in-law suites. Secondary dwelling units provide the ability to house family and friends as guests while providing some privacy and separation through detaching the structure. The use of this site will remain single family detached residential. The Planning and Zoning Commission conducted a public hearing at the September 15, 2015, meeting concerning this request. Eight public hearing notice responses were received by the City for the P&Z public hearing; eight in favor and none in opposition. The Commission voted unanimously to recommend approval of the proposed SCUP.

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### **Action Required of Council:**

Conduct public hearing and consider approval or other action on a recommendation by the Planning and Zoning Commission to approve Special Conditional Use Permit Request #16-91000003, to allow construction of secondary dwelling unit for the property located at 2711 Crescent Drive.

---

**Approved for City Council Agenda**

---

**Corby D. Alexander, City Manager**

---

**Date**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF LA PORTE, CHAPTER 106, MORE COMMONLY REFERRED TO AS THE ZONING ORDINANCE OF THE CITY OF LA PORTE, BY GRANTING SPECIAL CONDITIONAL USE PERMIT NO. 16-9100003 FOR THAT CERTAIN TRACT OF LAND HEREIN DESCRIBED, FOR THE PURPOSE OF ALLOWING DEVELOPMENT OF ONE (1) SECONDARY DWELLING UNIT; MAKING CERTAIN FINDINGS OF FACT RELATED TO THE SUBJECT; CONTAINING A SEVERABILITY CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF;**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE, TEXAS:

**Section 1.** Chapter 106 “Zoning” of the Code of Ordinances is hereby amended by granting Special Conditional Use Permit #16-9100003, attached hereto as Exhibit A and incorporated by reference for all purposes, to allow for the development of one (1) secondary dwelling unit on property generally located at 2711 Crescent Drive, La Porte, Texas, said property being legally described as Tract 1, Crescent View Subdivision, Harris County, Texas, within a Low Density Residential (R-1) zoning district.

**Section 2.** All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

**Section 3.** Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

**Section 4.** The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council is posted at a place convenient to the public at the City Hall of the city for the time required by law preceding this meeting, as required by Chapter 551, Tx. Gov’t Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

**Section 5.** The City Council of the City of La Porte hereby finds that public notice was properly mailed to all owners of all properties located within two hundred feet (200’) of the properties under consideration.

**Section 6.** The City Council of the City of La Porte hereby finds, determines, and declares that all prerequisites of law have been satisfied and hereby determines and declares that the amendments to the City of La Porte Zoning Classification contained in this Ordinance as amendments thereto are desirable and in furtherance of the goals and objectives stated in the City of La Porte's Comprehensive Plan.

**Section 7.** This ordinance shall be effective after its passage and approval.

PASSED AND APPROVED this the 10<sup>th</sup> day of OCTOBER 2016.

CITY OF LA PORTE, TEXAS

By: \_\_\_\_\_  
Louis R. Rigby, Mayor

ATTEST:

\_\_\_\_\_  
Patrice Fogarty, City Secretary

APPROVED:

  
\_\_\_\_\_  
Clark Askins, Assistant City Attorney

**EXHIBIT A**

**City of La Porte  
Special Conditional Use Permit #16-91000003**

This permit is issued to: Kenneth Humphries  
Owner or Agent  
7514 Olympia Drive, Houston, TX 77063  
Address

For Development of: Secondary Dwelling Unit  
Development Name  
2711 Crescent Drive, La Porte, TX 77571  
Address

Legal Description: Tract 1, Crescent View Subdivision

Zoning: R-1, Low Density Residential

Use: Single Family Residential, Secondary Dwelling Unit

Permit Conditions:

This Special Conditional Use Permit is applicable for the subject property. A copy of which shall be maintained in the files of the City's Planning and Development Department upon approval. Project development shall be in accordance with the following conditions:

1. All necessary documentation for building permit review must be submitted in conjunction with the city's building permit application process.
2. The plan shall comply with all applicable provisions of Chapter 106, "Zoning" of the City's Code of Ordinances and all other department reviews and applicable laws and ordinances of the City of La Porte and the State of Texas.
3. The proposed secondary dwelling unit shall be used only for residential purposes.

Failure to begin construction of the building within 12 months after issuance or as scheduled under the terms of a special conditional use permit shall void the permit as approved, except upon an extension of time granted after application to the Planning and Zoning Commission.

If contract or agreement is terminated after completion of any stage and there is ample evidence that further development is not contemplated, the ordinance establishing such special conditional use permit may be rescinded by the City Council, upon its own motion or upon the recommendation of the Planning and Zoning Commission of the City of La Porte, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

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

\_\_\_\_\_  
Director of Planning

\_\_\_\_\_  
City Secretary



September 23, 2016

Honorable Mayor Rigby and City Council  
City of La Porte

RE: Special Conditional Use Permit Request #16-91000003

Dear Mayor Rigby and City Council:

The La Porte Planning and Zoning Commission held a meeting on September 15, 2016 to hear a Special Conditional Use Permit request by Kenneth and Joanne Humphries for a Special Conditional Use Permit to allow for the building of a guest quarters on the second floor level of a proposed detached garage at 2711 Crescent Dr., legally described as Tract 1 of the Crescent View Subdivision.

The lot is zoned R-1, Low-Density Residential, and currently has one single family house on it. Section 106-331 of the city's Code of Ordinances allows secondary dwelling units as a conditional use in the R-1 zone district.

The Commission voted unanimously (5-0) to recommend approval of the proposed SCUP.

Respectfully submitted,

Hal Lawler  
Chairman, Planning and Zoning Commission

cc: Tim Tietjens, Director of Planning and Development  
Department File

Planning & Development Department  
**SPECIAL CONDITIONAL USE  
PERMIT APPLICATION**

**1. PROPERTY OWNER CONTACT INFORMATION:**

OWNER NAME: Kenneth & Joanne Humphries PHONE 1: 713-249-2569  
PHONE 2: 713-978-6610 X:111 FAX #: 713-978-6318  
E-MAIL: [REDACTED]  
MAILING ADDRESS: 7514 Olympia Dr., Houston, TX 77063

**2. BUSINESS INFORMATION:**

BUSINESS NAME: \_\_\_\_\_ BUSINESS TYPE: \_\_\_\_\_  
CONTACT NAME: \_\_\_\_\_ PHONE #: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_ FAX #: \_\_\_\_\_  
MAILING ADDRESS: \_\_\_\_\_

**3. PROPERTY DESCRIPTION:**

PARCEL NO(s) (13-digit HCAD Tax ID #): 0600550000001  
PROPERTY ADDRESS (If existing): 2711 Crescent Dr., La Porte, TX 77571  
PROPERTY LEGAL DESCRIPTION TR 1, Crescent View

**4. SUPPORTING DOCUMENTATION (Check Applicable):**

GENERAL PLAN       SITE PLAN       PLAT

REASON FOR REQUEST?: See Attached  
OWNER or AUTHORIZED AGENT'S SIGNATURE: [Signature]  
PRINTED NAME: Kenneth M. Humphries DATE: 7/29/16

**5. APPLICATION CHECKLIST & SUPPORTING DOCUMENTATION:**

- COMPLETE ITEMS 1 THRU 4 OF APPLICATION
- ATTACH APPLICABLE PLAN(S)
- SUBMIT \$300.00 NON-REFUNDABLE APPLICATION FEE

**(STAFF USE ONLY):**

DATE RECEIVED: \_\_\_\_\_ RECEIVED BY: \_\_\_\_\_  
PROJECT NUMBER: \_\_\_\_\_  
SCHEDULED DATE FOR PLANNING & ZONING COMMISSION AGENDA: \_\_\_\_\_

**KENNETH M. HUMPHRIES**  
7514 OLYMPIA DRIVE  
HOUSTON, TEXAS 77063

July 29, 2016

Planning and Development  
City of La Porte  
604 W. Fairmont Parkway  
La Porte, TX 77571

RE: 2711 Crescent Dr., La Porte, TX  
Special Conditional Use Permit Application

Gentlemen:

We are requesting permission to build a Guest Quarters consisting of two bedrooms, a bath, a Coffee Bar and a Sitting Area on the second floor level of the garage structure that we have recently permitted.

The primary residence is a three bedroom house on a large bay front lot, which we hope will be a family retreat. Since we have five grown children, we need the extra bedrooms to accommodate family, as well as guests, for holidays, special occasions and any other time that we can convince children and grandchildren to come visit. We have no intention of ever renting the property.

If this application is approved, I will submit a revised plan of the second floor of the garage for a permit revision. I have enclosed two (2) copies of Drwgs. A01.01 Site Plan and A0.201 Roof and Floor Plan for your reference.

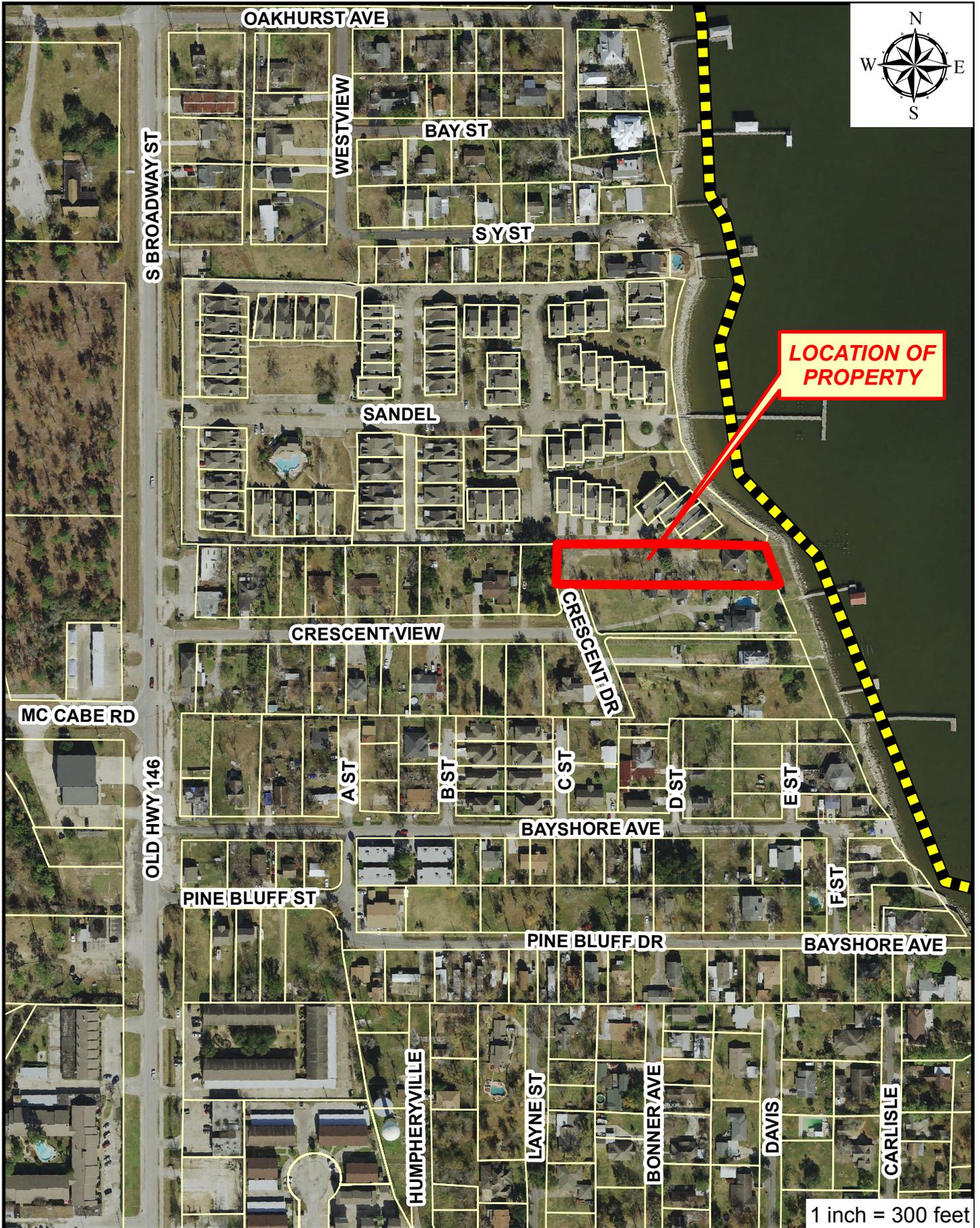
Thank you for your consideration of this request.

Sincerely,

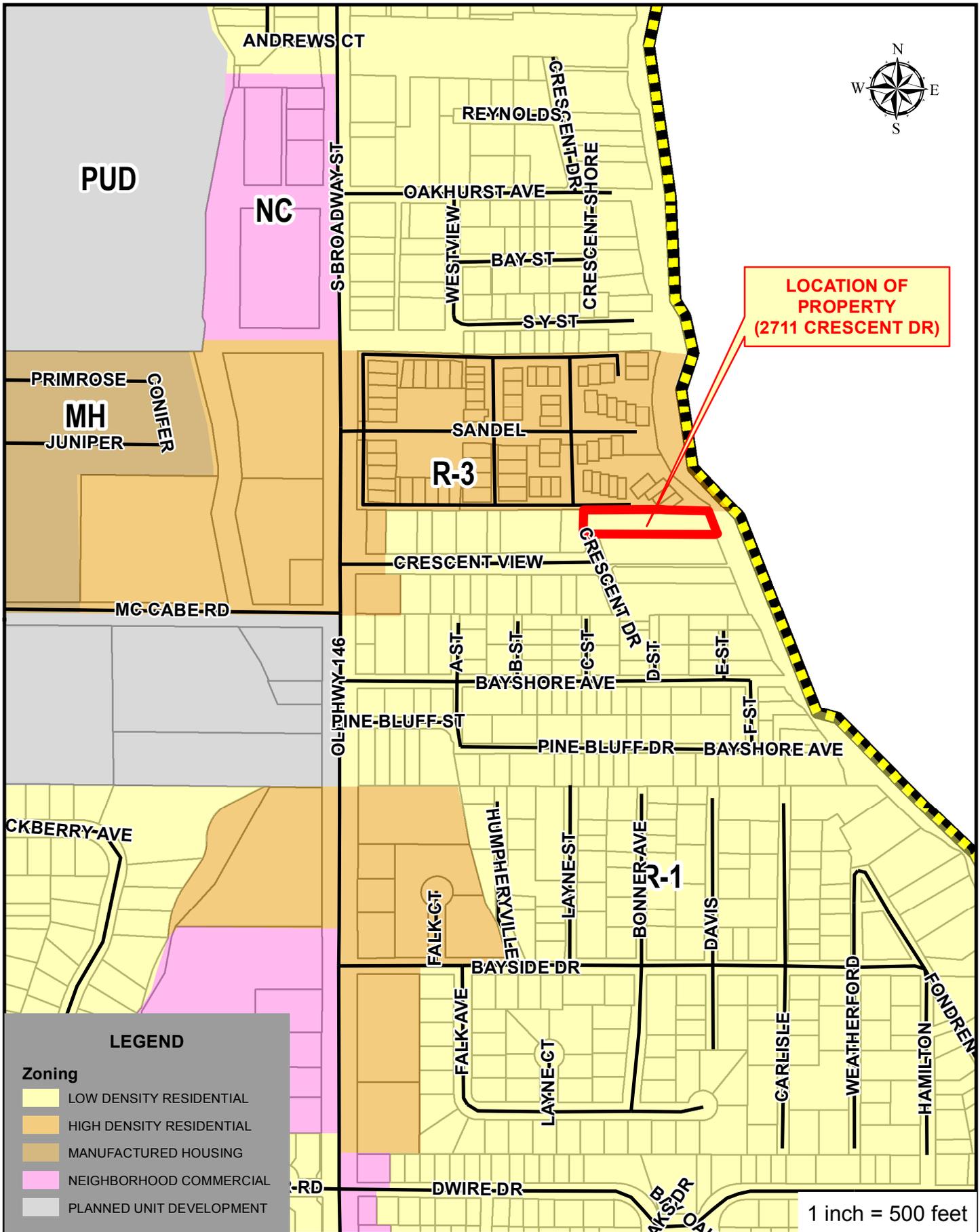


Kenneth M. Humphries

# AREA MAP



# ZONING EXHIBIT



A Meeting of the La Porte

Planning and Zoning Commission

(Type of Meeting)

Scheduled for

September 15, 2016

(Date of Meeting)

to Consider

Variance Request #16-9100003

(Type of Request)

I have received notice of the above referenced public hearing.

I am in FAVOR of granting this request for the following reasons:

1. INCREASE PROPERTY VALUE
2. SAME BUILDING TYPE NEXT DOOR ON S. PROPERTY - 1950's
3. I HAVE MET THE HUMPHRIES + BELIEVE THEY WILL MAKE GREAT NEIGHBORS + SHOULD BE ALLOWED TO DEVELOP THEIR PROPERTY.

I am ~~opposed~~ <sup>FAVOR</sup> to granting this request for the following reasons:

4. THIS IS A LARGE BAY FRONT LOT WHICH I GREW UP ON IN THE 1950's + WOULD LOVE TO SEE IT IMPROVED.

ROBERT DRUE ADAMS

Name (please print)

200 CRESCENTVIEW ST.

Address

Robert D. Adams

Signature

LA PORTE, TX 77571

City, State, Zip

A Meeting of the La Porte

Planning and Zoning Commission

(Type of Meeting)

Scheduled for

September 15, 2016

(Date of Meeting)

to Consider

Variance Request #16-9100003

(Type of Request)

I have received notice of the above referenced public hearing.

I am in FAVOR of granting this request for the following reasons:

INCREASE my PROPERTY VALUE, WITH THIS  
IMPROVEMENT TO BAY LOT.

I am OPPOSED to granting this request for the following reasons:

BILLY F. ADAMS

Name (please print)

Billy F Adams

Signature

617 JACK SCHREFFER

Address

TRINITY, TX 75862

City, State, Zip

A Meeting of the La Porte

Planning and Zoning Commission

(Type of Meeting)

Scheduled for

September 15, 2016

(Date of Meeting)

to Consider

Variance Request #16-9100003

(Type of Request)

---

I have received notice of the above referenced public hearing.

I am in **FAVOR** of granting this request for the following reasons:

*A very reasonable request!*

I am **OPPOSED** to granting this request for the following reasons:

*Jeff Calvert*

Name (please print)

*Jeff Calvert*

Signature

*2201 S. Bury #42*

Address

*L.P. TX 77571*

City, State, Zip

A Meeting of the La Porte

Planning and Zoning Commission

(Type of Meeting)

Scheduled for

September 15, 2016

(Date of Meeting)

to Consider

Variance Request #16-9100003

(Type of Request)

---

I have received notice of the above referenced public hearing.

I am in **FAVOR** of granting this request for the following reasons:

*We are in favor of them building.  
And, wish them the best of luck!*

I am **OPPOSED** to granting this request for the following reasons:

*Helén Saldivar*

Name (please print)

*Helén Saldivar*

Signature

*3115 Bayou Dr.*

Address

*La Porte, Tx 77571*

City, State, Zip

A Meeting of the La Porte

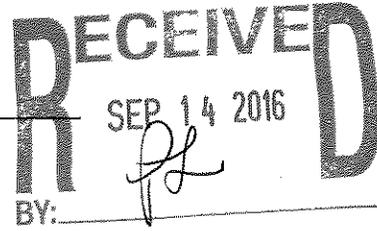
Planning and Zoning Commission  
(Type of Meeting)

Scheduled for

September 15, 2016  
(Date of Meeting)

to Consider

Variance Request #16-9100003  
(Type of Request)



I have received notice of the above referenced public hearing.

I am in FAVOR of granting this request for the following reasons:

WE APPRECIATE SUCH IMPROVEMENTS TO THE  
NEIGHBORHOOD. WE KNOW THE HUMPHRIES, AND KNOW  
THEY WILL INSURE THE BUILDING IS OF HIGH QUALITY  
AND WILL BE MAINTAINED.

I am OPPOSED to granting this request for the following reasons:

Four horizontal lines for writing reasons for opposition.

BARRY & CAMBRIA BEASLEY

2802 CRESCENT DR.

Name (please print)

Address

*Barry & Cambria Beasley*

LA PORTE 77071

Signature

City, State, Zip

A Meeting of the La Porte

Planning and Zoning Commission

(Type of Meeting)

Scheduled for

September 15, 2016

(Date of Meeting)

to Consider

Variance Request #16-9100003

(Type of Request)

I have received notice of the above referenced public hearing.

I am in **FAVOR** of granting this request for the following reasons:

*No issues, so no reason to be opposed.*

I am **OPPOSED** to granting this request for the following reasons:

*Dnn Peter*

Name (please print)

*[Signature]*

Signature

*2601 S Broadway #57*

Address

*La Porte, TX 77571*

City, State, Zip

A Meeting of the La Porte

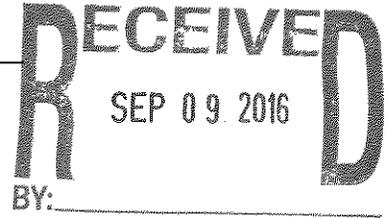
Planning and Zoning Commission  
(Type of Meeting)

Scheduled for

September 15, 2016  
(Date of Meeting)

to Consider

Variance Request #16-9100003  
(Type of Request)



I have received notice of the above referenced public hearing.

I am in FAVOR of granting this request for the following reasons:

ADJACENT PROPERTY HAS APARTMENT OVER DETACHED GARAGE. PROPOSED GARAGE W/APARTMENT WOULD BE CONGRUENT WITH TYPES OF STRUCTURES IN NEIGHBORHOOD.

I am OPPOSED to granting this request for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TERRY MATTHEWS

Name (please print)

Terry Matthews  
Signature

2807 CRESCENT

Address

LA PORTE, TEXAS 77571

City, State, Zip

A Meeting of the La Porte

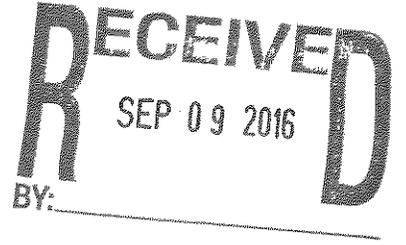
Planning and Zoning Commission  
(Type of Meeting)

Scheduled for

September 15, 2016  
(Date of Meeting)

to Consider

Variance Request #16-9100003  
(Type of Request)



I have received notice of the above referenced public hearing.

I am in **FAVOR** of granting this request for the following reasons:

*many of the houses have the same and it is only fair to allow it*

I am **OPPOSED** to granting this request for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Vidya O'Sullivan*  
Name (please print)

*2715 Crescent*  
Address

*[Handwritten Signature]*  
Signature

*LP 77571*  
City, State, Zip

A Meeting of the La Porte

Planning and Zoning Commission

(Type of Meeting)

Scheduled for

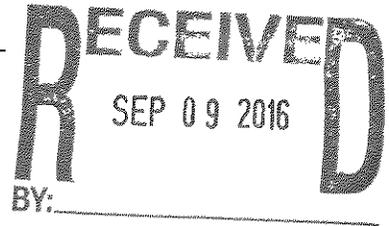
September 15, 2016

(Date of Meeting)

to Consider

Variance Request #16-9100003

(Type of Request)



I have received notice of the above referenced public hearing.

I am in **FAVOR** of granting this request for the following reasons:

We have no reasons to be opposed.

I am **OPPOSED** to granting this request for the following reasons:

Carlos F. Sales Amy I Sales 2601 S. Broadway St. #44

Name (please print)

Address

[Signature]  
Signature

La Porte, TX 77571

City, State, Zip

## REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: October 10, 2016 Appropriation  
Requested By: Traci Leach Source of Funds: \_\_\_\_\_  
Department: Administration Account Number: \_\_\_\_\_  
Report:  Resolution:  Ordinance:  Amount Budgeted: \_\_\_\_\_  
Other:  Amount Requested: \_\_\_\_\_  
Attachments : Budgeted Item:  YES  NO

### 1. Chapter 380 Development Agreement

---

#### SUMMARY & RECOMMENDATIONS

El Toro Mexican Restaurant is a local well known restaurant that has been doing business in La Porte for over 50 years. It is owned and operated by the Ybarra family, which not only grew up in La Porte but still live there.

Mr. Roland Ybarra (dba as Ybarra Restaurants Inc.) is planning on building a brand new El Toro restaurant with a Hacienda feel that will not only attract local patrons but also ones visiting or staying here. The proposed restaurant will be a minimum of 7,500 square feet, seat over 400 patrons, and will have patio dining, as well. All 35 existing employees will be retained in La Porte and approximately 100 employees will be hired as a result of building this restaurant.

In order to construct the proposed restaurant, El Toro will need to close the N. 25<sup>th</sup> Street right of way (El Toro owns property on both sides of the N. 25<sup>th</sup> Street right of way). The application for the right-of-way is included as a subsequent item on tonight's agenda. The value of the street closure is \$116,100. El Toro is requesting that the City waive the closing fee in order to assist in the development of the property. Given the estimated increase in property value, staff estimates a payback period of 5.5 years.

The attached Chapter 380 document outlines the parameters under which this incentive would be structured. The City will waive El Toro's obligation to make payment of fair market value for the right of way closure. El Toro would be required to meet the following performance benchmarks:

- Provide proof of Certificate of Occupancy for restaurant with a minimum of 7,500 square feet within three years of the effective date of Agreement
- Document minimum capital investment of \$5,000,000.00 for infrastructure, site improvements, building construction within three years of the effective date

Should these performance benchmarks not be met, the following instruments are included to safeguard the City:

- A real estate lien shall be placed for the entire tract of land. It is understood by all parties that the City's lien would not be the first lien in the event of bankruptcy. In order to address this concern, the Guaranty of Payment and the Promissory Note is included as part of Exhibit D of the

Agreement.

- Guaranty of Payment, which unconditionally guarantees all obligations/liabilities incurred by El Toro in pursuit of the project
- Promissory Note (Real Estate Lien Note), which Roland Ybarra personally agrees to pay the City for the value of the right of closure if the terms of the Agreement are not met.

Staff recommends approval of the Chapter 380 Agreement between the City of La Porte and Ybarra restaurants to construct a new El Toro restaurant.

---

**Action Required of Council:**

Consider approval or other action authorizing the Mayor to execute a Chapter 380 Agreement between the City of La Porte and Ybarra Restaurants, Inc. for waiver of payment for closure of street right of way for the construction of a new El Toro restaurant.

---

**Approved for City Council Agenda**

---

**Corby D. Alexander, City Manager**

---

**Date**

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

**CHAPTER 380 AGREEMENT FOR WAIVER OF PAYMENT FOR CLOSURE OF STREET  
RIGHT-OF-WAY, BETWEEN YBARRA RESTAURANTS, INC., A TEXAS CORPORATION  
AND THE CITY OF LA PORTE, TEXAS**

This AGREEMENT is entered into by and between the City of La Porte, Texas, a Texas municipal corporation of Harris County, Texas ("CITY"), and Ybarra Restaurants, Inc., a Texas Corporation (hereinafter called "DEVELOPER"). DEVELOPER and CITY may be referred to jointly herein as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code provides statutory authority for a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

WHEREAS, CITY has found that providing a program consisting of a grant of funds to DEVELOPER in exchange for DEVELOPER'S completion of the Project proposed by DEVELOPER will promote local economic development and stimulate business and commercial activity and create jobs within the CITY (hereafter referred to as "PROGRAM"); and

WHEREAS, the Project proposed by DEVELOPER will additionally benefit CITY by generating revenue from the assessment of ad valorem tax on personal property, inventory and real property; and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

NOW THEREFORE, for the reasons stated in these Recitals, which are incorporated into and made part of this Agreement, and in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1. The Project.**

1.1 DEVELOPER is planning to construct a restaurant with a minimum capital investment of at least *Five Million* (\$5 Million), more fully described in Exhibit "A" (the "Project" herein), to be located on a tract of land generally situated at the northeast corner of Sens Road and West Main Street, as more particularly described in Exhibit "B" (the "Property").

1.2 As a precondition to implementation of the Project, DEVELOPER has determined that it would be necessary to petition CITY to close, vacate and abandon that portion of the 25<sup>th</sup> Street right-of-way situated between West Main Street and West Polk Street (the "Right-of Way" herein), which currently separates DEVELOPER'S tracts, in order to consolidate said tracts and thereafter construct the proposed restaurant and associated facilities.

1.3 DEVELOPER has filed an application with CITY to close, vacate and abandon the Right of Way.

1.4 Under Chapter 62, Article II of CITY's Code of Ordinances, a landowner is required to pay to CITY the fair market value of the right-of-way petitioned to be closed, in exchange for conveyance of the right-of-way to the landowner after closure. Section 62-35(b) of said Code defines "fair market value" as 75% of the appraised value of the right-of-way. An independent appraisal of the Right-of-Way determined the fair market value to be \$154,800.00, 75% of which is \$116,100.00.

1.5 In accordance with Texas Local Government Code Chapter 272 and Chapter 62 of CITY's Code of Ordinances, on \_\_\_\_\_, 2016 CITY considered DEVELOPER's application for closure of the Right-of-Way, and upon a finding of no public necessity to maintain the Right-of-Way and proper receipt of notices of Non-Objection from utilities maintaining facilities in the Right-of-Way, did on such date vote to adopt Ordinance 2016-\_\_\_\_\_, to effect the closure of Right-of-Way and convey title to same to DEVELOPER. Said Ordinance 2016-\_\_\_\_\_ and accompanying Deed Without Warranty are attached to this Agreement as Exhibit "C" and is incorporated by reference for all purposes.

1.6 In exchange for development of the Project, and attainment of certain performance standards upon completion of the Project, as more fully described herein, DEVELOPER seeks CITY's agreement to waive and credit to DEVELOPER, payment of fair market value as required under Chapter 62 of CITY'S Code of Ordinances, for closure of the Right-of-Way.

## Section 2. CITY Obligations.

CITY agrees to waive DEVELOPER'S obligation to make payment of fair market value for closure of Right-of-Way, and credit such fee to DEVELOPER as a grant in accordance with this Agreement and as allowed by Texas Local Government Code Chapter 380, as an inducement to DEVELOPER to complete the Project. However, as provided in Section 3 of this Agreement, CITY'S agreement to waive payment of fair market value is conditioned on DEVELOPER's obligation to attain certain specified performance benchmarks in connection with the Project. The failure of DEVELOPER to satisfy the specified performance benchmarks shall provide CITY the right to forfeit such grant and reclaim from DEVELOPER, the fair market value of the Right-of-Way, as the term "fair market value" is defined in Section 1.4 above.

## Section 3. DEVELOPER Obligations.

3.1 As a condition for CITY's waiver of DEVELOPER'S obligation to make payment of fair market value in connection with CITY's closure of the Right-of-Way on \_\_\_\_\_ 2016, and CITY'S promise to permanently forbear collection of such payment and credit same to DEVELOPER as a grant to induce completion of the Project, DEVELOPER promises to submit to CITY, and shall submit to CITY the following items, by the deadlines indicated:

- a) Proof of Certificate of Occupancy issued by CITY for restaurant building to be situated on the Property, with the restaurant building having a minimum of 7500 square feet of floor space, no later than three (3) years after the effective date of this Agreement
- b) Documentation substantiating minimum capital investment by DEVELOPER of *Five Million* (\$5 Million), for infrastructure, site improvements, construction, and other related improvements which are necessary to develop the proposed restaurant no later than three (3) years after the effective date of this Agreement.

3.2 DEVELOPER agrees that CITY will have the right to review the business records of DEVELOPER that relate to the Project and this Agreement in order to determine DEVELOPER'S

City's Initials: \_\_\_\_\_ Developer's Initials RY

compliance with the terms of this AGREEMENT. Such review shall occur at any reasonable time and upon thirty (30) days' prior notice to DEVELOPER. To the extent reasonably possible, DEVELOPER shall make all such records available in electronic form.

3.3 Upon execution of this Agreement DEVELOPER agrees to simultaneously execute a promissory note in the amount of \$116,100.00 and a second lien position Deed of Trust in favor of CITY, with said Deed of Trust imposing a lien on and against the Property, (secondary and subordinate to lenders' liens for acquisition of the property and subsequent to the Project's construction costs funded by the first lien lenders), to secure DEVELOPER'S obligation to remit to CITY the fair market value of the Right-of-Way in the event of DEVELOPER'S breach of this Agreement. The promissory note reference in paragraph 3.3 above shall become due and payable in full three (3) years after the effective date of the note and this Agreement, but shall be forgiven and deemed discharged if DEVELOPER sooner satisfies its obligations under this Agreement.

3.5 Mr. Roland Ybarra, President of DEVELOPER, agrees that he will, as a condition of City's entering into this Agreement, execute in favor of CITY a personal guarantee in his individual capacity, in the amount of \$116,100.00.

3.6 Said guaranty, promissory note, and deed of trust are collectively attached to this Agreement as Exhibit "D" and is incorporated by reference for all purposes.

3.7 DEVELOPER shall not allow any portion of ad valorem taxes owed to CITY on the Property, or any other property owned by DEVELOPER and located within the City of La Porte, Texas to become delinquent beyond the date when due, as such date may be extended to permit protest of valuation or any appeal; nor shall DEVELOPER fail to render for taxation any personal property, including inventory and equipment, owned by DEVELOPER and located within the City of La Porte, Texas.

3.8 DEVELOPER covenants and certifies that DEVELOPER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f), DEVELOPER shall repay to the CITY the full amount of the payment waived under this Agreement, plus 10% per annum from the date the waiver was made. Repayment shall be paid within 120 days after the date DEVELOPER receives notice of violation from the CITY.

#### **Section 4. Force Majeure.**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not ("**Force Majeure**"), the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

**Section 5. Term.** The term of this Agreement shall begin upon the execution hereof by both Parties (the Effective Date) and end either upon the complete performance of all obligations and conditions imposed upon DEVELOPER under this Agreement (unless sooner terminated in writing in

January 1, 2020 to RY

accordance with this Agreement), or on that date which is four (4) years after the Effective Date ~~January 1, 2019~~, whichever date occurs first.

#### Section 6. Indemnity.

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT ARISE OUT OF OR ARE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY OR ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

#### Section 7. Breach and Recapture.

7.1 Breach - A breach of this Agreement shall result upon DEVELOPER'S 1) failure to satisfy any one or more of the performance benchmarks, including the failure to do so by the deadlines applicable thereto, outlined in Section 3.1 of this Agreement; 2) failure to comply with any other term or condition of this Agreement; or 3) sale of the Property to a third party without the express, written consent of CITY, during the term of this Agreement.

7.2. Notice of Breach - In the event that CITY makes a reasonable determination that DEVELOPER has breached this Agreement, then CITY shall give DEVELOPER written notice of such. DEVELOPER has thirty (30) days following receipt of said written notice to cure such breach, after which time this Agreement may be terminated by CITY, and the right of CITY to reclaim and recapture any and all funds granted to DEVELOPER under this Agreement shall then immediately accrue. Notice of breach shall be in writing and shall be delivered by personal delivery or certified mail to DEVELOPER at its address provided in Section 10 of this Agreement.

7.3. Recapture - Should DEVELOPER commit a breach of this Agreement as established in Section 7, CITY may enforce its right to reclaim and recapture the fair market value of the Right-of-Way, as conditionally granted to DEVELOPER under the terms of this Agreement, by any means lawfully available to CITY, including but not limited to foreclosure of the aforementioned Deed of Trust lien on the Property.

7.4 Termination for Misrepresentation. Notwithstanding any provision for notice of default and any opportunity to cure provided for in this Agreement, CITY may terminate this Agreement immediately by providing written notice to DEVELOPER, if DEVELOPER, its officers or signatories to this Agreement misrepresented or misrepresents any material fact or information: 1) upon which CITY relied in entering into this Agreement; 2) upon which CITY relied in making grant to DEVELOPER; or 3) which served as an inducement for CITY to make a grant to DEVELOPER.

City's Initials: \_\_\_\_\_ Developer's Initials RY

**Section 8. Personal Liability of Public Officials.**

No employee or elected official of CITY shall be personally responsible for any liability arising under or related to this Agreement. Under no circumstances shall City's actions or obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

**Section 9. Venue and Governing Law.**

This Agreement is performable in Harris County, Texas and venue of any action arising out of this Agreement shall be exclusively in Harris County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

**Section 10. Notices.**

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

**If intended for CITY, to:**

City of La Porte, Texas  
604 W. Fairmont Pkwy.  
La Porte, Texas 77571  
ATTN: City Manager

**If intended for DEVELOPER, to:**

Ybarra Restaurants, Inc.  
by: Roland D. Ybarra, President & Director  
7529 Bayway Drive, Baytown, Tx., 77520

**Section 11 Applicable Laws.**

This Agreement is made subject to the provisions of the Charter and ordinances of CITY, as amended, and all applicable state and federal laws (collectively, the "Applicable Laws"), and violation of same shall constitute a default under this Agreement.

**Section 12. Legal Construction.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**Section 13. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**Section 14. Captions.**

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City's Initials: \_\_\_\_\_ Developer's Initials RY

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

**Section 15. Successors and Assigns.**

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement **SHALL NOT** be assigned by DEVELOPER to any other person or entity, without prior, written CITY approval. Written approval of the CITY shall be required for an assignment to an Affiliate of DEVELOPER, but in such case approval shall not be unreasonably withheld. "Affiliate of DEVELOPER," as used herein, is defined as a parent, sister, partner, joint venture, or subsidiary entity of DEVELOPER; any entity in which DEVELOPER is a major shareholder, owns an equity interest, or is a joint venture or partner (whether general or limited).

**Section 16. Entire Agreement.**

This Agreement embodies the complete agreement of the parties hereto regarding waiver of payment of the fair market value to close the Right-of-Way in connection with the Project, superseding all oral or written previous and contemporary agreements between the parties, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

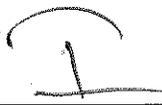
Effective this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF LA PORTE, TEXAS**

EXECUTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2016, by CITY, signing by and through its City Manager.

**YBARRA RESTAURANTS, INC.**

EXECUTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Roland Ybarra, President



\_\_\_\_\_

EXHIBIT A: PROJECT SCOPE  
(hard copies to be provided  
separately)

EXHIBIT B: PROPERTY SURVEY

**EXHIBIT "B" (the "Property")  
To  
CHAPTER 380 AGREEMENT**

Legal Description of Property:

**TRACT 1**

**EXHIBIT B: PROPERTY SURVEY**

Being a 2.403 acre tract of land out of the T.W. Lee Subdivision, Richard Pearsall Survey, A-625, Harris County, Texas, according to the survey performed by H. Carlos Smith, Engineers & Surveyors, Inc., on April 12 thru 13, 1984. The 2.403 acre tract is further described as being part of Lots 1 thru 10 and Lots 12 thru 20, all of lots 21 thru 30, Block 707, including the alley contained therein and a portion of "A" street; both the alley and street having been vacated, abandoned and closed on March 18, 1981, by the City of La Porte Ordinance No. 1252. The 2.403 acre tract of land is more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch iron rod found for the Southeast corner of Block 698, T. W. Lee Subdivision, according to the plat recorded in Volume 67, Page 1, Harris County Deed Records, said corner being coincident with the West right-of-way line of 25th street (based on a width of 60.00 feet) and the North right-of-way line of "A" street (based on a width of 60.00 feet);

Thence South, passing at 60.00 feet the Northeast corner of Block 707 and being coincident with West right-of-way line of 25th street (based on a width of 60.00 feet) and the East boundary line of Block 707 for a total distance of 452.50 feet to a 5/8 inch iron rod found for the Southeast corner of the aforesaid 2.403 acre tract;

Thence West, coincident with the North right-of-way line of West Main Street (based on a width of 114.00 feet; original 85.00 feet) a distance of 221.00 feet to a 5/8 inch iron rod set for the Southwest corner of the aforesaid 2.403 acre tract;

Thence North, coincident with the East right-of-way line of Sens Road (26th street) (based on a width of 105.00 feet, original 60.00 feet) as widened and recorded under Harris County Film Code No. 176-97-1700; a distance of 100.00 feet to a 5/8 inch iron rod set for a corner.

Thence, N 4° 17' 21" W, coincident with East right-of-way line of Sens Road as widened, a distance of 353.49 feet to a 5/8 inch iron rod set for the Northwest corner of the aforesaid 2.403 acre tract, said corner being coincident with the North right-of-way line of "A" street as vacated, abandoned and closed by the City of La Porte Ordinance No. 1252 on March 8, 1981, and the South boundary line of Block 698;

Thence East, coincident with the North right-of-way line of "A" street and the South boundary line of Block 698, a distance of 247.44 feet to the POINT OF BEGINNING.

**TRACT 2**

Lots 1 through 30, Block 708, Town of La Porte, according to map or plat thereof recorded in Volume 67, Page 1, of the Map / Plat Records of Harris County, Texas SAVE AND EXPECT that 7.5 foot strip of land conveyed to Harris County, Texas by deed recorded under Clerk's File No. D231169.

EXHIBIT C: DEED WITHOUT WARRANTY

**DEED WITHOUT WARRANTY**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: \_\_\_\_\_, 2016

Grantor: City of La Porte, Texas, a municipal corporation

Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

Grantee: Ybarra Restaurants, Inc., a Texas corporation

Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520

Consideration: Ten and No/100 Dollars (\$10.00) cash  
and other good and valuable considerations

Vendor's Lien Note: \$116,100.00

Further Consideration: The execution and delivery by the said Grantee of one certain promissory note of even date herewith in the principal sum shown above as Vendor's Lien Note, payable to the order of Grantor, bearing interest at the rate therein specified, providing for attorney's fees and acceleration of maturity at the rate and in the events therein set forth, and payment of said note being secured by Vendor's Lien and Superior Title retained herein in favor of said Grantor, and by Deed of Trust of even date herewith, from Grantee to CLARK T. ASKINS, Trustee, to which reference is here made for all purposes; have GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto the said Grantee, the following described property, to-wit:

Property (including any improvements):

BEGINNING at a point located at the north line of the West Main Street Right-of-Way and the west line of the North 25<sup>th</sup> Street Right-of-Way;

THENCE in a northerly direction, along the west line of the North 25<sup>th</sup> St. Right-of-Way to its intersection with the north line of the West Polk Street Right-of-Way;

THENCE in an easterly direction along the north line of the West Polk Street Right-of-Way to a point located at the intersection of the centerline of the North 25<sup>th</sup>

Street Right-of-Way and north line of the West Polk St. Right-of-Way;

THENCE in a southerly direction, along the centerline of the North 25<sup>th</sup> Street Right-of-Way to its intersection with the projected south line of the west Polk Street Right-of-Way;

THENCE in an easterly direction along the projected south line of the West Polk Street Right-of-Way to its intersection with the east line of the North 25<sup>th</sup> Street Right-of-Way;

THENCE in a southerly direction, along the east line of the North 25<sup>th</sup> Street Right-of-Way to its intersection with the North line of the West Main Street Right-of-Way;

THENCE in a westerly direction along the projected north line of the West Main St. Right-of-Way to the POINT OF BEGINNING of the herein described tract, which was vacated, abandoned and closed by City of La Porte Ordinance No. 2016-\_\_\_\_ passed and approved by the City Council of the City of La Porte on the \_\_\_\_ day of \_\_\_\_\_, 2016.

Reservations from and Exception to Conveyance and Warranty: This conveyance is made subject to all and singular the restrictions, conditions, oil, gas, and other mineral reservations; easements, and covenants, if any, applicable to and enforceable against the above described property as reflected by the records of the county clerk of the aforesaid county.

Grantor for the consideration and subject to the reservations from and exceptions to conveyance, conveys to Grantee the property without express or implied warranty, and all warranties that might arise by common law and the warranties in §5.023 of the Texas Property Code (or its successor) are excluded.

Attest:

City of La Porte, Texas

\_\_\_\_\_  
Patrice Fogarty  
City Secretary

By: \_\_\_\_\_  
Corby D. Alexander  
City Manager

Approved:

\_\_\_\_\_  
Clark T. Askins  
Assistant City Attorney

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2016, by Corby D. Alexander, City Manager of the City of La Porte, Texas, a municipal corporation.

---

Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

ASKINS & ASKINS, P.C.  
P.O. Box 1218  
La Porte, TX 77572-1218

**PREPARED IN THE LAW OFFICE OF:**

ASKINS & ASKINS, P.C.  
P.O. Box 1218  
La Porte, TX 77572-1218

EXHIBIT D: GUARANTY OF PAYMENT, PROMISSORY NOTE, DEED OF TRUST

## GUARANTY OF PAYMENT

GUARANTY dated \_\_\_\_\_, 2016, made by **ROLAND YBARRA**, having an address of \_\_\_\_\_ (the "Guarantor"), in favor of **CITY OF LA PORTE, TEXAS**, having an address of 604 W. Fairmont Parkway, La Porte, Texas 77571 (the "City").

YBARRA RESTAURANTS, INC., a Texas corporation (the "Borrower"), desires to obtain financial accommodations from the City in connection with the development of a new business site. The City, as reflected in that Chapter 380 Agreement for Waiver of Payment for Closing of Street Right-of-Way dated \_\_\_\_\_, 2016, is unwilling to extend the accommodations to Borrower unless it receives this Guaranty. The Guarantor wishes the accommodations to be made and will derive advantage from such accommodations.

Accordingly, to induce the City in its discretion, to make such financial accommodations:

**Section 1. Guaranty.** The Guarantor hereby unconditionally guarantees to the City, the prompt payment, when due, whether by acceleration or otherwise, of all present or future obligations or liabilities of the Borrower to the City, whether now existing or arising after the date of this Guaranty, secured or unsecured, absolute or contingent, together with all modifications, extensions or renewals of the obligations or liabilities. This Guaranty covers obligations and liabilities incurred by the Borrower in any capacity (including as maker, endorser, guarantor, accommodation party or otherwise) and also includes the amount of any payment made by the Borrower to the City, which payment is rescinded or must otherwise be returned by the City upon the insolvency or bankruptcy of the Borrower. This Guaranty covers obligations and liabilities incurred by the Borrower under any indemnification provisions set forth in the documents evidencing and securing such obligations and liabilities. Such obligations and liabilities, together with interest and all fees, costs, expenses, attorneys' fees and other costs of collection incurred or paid by the City, are together referred to as the "Indebtedness".

**Section 2. Guaranty Absolute.** The Guarantor will pay all Indebtedness in accordance with its terms. The liability of the Guarantor under this Guaranty is absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of any documents evidencing (or relating) to the Indebtedness;
- (ii) any change in the time, manner, place or amount of payment or in any other term of all or any of the Indebtedness, or any other amendment or waiver of or any consent to departure from the terms of the Indebtedness;

- (iii) any exchange, release or non-perfection of any collateral or lien securing all or any part of the Indebtedness, which exchange, release or non-perfection the Guarantor expressly agrees will not be deemed an unjustifiable impairment of the collateral;
- (iv) any release or amendment or waiver of or consent to departure from any other guaranty, for all or any part of the Indebtedness;
- (v) any settlement or compromise with any Borrower or any other person relating to the Indebtedness; or
- (vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Borrower in respect of the Indebtedness or the Guarantor in respect of this Guaranty.

This Guaranty will continue to be effective, or be reinstated, as the case may be, if at any time any of the Indebtedness is rescinded or must otherwise be returned by the City upon the insolvency or bankruptcy of any Borrower or otherwise, all as though such payment had not been made.

**Section 3. Waiver.** The Guarantor waives presentment, demand, diligence, notice of acceptance and any other notice with respect to any of the Indebtedness and/or this Guaranty and any requirement that the City exhaust any right or take any action against the Borrower or any other person or entity or any collateral.

**Section 4. Subrogation, Reimbursement and Indemnity.** Each Guarantor waives (a) all right to seek reimbursement or indemnity from the Borrower, and (b) any right to subrogation it may have or acquire as result of performance under this Guaranty.

**Section 5. Representation and Warranties.** Each Guarantor represents and warrants:

- (a) The execution and delivery of this Guaranty and the performance of its obligations under this Guaranty have been authorized by all necessary action.
- (b) No authorization, or registration with, any court or governmental department, commission, agency or instrumentality, is or will be necessary to the valid execution, delivery or performance of the Guaranty.
- (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.
- (d) The Guarantor has made whatever inquiry into the financial or other affairs of the Borrower, and the terms of any Indebtedness, as it deems necessary or desirable prior to executing this Guaranty and has not relied on the City for any such information.
- (e) The Guarantor shall provide the City with any and all financial information and/or financial statements as requested by the City, including annual financial statements and manually signed copies of federal and state tax returns, which shall be satisfactory to the City.

- (f) The Guarantor agrees not to transfer any of its assets other than for full and adequate consideration, without the written consent of the City.

**Section 6. Acceleration.** The Guarantor agrees that, if the maturity of any of the Indebtedness is accelerated, by bankruptcy or otherwise, as against the Borrower, the maturity shall also be deemed accelerated for the purposes of this Guaranty, and without demand on or notice to the Guarantor.

**Section 7. Amendments, etc.** This Guaranty represents the entire agreement of the parties. No amendment or waiver of any provision nor consent to departure by the Guarantor from any provision is effective unless in writing and signed by the City, and then the waiver or consent will be effective only in the special instance and for the specific purpose given.

**Section 8. Notices.** All notices required or permitted under this Guaranty shall be given to the parties at the address stated in this Guaranty (or at any other address a party may designate in writing), sent by first class mail, postage prepaid, and is deemed complete upon mailing.

**Section 9. No Waiver; Remedies.** No failure on the part of the City to exercise, and no delay in exercising, any right under this Guaranty shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any further exercise of such right or of any other right. All remedies provided in this Guaranty and in any document evidencing or relating to any Indebtedness are cumulative.

**Section 10. Right of Set-off; Security Interest.** On the occurrence and during the continuance of any default under the Indebtedness, the City is authorized at any time, without notice to the Guarantor to set off and apply to any unpaid Indebtedness: (a) any amounts which the City from time to time may owe the Guarantor, including any balance or share of any general or special deposit, certificate of deposit, savings certificates or other account (regardless of the source or intended use of any funds in such account), and (b) any other property, tangible or intangible, owned by or in which the Guarantor has an interest which may be in the possession or control of the City, in which accounts and other property the Guarantor grants the City a security interest. This right is in addition to and not in limitation of any other rights, including of set-off, which the City may have by law.

**Section 11. Continuing Guaranty; Assignment.** This Guaranty is a continuing guaranty and will: (a) remain in full force and effect until payment in full of the Indebtedness and all other amounts payable under this Guaranty, (b) extend to and cover every modification, waiver, extension or renewal of and every obligation accepted in substitution for, the Indebtedness, (c) be binding upon the Guarantor, his successors and assigns and; (d) inure to the benefit of and be enforceable by the City and its successors, transferees and assigns.

**Section 12. Other Guarantors.** The obligations of each Guarantor under this Guaranty shall be joint and several as to each other and all other guarantors of the Indebtedness. This

Guaranty shall not be impaired or affected in any way as to the Guarantor by any termination, revocation, release, modification, discharge or substitution of collateral or changes as to any or all of the liabilities or undertakings of any other guarantor.

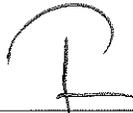
**Section 13. Guaranty Not Modified By Bankruptcy.** Neither the Guarantor's obligation in accordance with the terms of this Guaranty, nor any remedy for the enforcement, nor the amount of the Indebtedness of the Borrower will be impaired, modified, or limited, in any manner whatsoever by any impairment, modification, discharge, limitation of the Indebtedness of the Borrower or its estate in bankruptcy or any remedy for the enforcement, resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or other statute, or from the decision of any court interpreting any of the same, and each Guarantor is obligated under this Guaranty. The amount of the Indebtedness will, for the purposes of this Guaranty, be determined as if no such impairment, stay, modification, discharge, or limitation had occurred.

**Section 14. Governing Law.** This Guaranty will be governed by, and construed in accordance with, the laws of the State of Texas. In the event the City brings any action hereunder in any court of record of Texas or the Federal Government, the Guarantor consents to and confers personal jurisdiction over the Guarantor by such court or courts and agrees that service of process may be made upon the Guarantor by mailing a copy of such process to the Guarantor.

**Section 15. Waiver of Jury Trial.** EACH GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION UNDER OR RELATING TO THIS GUARANTY AND TO THE INDEBTEDNESS OF THE BORROWER TO THE BANK.

Witness:

ROLAND YBARRA



\_\_\_\_\_  
Roland Ybarra

## DEED OF TRUST AND SECURITY AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: \_\_\_\_\_, 2016

Grantor: YBARRA RESTAURANTS, INC.

Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520

Trustee: CLARK T. ASKINS

Mailing Address: P.O. Box 1218, La Porte, Texas 77572

Beneficiary: CITY OF LA PORTE, TEXAS

Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

### Real Estate Lien Note:

Date: \_\_\_\_\_, 2016

Amount: ONE HUNDRED SIXTEEN THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$116,100.00)

Maker: YBARRA RESTAURANTS, INC.

Payee: CITY OF LA PORTE, TEXAS

### Property (including any improvements):

#### TRACT 1

Being a 2.403 acre tract of land out of the T.W. Lee Subdivision, Richard Pearsall Survey, A625, Harris County, Texas, according to the survey performed by H. Carlos Smith, Engineers & Surveyors, Inc., on April 12 thru 13, 1984. The 2.403 acre tract is further described as being part of Lots 1 thru 10 and Lots 12 thru 20, all of Lots 21 thru 30, Block 707, including the alley contained therein and a portion of "A" Street; both the alley and street having been vacated, abandoned and closed on

March 18, 1981, by the City of La Porte Ordinance No. 1252. The 2.403 acre tract of land is more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch iron rod found for the Southeast corner of Block 698, T.W. Lee Subdivision, according to the plat recorded in Volume 67, Page 1, Harris County Deed Records, said corner being coincident with the West right-of-way line of 25<sup>th</sup> street (based on a width of 60.00 feet) and the North right-of-way line of "A" street (based on a width of 60.00 feet);

Thence South, passing at 60.00 feet the Northeast corner of Block 707 and being coincident with West right-of-way line of 25<sup>th</sup> street (based on a width of 60.00 feet) and the East boundary line of Block 707 for a total distance of 452.50 feet to a 5/8 inch iron rod found for the Southeast corner of the aforesaid 2.403 acre tract;

Thence West, coincident with the North right-of-way line of West Main Street (based on a width of 114.00 feet; original 85.00 feet) a distance of 221.00 feet to a 5/8 inch iron rod set for the Southwest corner of the aforesaid 2.403 acre tract;

Thence North, coincident with the East right-of-way line of Sens Road (26<sup>th</sup> street) (based on a width of 105.00 feet, original 60.00 feet) as widened and recorded under Harris County Film Code No. 176-97-1700; a distance of 100.00 feet to a 5/8 inch iron rod set for corner;

Thence N 4° 17' 21" W, coincident with East right-of-way line of Sens Road as widened, a distance of 353.49 feet to a 5/8 inch iron rod set for the Northwest corner of the aforesaid 2.403 acre tract, same corner being coincident with the North right-of-way line of "A" street as vacated, abandoned and closed by the City of La Porte Ordinance No. 1252 on March 8, 1981, and the South boundary line of Block 698;

Thence East, coincident with the North right-of-way line of "A" Street and the South boundary of Block 698, a distance of 247.44 feet to the POINT OF BEGINNING.

## TRACT 2

Lots 1 through 30, Block 708, Town of La Porte, according to map or plat thereof recorded in Volume 67, Page 1, of the Map/Plat Records of Harris County, Texas SAVE AND EXCEPT that 7.5 foot strip of land conveyed to Harris County, Texas by deed recorded under Clerk's File No. D231169.

For value received and to secure payment of the note, and as required by Section 3.3 of the 380 Agreement for Waiver for Payment for Closure of Street Right-of-Way executed by Grantor, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the note according to its terms, or alternatively, if the Note is forgiven in accordance with the terms of the Note and said 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way, this deed of trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

## **Grantor's Obligations**

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;
3. preserve the lien's priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that:
  - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
  - b. contains an 80% coinsurance clause;
  - c. provides fire and extended coverage, including windstorm coverage;
  - d. protects Beneficiary with a standard mortgage clause;
  - e. provides flood insurance at any time the property is in a flood hazard area; and
  - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy; and
8. if this is not a first lien, pay all prior lien notes that Grantor is personally liable to pay and abide by all prior lien instruments.

## **Beneficiary's Rights**

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:
  - a. declare the unpaid principal balance and earned interest on the note immediately due;
  - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
  - c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

### **Trustee's Duties**

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
  - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
  - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
  - c. any amounts required by law to be paid before payment to Grantor; and
  - d. to Grantor, any balance.

### **General Provisions**

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the note and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under

this paragraph,

and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. Interest on the debt secured by this deed of trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

9. When the context requires, singular nouns and pronouns include the plural.

10. The term "note" includes all sums secured by this deed of trust.

11. This deed of trust shall bind, inure, to the benefit of, and be exercised by successors in interest of all parties.

12. If Grantor and Maker are not the same person, the term "Grantor" shall include Maker.

13. If Grantor transfers any part of the property without Beneficiary's prior written consent, Beneficiary may declare the debt secured by this deed of trust immediately payable. In that event Beneficiary will notify Grantor that the debt is payable; if it is not paid within thirty days after notice to Grantor, Beneficiary may without further notice of demand to Grantor invoke any remedies provided in this instrument for default. Exceptions to this provision for declaring the note due on sale or transfer are limited to the following:

- a. creation of a lien or encumbrance subordinate to this deed of trust;
- b. creation of a purchase-money security interest for household appliances;
- c. transfer by devise, descent, or operation of law on the death of a joint tenant; and
- d. grant of a leasehold interest of three years or less without an option to purchase.

14. Grantor represents that this deed of trust and the note are given for the following purposes: The indebtedness, the payment of which is hereby secured, is in part payment of the purchase price of the real property herein described, and is also secured by a vendor's lien thereon retained in Deed of even date herewith to the undersigned, and this Deed of Trust is given as additional security for the payment of said indebtedness.

EXECUTED \_\_\_\_\_, 2016.

YBARRA RESTAURANTS, INC.

BY:  \_\_\_\_\_  
ROLAND YBARRA, President

## REAL ESTATE LIEN NOTE

Date: \_\_\_\_\_, 2016

Maker: YBARRA RESTAURANTS, INC., a Texas corporation

Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520

Payee: CITY OF LA PORTE, TEXAS, a municipal corporation

Place for Payment: 604 West Fairmont Parkway, La Porte, TX 77571

Principal Amount: ONE HUNDRED SIXTEEN THOUSAND ONE HUNDRED AND NO/  
100 DOLLARS (\$116,100.00)

Annual Interest Rate on Unpaid Principal from Date: 0%

Annual Interest Rate on Matured, Unpaid Amounts: 18%

### Terms of Payment:

This Real Estate Lien Note is delivered to Payee by Maker, to secure Maker's performance of the terms, conditions and covenants of that certain Chapter 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way ("Agreement" herein) between Ybarra Restaurants, Inc., a Texas corporation (as Developer), and the City of La Porte, Texas. This Real Estate Lien Note shall be due and payable three (3) years from the effective date of said Agreement. In the event that Maker, as Developer under said Agreement, has performed each and every obligation under the Agreement by three (3) years from the effective date of said Agreement, the entire principal balance of this Real Estate Lien Note shall be forgiven and Maker's and Grantor's obligations under this Real Estate Lien Note will be deemed discharged.

### Security for Payment:

Vendor's Lien retained in Deed of even date herewith from YBARRA RESTAURANTS, INC. to CITY OF LA PORTE, TEXAS, and being additionally secured by Deed of Trust of even date herewith to CLARK T. ASKINS, TRUSTEE, covering the tracts of land and property described therein, as well as adjacent property owned by Maker, to which Deed and Deed of Trust and the record thereof reference is here made for further identity of the security for this note.

Maker promises to pay to the order of Payee at the place for payment and according to the terms of payment the principal amount plus interest at the rates stated above. All unpaid amounts shall be due by the final scheduled payment date.

If Maker defaults in the payment of this note or in the performance of any obligation in any instrument securing or collateral to it, and the default continues after Payee gives Maker notice of the default and the time within which it must be cured, as may be required by law or by written

agreement, then Payee may declare the unpaid principal balance and earned interest on this note immediately due. Maker and each surety, endorser, and guarantor waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest, to the extent permitted by law.

If this note or any instrument securing or collateral to it is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if collected or enforced through probate, bankruptcy, or other judicial proceeding, then Maker shall pay Payee all costs of collection and enforcement, including reasonable attorney's fees and court costs, in addition to other amounts due. Reasonable attorney's fees shall be 10% of all amounts due unless either party pleads otherwise.

Interest on the debt evidenced by this note shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

When the context requires, singular nouns and pronouns include the plural.

YBARRA RESTAURANTS, INC.

BY: 

ROLAND YBARRA, President

BY: 

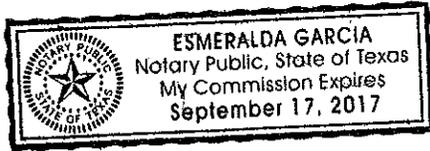
ROLAND YBARRA, Guarantor

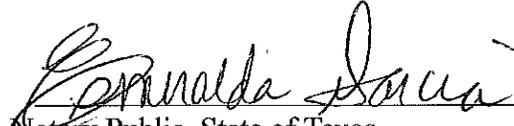
**PREPARED IN THE LAW OFFICE OF:**

ASKINS & ASKINS, P.C.  
P.O. Box 1218  
La Porte, TX 77572

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on September 14, 2016, by ROLAND YBARRA, President of YBARRA RESTAURANTS, INC.



  
\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**  
ASKINS & ASKINS, P.C.  
P.O. Box 1218

**PREPARED IN THE LAW OFFICE OF:**  
ASKINS & ASKINS, P.C.  
P.O. Box 1218

La Porte, Texas 77571

La Porte, Texas 77571

## REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: October 10, 2016 Appropriation  
Requested By: Traci Leach Source of Funds: \_\_\_\_\_  
Department: Planning & Development Account Number: \_\_\_\_\_  
Report:  Resolution:  Ordinance:  Amount Budgeted: \_\_\_\_\_  
Other:  \_\_\_\_\_ Amount Requested: \_\_\_\_\_  
Budgeted Item:  YES  NO

**Attachments :**

1. Ordinance
2. Deed
3. CenterPoint Response
4. AT&T Response
5. Comcast Reponse
6. Appraisal Summary
7. Area Map

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### SUMMARY & RECOMMENDATIONS

Staff has processed an application from El Toro Mexican Restaurants to vacate, abandon and close a portion of the North 25<sup>th</sup> Street Right-of-Way between West Main Street and West Polk Street (see Area Map). The purpose of the closing request is to acquire additional land to facilitate future development of the restaurant's new site at the northeast corner of West Main Street and Sens Road.

Staff's review of the closing application has determined that no public or franchised utilities exist within the subject rights-of-way to be closed.

In accordance with Section 62.35 of the Code of Ordinances, an independent appraisal of the subject right-of-way has been conducted to determine fair market value. The appraisal established a value of \$6.00 per square foot for 25,800 sq. feet of right-of-way to be closed. Total closing fees (with 25% discount by ordinance) for the abandonments total \$116,100. The City entered into a Chapter 380 agreement that would waive the closing fees if El Toro meets certain performance benchmarks. That agreement was considered by the Council earlier this evening.

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**Action Required of Council:**

Consider approval of an ordinance or other action vacating, abandoning, and closing a portion of the North 25<sup>th</sup> Street Right-of-Way and authorizing the City Manager to execute a deed to the adjacent owner for the subject right-of-way.

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**Approved for City Council Agenda**

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**Corby D. Alexander, City Manager**

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**Date**

**ORDINANCE NO. 2016\_\_\_\_\_**

**AN ORDINANCE VACATING, ABANDONING AND CLOSING A PORTION OF THE NORTH 25<sup>TH</sup> STREET RIGHT-OF-WAY; AUTHORIZING THE EXECUTION AND DELIVERY OF A DEED TO THE ADJOINING LANDOWNER, FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

WHEREAS, the City Council of the City of La Porte has been requested by the record owner of the property abutting the hereinafter described portion of the North 25<sup>th</sup> Street Right-of-Way; and,

WHEREAS, the City Council of the City of La Porte has determined and does hereby find, determine, and declare that the hereinafter described portion of the North 25<sup>th</sup> Street Right-of-Way is not suitable, needed, or beneficial to the public as a public road, street, or alley, and the closing of hereinafter described portion of the North 25<sup>th</sup> Street Right-of-Way is for the protection of the public and for the public interest and benefit, and that the hereinafter described portion of the North 25<sup>th</sup> Street Right-of-Way should be vacated, abandoned, and permanently closed.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE;**

**Section 1.** Under and by virtue of the power granted to the City of La Porte under its home rule charter and Chapter 253, Section 253.001, Texas Local Government Code, the hereinafter described portion of the North 25<sup>th</sup> Street Right-of-Way is hereby permanently vacated, abandoned, and closed by the City of La Porte, being generally illustrated on Exhibit "A" incorporated herein, and further described to wit:

**BEGINNING** at a point located at the north line of the West Main Street Right-of-Way and the west line of the North 25<sup>th</sup> Street Right-of-Way;

**THENCE** in a northerly direction, along the west line of the North 25<sup>th</sup> St. Right-of-Way to its intersection with the north line of the West Polk Street Right-of-Way;

**THENCE** in an easterly direction along the north line of the West Polk Street Right-of-Way to a point located at the intersection of the centerline of the North 25<sup>th</sup> Street Right-of-Way and north line of the West Polk St. Right-of-Way;

**THENCE** in a southerly direction, along the centerline of the North 25<sup>th</sup> Street Right-of-Way to its intersection with the projected south line of the West Polk Street Right-of-Way;

**THENCE** in an easterly direction along the projected south line of the West Polk Street Right-of-Way to its intersection with the east line of the North 25<sup>th</sup> Street Right-of-Way;

**THENCE** in a southerly direction, along the east line of the North 25<sup>th</sup> Street Right-of-Way to its intersection with the north line of the West Main Street Right-of-Way;

**THENCE** in a westerly direction along the projected north line of the West Main St. Right-of-Way to the POINT OF BEGINNING of the herein described tract.

**Section 2.** The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

**Section 3.** This ordinance shall be effective from and after its passage and approval, and it is so ordered.

PASSED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2016.

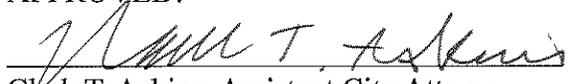
CITY OF LA PORTE, TEXAS

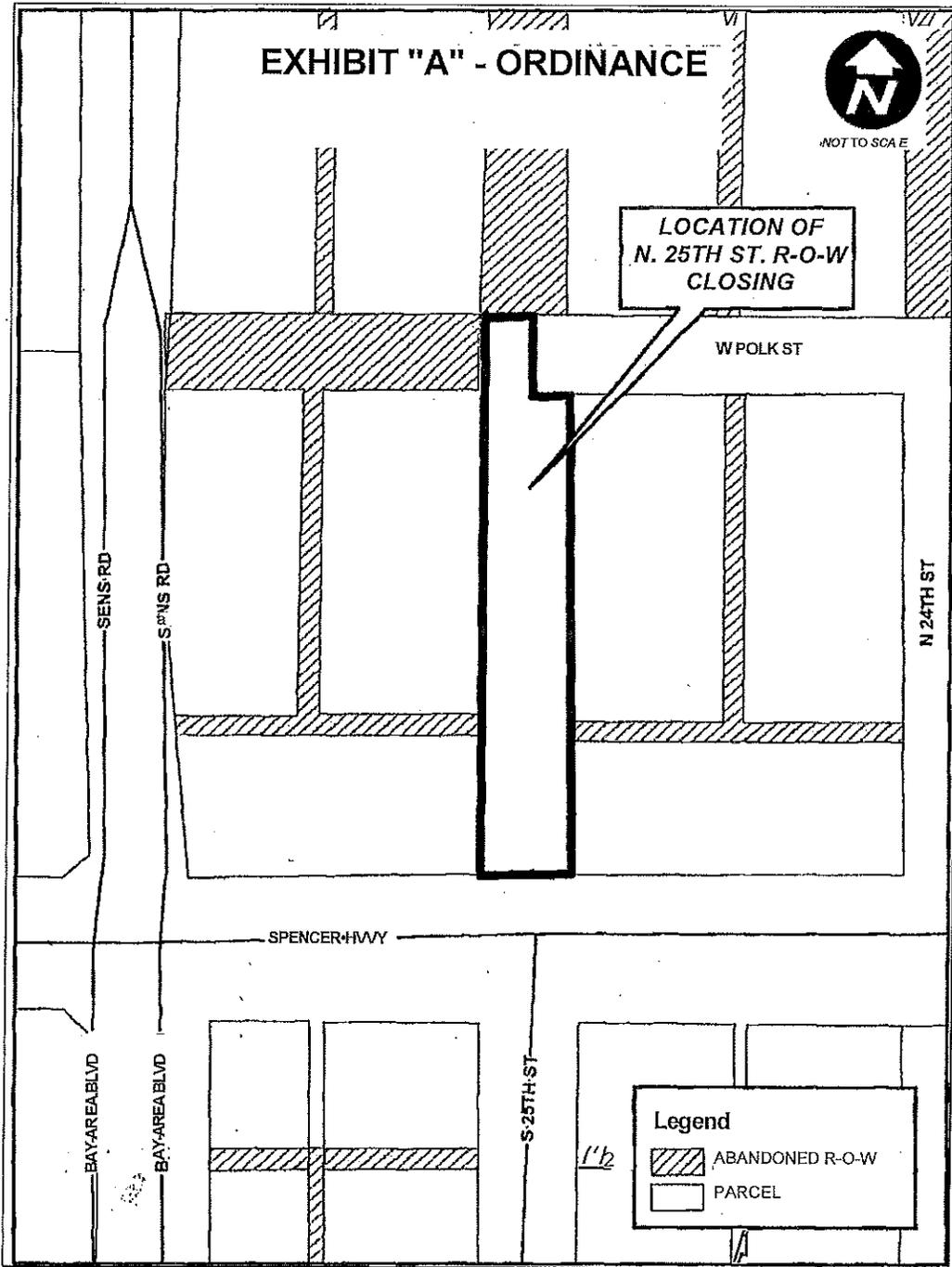
By: \_\_\_\_\_  
Louis R. Rigby, Mayor

ATTEST:

\_\_\_\_\_  
Patrice Fogarty, City Secretary

APPROVED:

  
\_\_\_\_\_  
Clark T. Askins, Assistant City Attorney



**DEED WITHOUT WARRANTY**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: \_\_\_\_\_, 2016

Grantor: City of La Porte, Texas, a municipal corporation

Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

Grantee: Ybarra Restaurants, Inc., a Texas corporation

Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520

Consideration: Ten and No/100 Dollars (\$10.00) cash  
and other good and valuable considerations

Vendor's Lien Note: \$116,100.00

Further Consideration: The execution and delivery by the said Grantee of one certain promissory note of even date herewith in the principal sum shown above as Vendor's Lien Note, payable to the order of Grantor, bearing interest at the rate therein specified, providing for attorney's fees and acceleration of maturity at the rate and in the events therein set forth, and payment of said note being secured by Vendor's Lien and Superior Title retained herein in favor of said Grantor, and by Deed of Trust of even date herewith, from Grantee to CLARK T. ASKINS, Trustee, to which reference is here made for all purposes; have GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto the said Grantee, the following described property, to-wit:

Property (including any improvements):

BEGINNING at a point located at the north line of the West Main Street Right-of-Way and the west line of the North 25<sup>th</sup> Street Right-of-Way;

THENCE in a northerly direction, along the west line of the North 25<sup>th</sup> St. Right-of-Way to its intersection with the north line of the West Polk Street Right-of-Way;

THENCE in an easterly direction along the north line of the West Polk Street Right-of-Way to a point located at the intersection of the centerline of the North 25<sup>th</sup> Street Right-of-Way and north line of the West Polk St. Right-of-Way;

THENCE in a southerly direction, along the centerline of the North 25<sup>th</sup> Street Right-of-Way to its intersection with the projected south line of the west Polk Street Right-of-Way;

THENCE in an easterly direction along the projected south line of the West Polk Street Right-of-Way to its intersection with the east line of the North 25<sup>th</sup> Street Right-of-Way;

THENCE in a southerly direction, along the east line of the North 25<sup>th</sup> Street Right-of-Way to its intersection with the North line of the West Main Street Right-of-Way;

THENCE in a westerly direction along the projected north line of the West Main St. Right-of-Way to the POINT OF BEGINNING of the herein described tract, and being graphically illustrated on Exhibit A, attached hereto and incorporated by reference herein, which was vacated, abandoned and closed by City of La Porte Ordinance No. 2016-\_\_\_\_\_ passed and approved by the City Council of the City of La Porte on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Reservations from and Exception to Conveyance and Warranty: This conveyance is made subject to all and singular the restrictions, conditions, oil, gas, and other mineral reservations, easements, and covenants, if any, applicable to and enforceable against the above described property as reflected by the records of the county clerk of the aforesaid county.

Grantor for the consideration and subject to the reservations from and exceptions to conveyance, conveys to Grantee the property without express or implied warranty, and all warranties that might arise by common law and the warranties in §5.023 of the Texas Property Code (or its successor) are excluded.

Attest:

City of La Porte, Texas

\_\_\_\_\_  
Patrice Fogarty  
City Secretary

By: \_\_\_\_\_  
Corby D. Alexander  
City Manager

Approved:

\_\_\_\_\_  
Clark T. Askins  
Assistant City Attorney

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2016, by Corby D. Alexander, City Manager of the City of La Porte, Texas, a municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

ASKINS & ASKINS, P.C.  
P.O. Box 1218  
La Porte, TX 77572-1218

**PREPARED IN THE LAW OFFICE OF:**

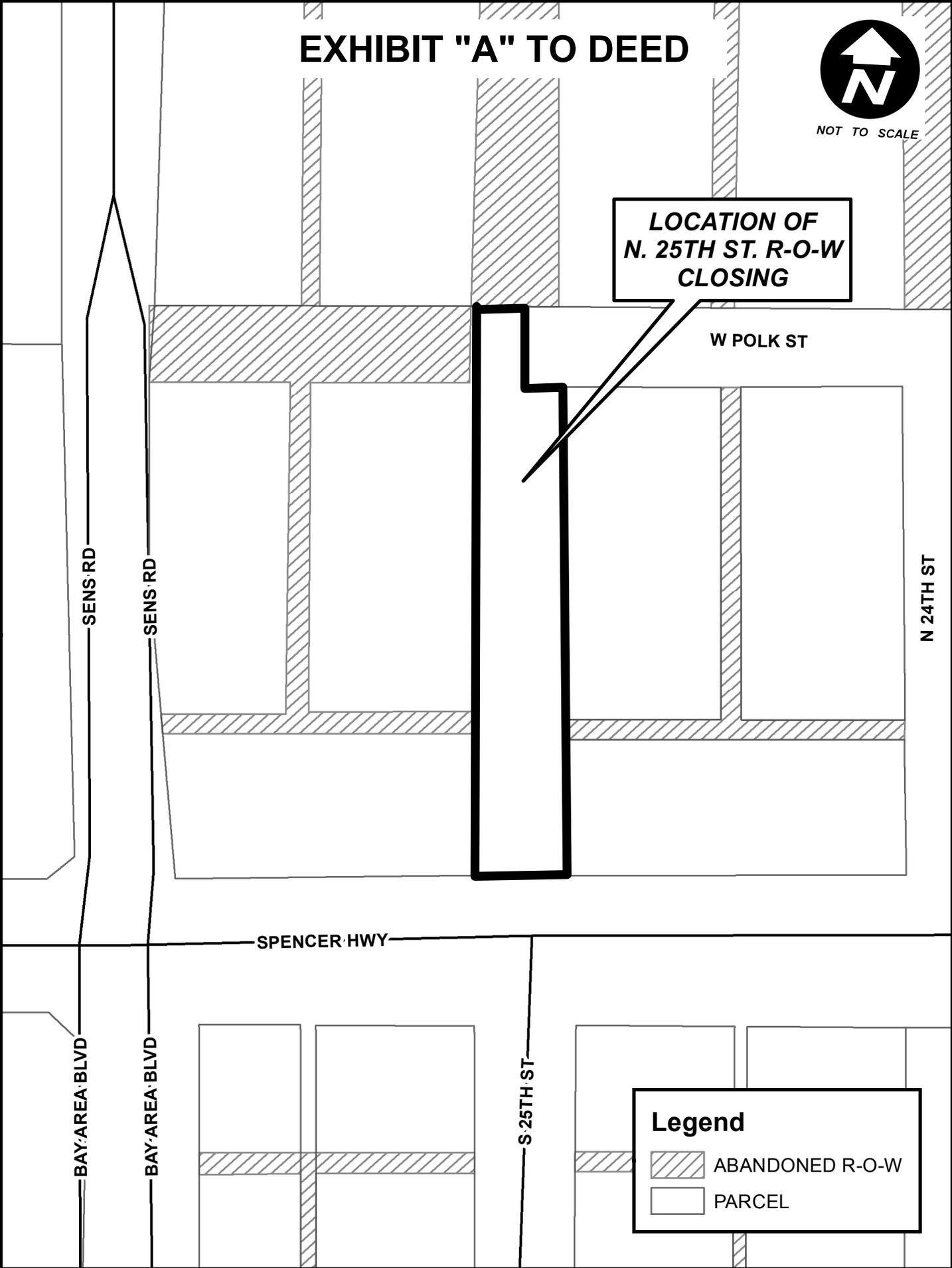
ASKINS & ASKINS, P.C.  
P.O. Box 1218  
La Porte, TX 77572-1218

# EXHIBIT "A" TO DEED



NOT TO SCALE

**LOCATION OF  
N. 25TH ST. R-O-W  
CLOSING**



**Legend**

-  ABANDONED R-O-W
-  PARCEL



March 11, 2015

John Mayes  
El Toro Restaurants  
7529 Bayway Drive  
Baytown, Texas 77520

Re: Street & Alley Closure of 25<sup>th</sup> Street in LaPorte, TX  
R/W File # 91498

Dear Mr. Mayes:

The City of LaPorte has been asked to close and abandon a portion of 25<sup>th</sup> Street.

CenterPoint Energy Houston Electric, LLC, CenterPoint Energy Resources Corporation, d/b/a CenterPoint Energy Texas Gas Operations and CenterPoint Energy Intrastate Pipelines, Inc., herein collectively called "CenterPoint Energy", has investigated the request and determined that it has no facilities located within the area to be abandoned as highlighted on the attached sketch. Therefore, CenterPoint Energy will interpose no objection to the request as filed.

This letter of concurrence shall become null and void in the event two (2) years has transpired from the above date and this street/alley closure has not been completed. CenterPoint Energy respectfully requests that the City of LaPorte forward a copy of the final abandonment ordinance to CenterPoint Energy in order to complete our files and to update our map records.

Yours truly,

A handwritten signature in black ink that reads "Rosemary Valdez". The signature is written in a cursive, flowing style.

Rosemary Valdez, SR/WA  
Right-of-Way Agent  
Surveying & Right of Way  
713-207-6027

Enclosure



AT&T Texas  
7602 Spring Cypress Drive  
Room 226  
Spring, TX 77379-3113

T: 281.379.7524  
F: 281.374.3318

March 18, 2015

John Mayes  
El Toro Restaurants  
7529 Bayway Drive  
Baytown, Texas 77520

**RE: "Consent to Abandon"** Abandonment of the 60'wide right-of-way of 25th Street that extends North from West Main Street to it terminus, LaPorte, Harris County, Texas. (R.O.W. Job # LP 00315-M)

Dear Mr. Mayes,

Southwestern Bell Telephone Company (SWBT) offers No Objection to the abandonment of the 60'wide right-of-way of 25th Street that extends north from West Main Street to it terminus, located in the City of LaPorte, Harris County, Texas, as described in your acceptance letter dated February 26<sup>th</sup>, 2015.

If you have any questions or need any additional information please contact me at the above address or by telephone at 713 943-4931 or by email at sm8285@att.com.

Sincerely,

Sonya Merrill  
Manager-Engineering Design  
Right-of-Way

March 5, 2015

Mr. John Mayes  
Owner of Operations  
El Toro Mexican Restaurant's  
[eltorotexmex.com](http://eltorotexmex.com)  
E-mail: [jdmayes@comcast.net](mailto:jdmayes@comcast.net)

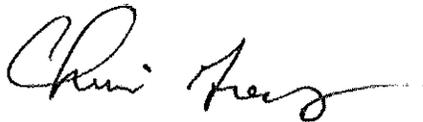
Re: No Objection for the abandonment of unopened public right-of-way in the northeast quadrant of the intersection of Spencer Highway and Sens Road.

Mr. Mayes,

Please accept this letter as notification that Comcast of Houston LLC, herein referred to as Comcast has no objections to the abandonment of unopened public right-of-way in the northeast quadrant of the intersection of Spencer Highway and Sens Road depicted in the attached hereto Exhibit "A" as Comcast Cable has no facilities within said Right-Of-Way.

Please feel free to contact me at 713-637-5025 with any questions that you may have.

Sincerely,



Chris Grey  
Construction Supervisor, Design and Serviceability

**R.C. Chuoke & Associates, Inc.**  
Appraisers & Consultants

P.O. Box 1447  
League City, Texas 77574

Office- 281-338-9633  
Fax- 281-338-9533

May 2, 2015

City of La Porte  
P.O. Box 1115  
La Porte, Texas 77572

RE: Restricted Appraisal regarding the estimated **Market Value** of a portion of the unopened 25th Street right of way adjoining the north line of (West Main (Spencer), La Porte, Harris County, Texas.

Dear Sirs:

In accordance with your request, I have inspected the following described property for the purpose of estimating the **Market Value** following described property as of the date of this Restricted Appraisal. As per our agreement, the data and analysis is presented in an abbreviated Restricted Appraisal format and is not intended to contain the full analysis.

**BRIEF LEGAL DESCRIPTION OF PROPERTY**

Known as portion of the unopened 25th Street right of way adjoining the north line of (West Main (Spencer), between Blocks 707 and 708, La Porte, Harris County, Texas. (See site plan in addenda).

I hereby certify that I have personally inspected the property described via a street inspection and that all data gathered by my investigation is from sources believed reliable and true. In preparing this Restricted Appraisal, a study of comparable sales and other related market data was performed.

.....Page 2 Continued.....

It should clearly be understood that this letter only constitutes only a statement of the final value and that does not presume to be the complete analysis of the subject property nor a complete appraisal format and is subject to the preparation of a detailed appraisal report.

The market values in the subject neighborhood appear to vary generally from +-\$2.00 PSF to over \$9.00 PSF for tracts generally similar to the subject property with locations that range from primary to secondary type roadways. The area has general access public utilities. The subject site appears to be generally flat and level. The subject property is not located in the 100 year flood plain. The Highest and Best Use of the subject property is determined to be for use a street right of way or for use by adjacent property owners due to its configuration. Adjacent property uses on the north, east and west boundaries of the subject property are commercial tracts of land with frontage along West Main Street or Sens Road. The client and intended user of this appraisal is the City of La Porte only. The intended use is to estimate the current market value of the subject property of this analysis as described above for use in street abandonment procedures. There has been no transfer of the subject property noted for the past 36 months per appraisal district records. The effective date of the appraisal is March 29, 2015. The effective date of the report is May 2, 2015. The estimated exposure time is up to 24 months.

After a review of the comparable sales it is my opinion the estimated unit value range of between **\$4.00 PSF to \$8.00 PSF** would be placed on the subject property with a mid-range value of **\$6.00 PSF** being indicated for the subject property before any discounting. Therefore the unit market value of the subject tract is estimated at **\$6.00 PSF which is based on 100% fee simple ownership with no discounting applied.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "C. Chuoke". The signature is written in a cursive style with a large initial "C" and a long, sweeping underline.

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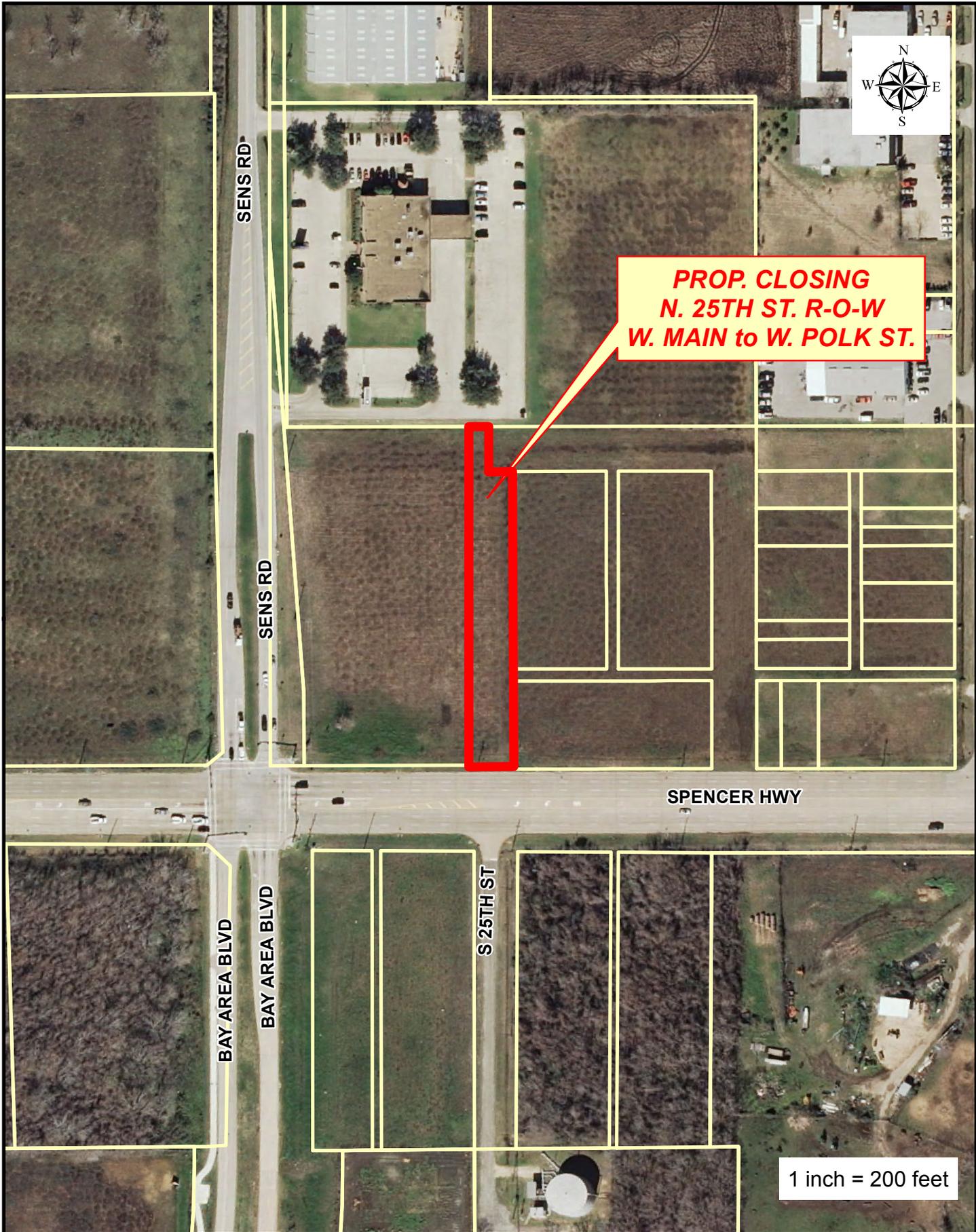
Chris Chuoke, President  
R.C. CHUOKE & ASSOCIATES, INC.

# AREA MAP

CLP PROJECT NO. 15-2500002



**PROP. CLOSING  
N. 25TH ST. R-O-W  
W. MAIN to W. POLK ST.**



1 inch = 200 feet



The City will select a firm based upon the outcome of a committee evaluation of proposals using the following evaluation criteria:

1. Demonstrated results of the performance of the firm for delinquent tax collections **30 points**

Based on a three year (2013-2016 tax years) summary for four surrounding existing municipal clients of delinquent tax collections that have been achieved

|                         |       |
|-------------------------|-------|
| 60% and above collected | 30pts |
| 50%-60% collected       | 20pts |
| 50%-40% collected       | 10pts |
| 40% or below collected  | 0pts  |

2. Proven experience in the field of delinquent property tax collections. **25 points**

|                |        |
|----------------|--------|
| 30+ years =    | 25 pts |
| 25+ years =    | 20 pts |
| 20+ years =    | 15 pts |
| 15+ years =    | 10 pts |
| Less than 15 = | 0      |

3. Experience of personnel assigned to the City's account in connection with the collection of delinquent taxes. **20 points**

|   |       |
|---|-------|
| Lawyers assigned with 20+ years of experience     | 20pts |
| Lawyers assigned with 10+ years of experience     | 15pts |
| Lawyers assigned with 5+ years of experience      | 10pts |
| Lawyers assigned with below 5 years of experience | 0pts  |

4. Historical performance levels and demonstrated capabilities **20 points**

(Factors for this criteria will be based on suits filed and dismissals from July 1, 2013-June 30, 2016 from four surrounding existing municipal clients)

|                                     |        |
|-------------------------------------|--------|
| Firm with highest percentage        | 20 pts |
| Firm with second highest percentage | 15 pts |
| Firm with third highest percentage  | 10 pts |

Firm with fourth highest percentage 5 pts

5. Clarity of proposal and supporting data

5 points

All required information submitted 5 pts

Partial required information submitted 0pts

|   | July 1, 2013 -<br>June 30, 2014 | July 1, 2014 -<br>June 30, 2015 | July 1, 2015 -<br>June 30, 2016 |
|---|---------------------------------|---------------------------------|---------------------------------|
| Collection Records  |                                 |                                 |                                 |
| Number of Accounts  |                                 |                                 |                                 |
| Beginning Delinquent Taxes Receivable (DTR) for all delinquent tax years on July 1. |                                 |                                 |                                 |
| Total Delinquent Taxes Collected (DTC)  |                                 |                                 |                                 |
| Total Penalties and Interest (P&I) Collected  |                                 |                                 |                                 |
| Collection Percentage (Base, P&I) for all delinquent tax years (DTC + P&I/DTR)      |                                 |                                 |                                 |
|   |                                 |                                 |                                 |
| Litigation Records  |                                 |                                 |                                 |
| Suits Filed   |                                 |                                 |                                 |
| Primary Suits Filed   |                                 |                                 |                                 |
| Intervenor Suits  |                                 |                                 |                                 |
| Number of Demand Letters  |                                 |                                 |                                 |
| Dismissals  |                                 |                                 |                                 |

Figures based on four surrounding existing municipal accounts

## REQUEST FOR CITY COUNCIL AGENDA ITEM

|   |  |
|---|--|
| Agenda Date Requested: <u>October 10, 2016</u>  | <u>Appropriation</u>   |
| Requested By: <u>Michael Dolby</u>  | Source of Funds: <u>N/A</u>  |
| Department: <u>Finance</u>  | Account Number: _____  |
| Report: <input checked="" type="radio"/> Resolution: <input type="radio"/> Ordinance: <input type="radio"/> | Amount Budgeted: _____   |
| Other: <input type="radio"/> _____  | Amount Requested: _____  |
| <b>Attachments :</b>  | Budgeted Item: <input checked="" type="radio"/> YES <input type="radio"/> NO |

1. Purchasing Methods Presentation
2. Local Government Code Chapters 252
3. Local Government Code Chapters 271
4. Government Code Chapters 2254

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### SUMMARY & RECOMMENDATIONS

Staff will be making a presentation of the most common purchasing methods used by the City to obtain goods and services.

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**Action Required of Council:**

None.

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**Approved for City Council Agenda**

\_\_\_\_\_  
Corby D. Alexander, City Manager

\_\_\_\_\_  
Date

# PROCUREMENT METHODS





# Procurement Thresholds

- 0-\$1,999- Primary source of procurement is city-issued procurement card. (P-card)
- \$2,000-\$24,999- Requires minimum of three (3) written quotes be obtained by the department or purchasing.
- \$25,000-\$49,999- Requires Purchasing to create an informal solicitation to send to potential bidders
- \$50,000 and above – Requires a formal solicitation per Chapter 252 and 271 of the Local Government Code



# Formal Solicitations

## Competitive Sealed Bid

## Request for Proposal (RFP)

Per LGC 252.041:

- Notice published at least once a week for at least two consecutive weeks in the City's official newspaper, notice must be published more than 14 days before the date set for opening the proposals
- Public opening
- Award must be approved by the entity's governing body

# BIDS



- Used to obtain a firm price for goods and services (equipment, materials, construction)
- Defined specifications
- Awarded to lowest responsible bidder or at best value for the municipality (LGC 252.043)



# Request for Proposal

- Used for high technology and other items for which it is difficult to write exact specifications(Insurance Benefits Consultant, Website Design, Banking Services)
- Proposals are evaluated not just on price but other factors such as experience, performance levels, financials (LGC 252.043)
  - Evaluation committee is typically 3 to 5 city staff individual evaluate each proposal. Purchasing compiles final score sheet.
- The City may chose to interview the top ranked responders



# Request for Proposal

- Allows vendor to suggest solutions, focus is on end product or service desired
- Allows for negotiations (LGC 252.042)



# Exemptions

Specific exceptions may relieve the City from the competitive solicitation (LGC 252.022)

- A procurement necessary to preserve or protect the public health or safety of the municipality's residents
- Sole Source
- Proprietary
- Inter-local
- Cooperative (LGC 281-102)
- A procurement for a personal, professional or planning service
- Captive replacement parts or components for equipment



# Professional Services

- GC 2254 specifically exempts contracts for professional services from the competitive bidding requirements
- Professional services have been described as services that are mainly mental or intellectual rather than physical or manual.
- Professional services are those disciplines requiring special knowledge or attainment and a high order of learning, skill and intelligence (Black's Law Dictionary)



# Professional Services (GC 2254)

- (A) Within the scope of practice, as defined by state law, of:
- (i) accounting;
  - (ii) architecture;
  - (iii) landscape architecture;
  - (iv) land surveying;
  - (v) medicine
  - (vi) optometry;
  - (vii) professional engineering
  - (viii) real estate appraising
  - (ix) professional nursing



# Professional Services(GC 2254)

(B) Provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant
- (ii) an architect;
- (iii) a landscape architect;
- (iv) land surveyor;
- (v) a physician, including a surgeon;
- (vi) optometrist;
- (vii) professional engineer;
- (viii) state certified or licensed appraiser;
- (ix) a registered nurse



# Professional Services

## Selection of Provider (GC 2254.003)

A government entity may not select a provider of professional services or a group association of providers or award a contract for services on the basis of competitive submitted bids for the contract, but shall make the selection and award:

(1) on the basis of demonstrated competence and qualifications to perform services; and

(2) for a fair and reasonable price (may negotiate with more than one at a time)



# Professional Services

Contract for professional service of Architect, Engineer or Surveyor (GC 2254.004)

1. Select the most highly qualified provider based on demonstrated competence and qualifications (RFQ)
2. Attempt to negotiate with that provider for a fair and reasonable price.
3. If a contract cannot be negotiated, formally end negotiations with that provider; select the next most qualified provider and attempt to negotiate a contract
4. The entity shall continue the process until a contract is entered into



# Professional Services

## Request for Qualifications (RFQ)

- Advertise in official newspaper
- Weighted Criteria
- Evaluation Team, 3-5 staff individually grade qualification statements
- May interview top qualifiers
- Negotiate price
- Council Approval

## Void Contract (GC 2254.005)

A contract entered into or an arrangement made in violation of this subchapter is void as against public policy.



# Cooperative Agreements

LGC 271.102

Allows local governments to participate in cooperative purchasing programs with another local government of this state or another state or with a local cooperative organization of this state or another state.

271-101- Definition

“Local cooperative organization” means an organization of governments established to provide local government access to contracts with vendors for the purchase of materials, supplies, services or equipment.



# Cooperative Agreements

LGC 271-103

Local governments may purchase goods or services available under Federal supply schedules established by the U.S. General Services Administration without following competitive bidding procedures

Contracts awarded through cooperatives have been competitively procured, so members have compliance with Texas local and state procurement requirements and a documented audit trail



# Cooperative Agreements

- Interlocal agreements for all cooperatives that may be used
- Documentation should be maintained to support the purchase price and vendor selected for each purchase
- Best prices should be solicited from multiple vendors and/or cooperatives to ensure best offer.
- Utilizing cooperatives may save time, cost of bid administration, and obtain a lower price through volume purchasing.



# Cooperative Agreements

BuyBoard (offers rebate)

State of Texas

Houston –Galveston Area Council (H-GAC)

The Cooperative Purchasing Network (TCPN)

National Joint Powers Alliance (NJPA)

US Communities

Texas Department of Information Resources (DIR)

General Service Administration (GSA)

Cooperative Purchases:

Vehicles, Computers, Uniform rentals, Body  
Cameras

# Questions?



LOCAL GOVERNMENT CODE

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY

SUBTITLE A. MUNICIPAL ACQUISITION, SALE, OR LEASE OF PROPERTY

CHAPTER 252. PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Bond funds" includes money in the treasury received from the sale of bonds and includes the proceeds of bonds that have been voted but have not been issued and delivered.

(2) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(3) "Current funds" includes money in the treasury, taxes in the process of being collected in the current tax year, and all other revenue that may be anticipated with reasonable certainty in the current tax year.

(4) "High technology procurement" means the procurement of equipment, goods, or services of a highly technical nature, including:

(A) data processing equipment and software and firmware used in conjunction with data processing equipment;

(B) telecommunications equipment and radio and microwave systems;

(C) electronic distributed control systems, including building energy management systems; and

(D) technical services related to those items.

(5) "Planning services" means services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.

(6) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(7) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(8) "Time warrant" includes any warrant issued by a municipality that is not payable from current funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 207, Sec. 1, eff. May 23, 1995.

Sec. 252.002. MUNICIPAL CHARTER CONTROLS IN CASE OF CONFLICT. Any provision in the charter of a home-rule municipality that relates to the notice of contracts, advertisement of the notice, requirements for the taking of sealed bids based on specifications for public improvements or purchases, the manner of publicly opening bids or reading them aloud, or the manner of letting contracts and that is in conflict with this chapter controls over this chapter unless the governing body of the municipality elects to have this chapter supersede the charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 749, Sec. 5, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 7, eff. Sept. 1, 1993.

Sec. 252.003. APPLICATION OF OTHER LAW. The purchasing requirements of Section [361.426](#), Health and Safety Code, apply to municipal purchases made under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 17, eff. Sept. 1, 1991.

#### SUBCHAPTER B. COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED

Sec. 252.021. COMPETITIVE REQUIREMENTS FOR PURCHASES. (a) Before a municipality may enter into a contract that requires an expenditure of more than \$50,000 from one or more municipal funds, the municipality must:

(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;

(2) use the reverse auction procedure, as defined by Section [2155.062](#)(d), Government Code, for purchasing; or

(3) comply with a method described by Chapter [2269](#), Government Code.

(b) A municipality may use the competitive sealed proposal procedure for the purchase of goods or services, including high technology items and insurance.

(c) The governing body of a municipality that is considering using a method other than competitive sealed bidding must determine before notice is given the method of purchase that provides the best value for the municipality. The governing body may delegate, as appropriate, its authority under this subsection to a designated representative. If the competitive sealed proposals requirement applies to the contract, the municipality shall consider the criteria described by Section [252.043](#)(b) and the discussions conducted under Section [252.042](#) to determine the best value for the municipality.

(d) This chapter does not apply to the expenditure of municipal funds that are derived from an appropriation, loan, or grant received by a municipality from the federal or state government for conducting a community development program established under Chapter [373](#) if under the program items are purchased under the request-for-proposal process described by Section [252.042](#). A municipality using a request-for-proposal process under this subsection shall also comply with the requirements of Section [252.0215](#).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 56(b), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 749, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 11, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 45, Sec. 1, eff. May 5, 1995; Acts 1997, 75th Leg., ch. 790, Sec. 1, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 571, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 115, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 436, Sec. 2, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 436, Sec. 3, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1409, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 217, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 12.003, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. [1765](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. [1886](#)), Sec. 1, eff. September

1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(20), eff. September 1, 2013.

Sec. 252.0215. COMPETITIVE BIDDING IN RELATION TO HISTORICALLY UNDERUTILIZED BUSINESS. A municipality, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section.

Added by Acts 1993, 73rd Leg., ch. 749, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.18, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 115, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. 1765), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.100, eff. September 1, 2007.

Sec. 252.022. GENERAL EXEMPTIONS. (a) This chapter does not apply to an expenditure for:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal, professional, or planning services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) gas, water, and other utility services;

(D) captive replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a purchase of rare books, papers, and other library materials for a public library;

(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or

(D) under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;

(13) services performed by blind or severely disabled persons;

(14) goods purchased by a municipality for subsequent retail sale by the municipality;

(15) electricity; or

(16) advertising, other than legal notices.

(b) This chapter does not apply to bonds or warrants issued under Subchapter A, Chapter 571.

(c) This chapter does not apply to expenditures by a municipally owned electric or gas utility or unbundled divisions of a municipally owned electric or gas utility in connection with any purchases by the municipally owned utility or divisions of a municipally owned utility made in accordance with procurement procedures adopted by a resolution of the body vested with authority for management and operation of the municipally owned utility or its divisions that sets out the public purpose to be achieved by those procedures. This subsection may not be deemed to exempt a municipally owned utility from any other applicable statute, charter provision, or ordinance.

(d) This chapter does not apply to an expenditure described by Section 252.021(a) if the governing body of a municipality determines that a method described by Chapter 2269, Government Code, provides a better value for the municipality with respect to that expenditure than the procedures described in this chapter and the municipality adopts and uses a method described in that chapter with respect to that expenditure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 47(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1001, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 42, Sec. 1, eff. April 25, 1991; Acts 1993, 73rd Leg., ch. 749, Sec. 7, eff. Sept. 1,

1993; Acts 1993, 73rd Leg., ch. 757, Sec. 9, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 207, Sec. 2, eff. May 23, 1995; Acts 1995, 74th Leg., ch. 746, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 125, Sec. 1, eff. May 19, 1997; Acts 1997, 75th Leg., ch. 1370, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 405, Sec. 41, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.290, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. 1765), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(3), eff. April 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(21), eff. September 1, 2013.

Sec. 252.023. EXEMPTIONS FROM REFERENDUM PROVISIONS. The referendum provisions prescribed by Section 252.045 do not apply to expenditures that are payable:

(1) from current funds;

(2) from bond funds; or

(3) by time warrants unless the amount of the time warrants issued by the municipality for all purposes during the current calendar year exceeds:

(A) \$7,500 if the municipality's population is 5,000 or less;

(B) \$10,000 if the municipality's population is 5,001 to 24,999;

(C) \$25,000 if the municipality's population is 25,001 to 49,999;

or

(D) \$100,000 if the municipality's population is more than 50,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 109, Sec. 1, eff. Aug. 26, 1991.

Sec. 252.024. SELECTION OF INSURANCE BROKER. This chapter does not prevent a municipality from selecting a licensed insurance broker as the sole broker of record to obtain proposals and coverages for excess or surplus insurance that provides necessary coverage and adequate limits of coverage in structuring layered excess coverages in all areas of risk requiring special consideration, including public official liability, police professional liability, and airport liability. The broker may be retained only on a fee basis and may not receive any other remuneration from any other source.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

#### SUBCHAPTER C. PROCEDURES

Sec. 252.041. NOTICE REQUIREMENT. (a) If the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. The date of the first publication must be before the 14th day before the date set to publicly open the bids and read them aloud. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to publicly open the bids and read them aloud.

(b) If the competitive sealed proposals requirement applies to the contract, notice of the request for proposals must be given in the same manner as that prescribed by Subsection (a) for the notice for competitive sealed bids.

(c) If the contract is for the purchase of machinery for the construction or maintenance of roads or streets, the notice for bids and the order for purchase must include a general specification of the machinery desired.

(d) If the governing body of the municipality intends to issue time warrants for the payment of any part of the contract, the notice must include a statement of:

- (1) the governing body's intention;
- (2) the maximum amount of the proposed time warrant indebtedness;
- (3) the rate of interest the time warrants will bear; and

(4) the maximum maturity date of the time warrants.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 109, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 749, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 6, eff. Sept. 1, 1993.

Sec. 252.0415. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS. (a) A municipality may receive bids or proposals under this chapter through electronic transmission if the governing body of the municipality adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 6, eff. Sept. 1, 2001.

Sec. 252.042. REQUESTS FOR PROPOSALS FOR CERTAIN PROCUREMENTS. (a) Requests for proposals made under Section [252.021](#) must solicit quotations and must specify the relative importance of price and other evaluation factors.

(b) Discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 56(c), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 45, Sec. 2, eff. May 5, 1995.

Sec. 252.043. AWARD OF CONTRACT. (a) If the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(b) In determining the best value for the municipality, the municipality may consider:

(1) the purchase price;

(2) the reputation of the bidder and of the bidder's goods or services;

(3) the quality of the bidder's goods or services;

(4) the extent to which the goods or services meet the municipality's needs;

(5) the bidder's past relationship with the municipality;

(6) the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;

(7) the total long-term cost to the municipality to acquire the bidder's goods or services; and

(8) any relevant criteria specifically listed in the request for bids or proposals.

(b-1) In addition to the considerations provided by Subsection (b), a joint board described by Section 22.074(d), Transportation Code, that awards contracts in the manner provided by this chapter may consider, in determining the best value for the board, the impact on the ability of the board to comply with laws, rules, and programs relating to contracting with small businesses, as defined by 13 C.F.R. Section 121.201.

(c) Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(d) Except as provided by Subsection (d-1), the contract must be awarded to the lowest responsible bidder if the competitive sealed bidding requirement applies to the contract for construction of:

(1) highways, roads, streets, bridges, utilities, water supply

projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(2) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(d-1) A contract for construction of a project described by Subsection (d) that requires an expenditure of \$1.5 million or less may be awarded using the competitive sealed proposal procedure prescribed by Subchapter D, Chapter [2269](#), Government Code.

(e) If the competitive sealed bidding requirement applies to the contract for construction of a facility, as that term is defined by Section [2269.001](#), Government Code, the contract must be awarded to the lowest responsible bidder or awarded under the method described by Chapter [2269](#), Government Code.

(f) The governing body may reject any and all bids.

(g) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(h) If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals.

(i) This section does not apply to a contract for professional services, as that term is defined by Section [2254.002](#), Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1370, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1409, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 739 (H.B. [2661](#)), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 428 (S.B. [1618](#)), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 4.03, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(22), eff. September 1, 2013.

Sec. 252.0435. SAFETY RECORD OF BIDDER CONSIDERED. In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:

- (1) the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder;
- (2) the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and
- (3) the determinations are not arbitrary and capricious.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 58(b), eff. Aug. 28, 1989.

Sec. 252.0436. CONTRACT WITH PERSON INDEBTED TO MUNICIPALITY. (a) A municipality by ordinance may establish regulations permitting the municipality to refuse to enter into a contract or other transaction with a person indebted to the municipality.

(b) It is not a violation of this chapter for a municipality, under regulations adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the municipality.

(c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the municipality requiring approval by the governing body of the municipality.

Added by Acts 2003, 78th Leg., ch. 156, Sec. 1, eff. Sept. 1, 2003.

Sec. 252.044. CONTRACTOR'S BOND. (a) If the contract is for the

construction of public works, the bidder to whom the contract is awarded must execute a good and sufficient bond. The bond must be:

(1) in the full amount of the contract price;

(2) conditioned that the contractor will faithfully perform the contract; and

(3) executed, in accordance with Chapter 2253, Government Code, by a surety company authorized to do business in the state.

(b) Repealed by Acts 1993, 73rd Leg., ch. 865, Sec. 2, eff. Sept. 1, 1993.

(c) The governing body of a home-rule municipality by ordinance may adopt the provisions of this section and Chapter 2253, Government Code, relating to contractors' surety bonds, regardless of a conflicting provision in the municipality's charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 865, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 252.045. REFERENDUM ON ISSUANCE OF TIME WARRANTS. (a) If, by the time set for letting a contract under this chapter, a written petition with the required signatures is filed with the municipal secretary or clerk requesting the governing body of the municipality to order a referendum on the question of whether time warrants should be issued for an expenditure under the contract, the governing body may not authorize the expenditure or finally award the contract unless the question is approved by a majority of the votes received in the referendum. The petition must be signed by at least 10 percent of the qualified voters of the municipality whose names appear as property taxpayers on the municipality's most recently approved tax rolls.

(b) If a petition is not filed, the governing body may finally award the contract and issue the time warrants. In the absence of a petition, the governing body may, at its discretion, order the referendum.

(c) The provisions of Subtitles A and C, Title 9, Government Code, relating to elections for the issuance of municipal bonds and to the issuance, approval, registration, and sale of bonds govern the referendum and the time warrants to the extent those provisions are consistent with this chapter. However, the time warrants may mature over a term exceeding 40 years only if

the governing body finds that the financial condition of the municipality will not permit payment of warrants issued for a term of 40 years or less from taxes that are imposed substantially uniformly during the term of the warrants.

(d) This section does not supersede any additional rights provided by the charter of a special-law municipality and relating to a referendum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 38, eff. Sept. 1, 1999.

Sec. 252.046. CIRCUMSTANCES IN WHICH CURRENT FUNDS TO BE SET ASIDE. If an expenditure under the contract is payable by warrants on current funds, the governing body of the municipality by order shall set aside an amount of current funds that will discharge the principal and interest of the warrants. Those funds may not be used for any other purpose, and the warrants must be discharged from those funds and may not be refunded.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.047. PAYMENT METHOD FOR CERTAIN CONTRACTS. If the contract is for the construction of public works or for the purchase of materials, equipment, and supplies, the municipality may let the contract on a lump-sum basis or unit price basis as the governing body of the municipality determines. If the contract is let on a unit price basis, the information furnished to bidders must specify the approximate quantity needed, based on the best available information, but payment to the contractor must be based on the actual quantity constructed or supplied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.048. CHANGE ORDERS. (a) If changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the governing body of the municipality may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that purpose

from available funds or is provided for by the authorization of the issuance of time warrants.

(c) If a change order involves a decrease or an increase of \$50,000 or less, the governing body may grant general authority to an administrative official of the municipality to approve the change orders.

(c-1) If a change order for a public works contract in a municipality with a population of 300,000 or more involves a decrease or an increase of \$100,000 or less, or a lesser amount as provided by ordinance, the governing body of the municipality may grant general authority to an administrative official of the municipality to approve the change order.

(d) The original contract price may not be increased under this section by more than 25 percent. The original contract price may not be decreased under this section by more than 25 percent without the consent of the contractor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 706, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 746, Sec. 2, eff. Aug. 28, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. [679](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.09, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. [1050](#)), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1356 (S.B. [1430](#)), Sec. 2, eff. June 14, 2013.

Sec. 252.049. CONFIDENTIALITY OF INFORMATION IN BIDS OR PROPOSALS. (a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.

(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential

information in the proposals are not open for public inspection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.050. LEASE-PURCHASE OR INSTALLMENT PURCHASE OF REAL PROPERTY.

(a) This section applies only to a lease-purchase or installment purchase of real property financed by the issuance of certificates of participation.

(b) The governing body of a municipality may not make an agreement under which the municipality is a lessee in a lease-purchase of real property or is a purchaser in an installment purchase of real property unless the governing body first obtains an appraisal by a qualified appraiser who is not an employee of the municipality. The purchase price may not exceed the fair market value of the real property, as shown by the appraisal.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 10, Sec. 2, eff. Oct. 18, 1989.

Sec. 252.051. APPRAISAL REQUIRED BEFORE PURCHASE OF PROPERTY WITH BOND PROCEEDS. A municipality may not purchase property wholly or partly with bond proceeds until the municipality obtains an independent appraisal of the property's market value.

Added by Acts 2011, 82nd Leg., R.S., Ch. 719 (H.B. 782), Sec. 1, eff. September 1, 2011.

#### SUBCHAPTER D. ENFORCEMENT

Sec. 252.061. INJUNCTION. If the contract is made without compliance with this chapter, it is void and the performance of the contract, including the payment of any money under the contract, may be enjoined by:

(1) any property tax paying resident of the municipality; or

(2) a person who submitted a bid for a contract for which the competitive sealed bidding requirement applies, regardless of residency, if the contract is for the construction of public works.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 979 (H.B. 3668), Sec. 1, eff. September 1, 2009.

Sec. 252.062. CRIMINAL PENALTIES. (a) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B misdemeanor.

(b) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.

(c) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described by Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 3, eff. Sept. 1, 1989.

Sec. 252.063. REMOVAL; INELIGIBILITY. (a) The final conviction of a municipal officer or employee for an offense under Section 252.062(a) or (b) results in the immediate removal from office or employment of that person.

(b) For four years after the date of the final conviction, the removed officer or employee is ineligible:

(1) to be a candidate for or to be appointed or elected to a public office in this state;

(2) to be employed by the municipality with which the person served when the offense occurred; and

(3) to receive any compensation through a contract with that municipality.

(c) This section does not prohibit the payment of retirement or workers' compensation benefits to the removed officer or employee.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 4, eff. Sept. 1, 1989.

LOCAL GOVERNMENT CODE

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY

SUBTITLE C. ACQUISITION, SALE, OR LEASE PROVISIONS APPLYING TO MORE  
THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 271. PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES,  
COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

SUBCHAPTER A. PUBLIC PROPERTY FINANCE ACT

Sec. 271.001. SHORT TITLE. This subchapter may be cited as the  
Public Property Finance Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.002. PURPOSE. (a) The legislature finds that the  
purchase or other acquisition or the use of property by governmental  
agencies and the financing of those activities are necessary to the  
efficient and economic operation of government.

(b) This subchapter promotes a public purpose by furnishing  
governmental agencies with a feasible means to purchase or otherwise  
acquire, use, and finance public property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by  
Acts 1993, 73rd Leg., ch. 752, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.003. DEFINITIONS. In this subchapter:

(1) "Conservation and reclamation district" means a district or authority organized or operating under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(2) "Contract" means an agreement entered into under this subchapter but does not mean a contract solely for the construction of improvements to real property.

(3) "Governing body" means the board, council, commission, agency, court, or other body or group that is authorized by law to acquire personal property for each respective governmental agency.

(4) "Governmental agency" means a municipality, county, school district, conservation and reclamation district, hospital organization, or other political subdivision of this state.

(5) "Hospital organization" means a district, authority, board, or joint board organized under the laws of this state for hospital purposes.

(6) "Net effective interest rate" means, with reference to a contract, the interest amount considered by the governing body of a governmental agency to accrue on a contract.

(7) "Net interest cost" means the total of all interest to accrue and come due on a contract through the last date a payment is due on the contract, plus any discount or minus any premium included in the contract price or principal sum.

(8) "Personal property" includes appliances, equipment, facilities, and furnishings, or an interest in personal property, whether movable or fixed, considered by the governing body of the governmental agency to be necessary, useful, or appropriate to one or more purposes of the governmental agency. The term includes all materials and labor incident to the installation of that personal property. The term includes electricity. The term does not include real property.

(9) "School district" means an independent school district, common school district, community college district, junior college district, or regional college district organized under the

laws of this state.

(10) "Improvement" means a permanent building, structure, fixture, or fence that is erected on or affixed to land but does not include a transportable building or structure whether or not it is affixed to land.

(11) "Real property" means land, improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation in real property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 752, Sec. 2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 396, Sec. 1.37, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1095 (S.B. 1393), Sec. 1, eff. June 17, 2011.

Sec. 271.004. REAL PROPERTY AND IMPROVEMENTS FOR SCHOOL DISTRICTS. (a) The board of trustees of a school district may execute, perform, and make payments under a contract under this Act for the use or purchase or other acquisition of real property or an improvement to real property. If the board proposes to enter into such a contract, the board shall publish notice of intent to enter into the contract not less than 60 days before the date set to approve execution of the contract in a newspaper with general circulation in the district. The notice must summarize the major provisions of the proposed contract. The notice shall estimate the construction and other costs, but the board shall not publish the first advertisement for bids for construction of improvements until 60 days has expired from the publication of the notice of intent to enter into the contract.

(b) If, within 60 days of the date of publication of the notice of intent required by Subsection (a), a written petition signed by at

least five percent of the registered voters of the district is filed with the board of trustees requesting that the board order a referendum on the question of whether the contract should be approved, the board may not approve the contract or publish the first advertisement for bids for construction of improvements unless the question is approved by a majority of the votes received in a referendum ordered and held on the question.

(c) Except as otherwise provided by this section, the referendum shall be held in accordance with the applicable provisions of the Election Code. The requirement that an election must be held on a uniform election date as prescribed by the Election Code does not apply to an election held under this section.

(d) The contract is a special obligation of the school district if ad valorem taxes are not pledged to the payment of the contract.

(e) If the contract provides that payments by the school district are to be made from maintenance taxes previously approved by the voters of the school district and are subject to annual appropriation or are paid from a source other than ad valorem taxes, the payments under the contract shall not be considered payment of indebtedness under Section 26.04(c), Tax Code.

(f) All or part of the obligation of the school district may be evidenced by one or more negotiable promissory notes.

(g) A lease-purchase contract entered into by the district under this section and the records relating to its execution must be submitted to the attorney general for examination as to their validity.

(h) If the attorney general finds that the contract has been authorized in accordance with the law, the attorney general shall approve them, and the comptroller of public accounts shall register the contract.

(i) Following approval and registration, the contract is incontestable and is a binding obligation according to its terms.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 752, Sec. 3, eff. Aug. 30, 1993.

## Sec. 271.005. AUTHORITY TO CONTRACT FOR PERSONAL PROPERTY.

(a) The governing body of a governmental agency may execute, perform, and make payments under a contract with any person for the use or the purchase or other acquisition of any personal property, or the financing thereof. The contract is an obligation of the governmental agency. The contract may:

(1) be on the terms considered appropriate by the governing body;

(2) be in the form of a lease, a lease with an option or options to purchase, an installment purchase, or any other form considered appropriate by the governing body including that of an instrument which would be required to be approved by the attorney general under Chapter 1202, Government Code, provided that contracts in such form must be approved by the attorney general in accordance with the terms of that chapter;

(3) be for a term approved by the governing body and contain an option or options to renew or extend the term; and

(4) be made payable from a pledge of all or any part of any revenues, funds, or taxes available to the governmental agency for its public purposes.

(b) The governing body of a governmental agency may contract under this section for materials and labor incident to the installation of personal property.

(c) A contract may provide for the payment of interest on the unpaid amounts of the contract at a rate or rates and may contain prepayment provisions, termination penalties, and other provisions determined within the discretion of the governing body. The net effective interest rate on the contract may not exceed the net effective interest rate at which public securities may be issued in accordance with Chapter 1204, Government Code. Interest on the unpaid amounts of a contract shall be computed as simple interest.

(d) Subject only to applicable constitutional restrictions, the governing body may obligate taxes or revenues for the full term of a contract for the payment of the contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 82, Sec. 1, eff. May 12, 1991; Acts 1993, 73rd Leg., ch. 104, Sec. 3, eff. May 7, 1993; Acts 1999, 76th Leg., ch. 396, Sec. 1.38, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.293, eff. Sept. 1, 2001.

Sec. 271.006. COMPLIANCE WITH OTHER REQUIREMENTS. (a) In entering into the contract, a municipality must comply with the requirements of Chapter 252 and a county must comply with the requirements of Subchapter C, Chapter 262. However, the municipality or county is not required to submit to a referendum the question of entering into the contract.

(b) The purchasing requirements of Section 361.426, Health and Safety Code, apply to a purchase by a governmental agency under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 19, eff. Sept. 1, 1991.

Sec. 271.0065. ADDITIONAL COMPETITIVE PROCEDURES. (a) In any procedure for competitive bidding under this subchapter, the governing body shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.

(b) A governmental agency shall receive bids or proposals under this subchapter in a fair and confidential manner.

(c) A governmental agency may receive bids or proposals under this subchapter in hard-copy format or through electronic transmission. A governmental agency shall accept any bids or

proposals submitted in hard-copy format.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 4, eff. Sept. 1, 2001.

Sec. 271.007. APPROVED AND REGISTERED CONTRACT. (a) If the governing body approves the contract and the contract provides for the payment of an aggregate amount of \$100,000 or more, the governing body may submit the contract and the record relating to the contract to the attorney general for examination as to the validity of the contract. The attorney general shall approve the contract if it has been made in accordance with the constitution and other laws of this state, and the contract then shall be registered by the comptroller of public accounts.

(b) After the contract has been approved and registered as provided by this section, the contract is valid and is incontestable for any cause. The legal obligation of the lessor, vendor, or supplier of personal property or of the person installing personal property to the governmental agency is not diminished in any respect by the approval and registration of the contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 396, Sec. 1.39, eff. Sept. 1, 1999.

Sec. 271.008. AUTHORIZED INVESTMENTS. The contract is a legal and authorized investment for:

- (1) banks, savings banks, trust companies, and savings and loan associations;
- (2) insurance companies;
- (3) fiduciaries and trustees; and
- (4) the sinking funds of a county, municipality, school district, or other political subdivision or corporation of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.009. TERM OF CONTRACT. The contract may be for any term not to exceed 25 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS CONTRACTS

Sec. 271.021. DEFINITIONS. In this subchapter:

(1) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(2) "Governmental entity" means:

(A) a county;

(B) a common or independent school district;

(C) a hospital district or authority;

(D) a housing authority; or

(E) an agency or instrumentality of the governmental entities described by Paragraphs (A) through (D).

(3) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(4) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by

Acts 1989, 71st Leg., ch. 328, Sec. 15, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1250, Sec. 14, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.04, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 1370, Sec. 1, eff. Sept. 1, 1997.

Sec. 271.022. EXEMPT CONTRACT. This subchapter does not affect a contract required to be awarded under Subchapter A, Chapter 2254, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(9), eff. Sept. 1, 1995.

Sec. 271.023. CONFLICT OF LAWS. To the extent of any conflict, the provisions of Subchapter B, Chapter 44, Education Code, relating to the purchase of goods and services under contract by a school district prevail over this subchapter.

Added by Acts 1999, 76th Leg., ch. 1383, Sec. 2, eff. June 19, 1999.

Sec. 271.024. COMPETITIVE PROCUREMENT PROCEDURE APPLICABLE TO CONTRACT. If a governmental entity is required by statute to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than \$50,000 from the funds of the entity, the bidding on the contract must be accomplished in the manner provided by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 749, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 14, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 115, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 6, eff. June 19, 2009.

Sec. 271.0245. ADDITIONAL COMPETITIVE PROCEDURES. (a) In the procedure for competitive bidding under this subchapter, the governing body of the governmental entity shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.

(b) A governmental entity shall receive bids under this subchapter in a fair and confidential manner.

(c) A governmental entity may receive bids under this subchapter in hard-copy format or through electronic transmission. A governmental entity shall accept any bids submitted in hard-copy format.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 5, eff. Sept. 1, 2001.

Sec. 271.025. ADVERTISEMENT FOR BIDS. (a) The governmental entity must advertise for bids. The advertisement for bids must include a notice that:

(1) describes the work;

(2) states the location at which the bidding documents, plans, specifications, or other data may be examined by all bidders; and

(3) states the time and place for submitting bids and the time and place that bids will be opened.

(b) The advertisement must be published as required by law. If no legal requirement for publication exists, the advertisement must be published at least twice in one or more newspapers of general

circulation in the county or counties in which the work is to be performed. The second publication must be on or before the 10th day before the first date bids may be submitted.

(c) The governmental entity must mail a notice containing the information required under Subsection (a) to any organization that:

(1) requests in advance that notices for bids be sent to it;

(2) agrees in writing to pay the actual cost of mailing the notice; and

(3) certifies that it circulates notices for bids to the construction trade in general.

(d) The governmental entity shall mail a notice required under Subsection (c) on or before the date the first newspaper advertisement under this section is published.

(e) In a county with a population of 3.3 million or more, the county and any district or authority created under Article XVI, Section 59, of the Texas Constitution of which the governing body is the commissioners court may require that a minimum of 25 percent of the work be performed by the bidder and, notwithstanding any other law to the contrary, may establish financial criteria for the surety companies that provide payment and performance bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1019, Sec. 2, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 669, Sec. 82, eff. Sept. 1, 2001.

Sec. 271.026. OPENING OF BIDS. (a) Bids may be opened only by the governing body of the governmental entity at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

(b) This subchapter does not change the common law right of a

bidder to withdraw a bid due to a material mistake in the bid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.027. AWARD OF CONTRACT. (a) The governmental entity is entitled to reject any and all bids.

(b) The contract must be awarded to the lowest responsible bidder, but the contract may not be awarded to a bidder who is not the lowest bidder unless before the award each lower bidder is given notice of the proposed award and is given an opportunity to appear before the governing body of the governmental entity or the designated representative of the governing body and present evidence concerning the bidder's responsibility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.0275. SAFETY RECORD OF BIDDER CONSIDERED. In determining who is a responsible bidder, the governmental entity may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:

(1) the governing body of the governmental entity has adopted a written definition and criteria for accurately determining the safety record of a bidder;

(2) the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and

(3) the determinations are not arbitrary and capricious.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 58(d), eff. Aug. 28, 1989.

Sec. 271.028. EFFECT OF NONCOMPLIANCE. A contract awarded in violation of this subchapter is void.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.029. CRIMINAL PENALTIES. (a) An officer or employee of a governmental entity commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of the statute that requires a contract described by Section 271.024 to be awarded on the basis of competitive bids. An offense under this subsection is a Class B misdemeanor.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(c) An officer or employee of a governmental entity commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 15, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 18, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 24, eff. September 1, 2011.

#### SUBCHAPTER C. CERTIFICATE OF OBLIGATION ACT

Sec. 271.041. SHORT TITLE. This subchapter may be cited as the

Certificate of Obligation Act of 1971.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.042. PURPOSE; CONFLICT. (a) It is the purpose of this subchapter to provide:

(1) a procedure for certain financing that is an alternative to the more cumbersome procedure under Chapter 252 or 262; and

(2) a new class of securities to be issued and delivered within the financial capabilities of an issuer on compliance with the procedures prescribed by this subchapter.

(b) If there is a conflict between a provision of this subchapter and a provision of Chapter 252 or 262, an issuer may use either provision, and it is not necessary for the governing body to designate the law under which action is being taken.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 39, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 19, eff. September 1, 2011.

Sec. 271.043. DEFINITIONS. In this subchapter:

(1) "Bond funds" means money received from the sale of bonds by the issuer.

(2) "Certificate" means a certificate of obligation authorized to be issued under this subchapter.

(3) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be

purchased in one purchase.

(4) "Contractual obligation" means a contract entered into by an issuer through its governing body and executed under Section 271.054 or 271.056.

(5) "Current funds" means money in the treasury of the issuer, taxes in the process of collection during the current budget year of the issuer, and all other revenues anticipated with reasonable certainty during the current budget year of the issuer.

(6) "Governing body" means the board, council, commission, court, or other body or group authorized to issue bonds for or on behalf of an issuer.

(7) "Issuer" means a municipality, county, or hospital district established under Chapter 281, Health and Safety Code.

(8) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(9) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 17, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 47, Sec. 5, eff. Sept. 1, 2003.

Sec. 271.044. SUBCHAPTER AVAILABLE TO CERTAIN MUNICIPALITIES.

(a) A municipality may use this subchapter only if the municipality:

(1) is incorporated under the home-rule amendment to the constitution (Article XI, Section 5, of the Texas Constitution); or

(2) is incorporated under a general or special law and the municipality has the authority to levy an ad valorem tax of not less than \$1.50 on each \$100 valuation of taxable property in the

municipality.

(b) A home-rule municipality may use this subchapter regardless of any provision in the municipality's charter to the contrary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.045. PURPOSES FOR WHICH CERTIFICATES MAY BE AUTHORIZED. (a) The governing body of an issuer may authorize certificates to pay a contractual obligation to be incurred for the:

(1) construction of any public work;

(2) purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes; or

(3) payment of contractual obligations for professional services, including services provided by tax appraisers, engineers, architects, attorneys, map makers, auditors, financial advisors, and fiscal agents.

(b) If necessary because of change orders, certificates may be authorized in an amount not to exceed 25 percent of a contractual obligation incurred for the construction of public works, but certificates may be delivered only in the amount necessary to discharge contractual obligations.

(c) The governing body of a municipality may issue certificates of obligation to pay all or part of a municipality's obligations incurred by contract for interests in and rights to water or sewer treatment capacity in connection with a water supply and transmission project or sewer treatment or collection project to be constructed in whole or in part on behalf of the municipality by another governmental entity or political subdivision pursuant to a written agreement expressly authorized under Section 552.014 of this code or Section 791.026, Government Code.

(d) In exercising its authority to issue certificates of

obligation for the purposes specified in Subsection (c), the municipality must limit the principal amount of certificates to be issued for the purpose of funding its contractual obligations to an amount equal to (i) the aggregate of the contractual payments or the total costs allocated or attributed, under generally accepted accounting principles, to the capital costs of the project, as opposed to any maintenance or operating costs to be paid under the written agreement or (ii) the total cost of the project multiplied by the percentage of the nameplate capacity of the project acquired or conveyed by the written agreement to the municipality, whichever limitation is applicable to the contractual interests or rights being conveyed or identified in the written agreement.

(e) Work that is directly attributable under generally accepted accounting principles to the costs of the project and that is performed by employees of the issuer may be allocated or attributed to the capital costs of the project.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 124, Sec. 1, eff. May 19, 1997; Acts 2001, 77th Leg., ch. 402, Sec. 14, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 554 (H.B. [1232](#)), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 3.77(4), eff. April 1, 2009.

Sec. 271.046. ADDITIONAL PURPOSES FOR CERTIFICATES. (a) Certificates may be issued for the payment of contractual obligations to be incurred in:

- (1) constructing or equipping a jail;
- (2) constructing, renovating, or otherwise improving a county-owned building; or

(3) constructing a bridge that is part of or connected to a county road or an approach to such a bridge.

(b) Certificates issued under this section may be sold for cash, subject to the restrictions and other conditions of Section [271.050](#).

(c) The provisions of this subchapter relating to advertisement for competitive bids apply to contractual obligations to be incurred for a purpose for which certificates are to be issued under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 648, Sec. 1, eff. June 14, 1989.

Sec. 271.0461. ADDITIONAL PURPOSE FOR CERTIFICATES: DEMOLITION OF DANGEROUS STRUCTURES OR RESTORATION OF HISTORIC STRUCTURES. Certificates may be issued by any municipality for the payment of contractual obligations to be incurred in demolishing dangerous structures or restoring historic structures and may be sold for cash, subject to the restrictions and other conditions of Section [271.050](#).

Added by Acts 1989, 71st Leg., ch. 459, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1056, Sec. 1, eff. June 19, 1997.

Sec. 271.047. AUTHORIZATION OF CERTIFICATES BY ORDINANCE OR ORDER; OTHER PROVISIONS IN CERTIFICATES. (a) Certificates may be authorized by an ordinance adopted by the governing body of a municipality, or by an order adopted by the governing body of a county after compliance with the quorum requirements prescribed by Section [81.006](#).

(b) The governing body may:

(1) make the certificates payable at times and places determined by the governing body;

(2) issue the certificates in forms and one or more denominations, either in coupon form or registered as to principal and interest, or both;

(3) make the certificates contain options for redemption before scheduled maturity; and

(4) make the certificates contain any other provisions the governing body desires.

(c) A certificate may not mature over a period greater than 40 years from the date of the certificate and may not bear interest at a rate greater than that allowed by Chapter 1204, Government Code.

(d) Except as provided by this subsection, the governing body of an issuer may not authorize a certificate to pay a contractual obligation to be incurred if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding three years and failed to be approved. A governing body may authorize a certificate that the governing body is otherwise prohibited from authorizing under this subsection:

(1) in a case described by Sections 271.056(1)-(3); and

(2) to comply with a state or federal law, rule, or regulation if the political subdivision has been officially notified of noncompliance with the law, rule, or regulation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.294, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 923 (H.B. 1378), Sec. 2, eff. January 1, 2016.

Sec. 271.048. CLAIMS AND ACCOUNTS; FUNDING AND EXCHANGE. (a) A governing body may provide that claims and accounts may, after certificates are authorized, be incurred for authorized purposes and

that the claims and accounts represent an undivided interest in the certificates simultaneously authorized. The governing body may also provide for the funding or exchange of the claims and accounts for a like total principal amount of the certificates, with any amount in excess of the principal amount of the certificates delivered at one time to be paid in cash or carried forward to a subsequent exchange of claims and accounts for certificates.

(b) The authorization of certificates and the indebtedness they evidence may occur before the execution of a contract under this subchapter.

(c) This section does not create any exception to the competitive bidding requirements of this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.049. NOTICE OF INTENTION TO ISSUE CERTIFICATES; PETITION AND ELECTION. (a) Regardless of the sources of payment of certificates, certificates may not be issued unless the issuer publishes notice of its intention to issue the certificates. The notice must be published once a week for two consecutive weeks in a newspaper, as defined by Subchapter C, Chapter 2051, Government Code, that is of general circulation in the area of the issuer, with the date of the first publication to be before the 30th day before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates.

(b) The notice must state:

(1) the time and place tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates;

(2) the maximum amount and purpose of the certificates to be authorized; and

(3) the manner in which the certificates will be paid for, whether by taxes, revenues, or a combination of the two.

(c) If before the date tentatively set for the authorization of the issuance of the certificates or if before the authorization, the municipal secretary or clerk if the issuer is a municipality, or the county clerk if the issuer is a county, receives a petition signed by at least five percent of the qualified voters of the issuer protesting the issuance of the certificates, the issuer may not authorize the issuance of the certificates unless the issuance is approved at an election ordered, held, and conducted in the manner provided for bond elections under Chapter 1251, Government Code.

(d) This section does not apply to certificates issued for the purposes described by Sections 271.056(1)-(4).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(3), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 8.295, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 402, Sec. 15, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1008 (H.B. 730), Sec. 1, eff. June 15, 2007.

Sec. 271.050. SALE OF CERTIFICATES. (a) The governing body may sell for cash any certificates authorized to be issued for one or more purposes described by Section 271.056.

(b) The proceeds may be used only for the purposes for which the certificates were authorized and issued. The proceeds may be used to pay for work done by employees of the issuer that are hired for the specific purpose of performing work on the project. The proceeds may be used to pay for work done by other employees of the issuer only if the issuer incurs equivalent or greater costs to replace the normal work that would have otherwise been performed by the employees. The proceeds may not be used to reimburse the issuer for costs that are determined to be indirect costs under generally accepted accounting principles. Any accrued interest received must be deposited in the interest and sinking fund established for the payment of the

certificates.

(c) A certified copy of the proceedings relating to the authorization of the certificates must be submitted to the attorney general and must be approved by the attorney general as having been authorized in accordance with this subchapter. The attorney general shall examine the proceedings relating to the authorization of the certificates. Subtitles A and C, Title 9, Government Code, and Chapter 618, Government Code, govern the execution, approval, registration, and validity of the certificates. After registration of the certificates by the comptroller, the certificates are incontestable for any cause.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.296, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 554 (H.B. 1232), Sec. 2, eff. June 17, 2005.

Sec. 271.051. CERTIFICATES AS INVESTMENTS OR AS SECURITY FOR DEPOSITS. (a) Certificates approved by the attorney general are legal and authorized investments for:

(1) banks, savings banks, trust companies, and savings and loan associations;

(2) insurance companies;

(3) fiduciaries, trustees, and guardians; and

(4) sinking funds of municipalities, counties, school districts, or other political corporations or subdivisions of the state.

(b) Certificates approved by the attorney general are eligible to secure deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision

of the state. The certificates are sufficient security for the deposits to the extent of the face value of the certificates, if accompanied by any appurtenant unmatured interest coupons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.052. CERTIFICATES PAYABLE FROM AND SECURED BY OTHER REVENUES. (a) The governing body, instead of or in addition to other methods of payment provided by this subchapter, may provide that certificates will be paid from and secured by other revenues if the issuer is authorized by the state constitution or other statutes to secure or pay any kind of general or special obligation by or from those revenues.

(b) The issuer may deliver certificates secured under this section in exchange for services or property in the same manner and with the same effect as otherwise provided by this subchapter or may sell the certificates for cash.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.0525. REFINANCING CERTIFICATES ISSUED BY COUNTY. (a) A county may not issue certificates to refinance or refund the debt evidenced by certificates issued by the county unless the county complies with the notice requirements of Sections [271.049](#)(a) and (b) for the issuance of certificates.

(b) If, before the date tentatively set for the authorization of refinancing certificates, the county clerk receives a petition that meets the requirements of Subsection (c) protesting the issuance of the refinancing certificates, the county may not authorize the issuance of the refinancing certificates unless the issuance is approved at an election ordered, held, and conducted in the manner provided for bond elections under Chapter [1251](#), Government Code.

(c) A petition to protest the issuance of refinancing

certificates under this section must be signed by a number of qualified voters, residing in the county, equal to at least five percent of the number of votes cast in that county for governor in the most recent general election at which that office was filled.

Added by Acts 1989, 71st Leg., ch. 961, Sec. 1, eff. Sept. 1, 1989.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.297, eff. Sept. 1, 2001.

Sec. 271.053. CERTIFICATES AS DEBT AND SECURITY. Certificates are debts of the issuer within the meaning of Article XI, Sections 5 and 7, of the Texas Constitution. When delivered, certificates are "security" within the meaning of Chapter 8, Business & Commerce Code, and are general obligations of the issuer within the meaning of Subchapters A and D, Chapter 1207, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.298, eff. Sept. 1, 2001.

Sec. 271.054. COMPETITIVE PROCUREMENT REQUIREMENT. Before the governing body of an issuer may enter into a contract requiring an expenditure by or imposing an obligation or liability on the issuer, or on a subdivision of the issuer if the issuer is a county, of more than \$50,000, the governing body must:

(1) submit the proposed contract to competitive procurement; or

(2) use an alternate method of project delivery authorized by Chapter 2269, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 15, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 675, Sec. 1, eff. June 13, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 7, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.10, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002 (24), eff. September 1, 2013.

Sec. 271.055. NOTICE TO BIDDERS. (a) An issuer must give notice of the time, date, and place at which the issuer will publicly open the bids on a contract for which competitive bidding is required by this subchapter and read the bids aloud. The notice must be given in accordance with Subsection (b) or in accordance with:

(1) Chapter 252, if the issuer is a municipality;

(2) the municipal charter of the issuer, if the issuer is a home-rule municipality; or

(3) the County Purchasing Act (Subchapter C, Chapter 262), if the issuer is a county.

(b) If an issuer gives notice under this subsection, the notice must:

(1) be published once a week for two consecutive weeks in a newspaper, as defined by Subchapter C, Chapter 2051, Government Code, that is of general circulation in the area of the issuer, with the date of the first publication to be before the 14th day before the date set for the public opening of the bids and the reading of the bids aloud; and

(2) state that plans and specifications for the work to be done or specifications for the machinery, supplies, equipment, or materials to be purchased are on file with a designated official of the issuer and may be examined without charge.

(c) If the contract is to be let on a unit price basis, in

addition to the other information required to be in the notice, the notice must specify, based on the best available information, the approximate quantities of the items needed by the issuer that are to be bid on.

(d) An issuer may not authorize certificates unless the notice also states that:

(1) the successful bidder must accept the certificates in payment for all or part of the contract price; or

(2) the governing body has made provisions for the contractor to sell and assign the certificates and that each bidder is required, at the time of the receipt of the bids, to elect whether the bidder will:

(A) accept the certificates in payment of all or part of the contract price; or

(B) assign the certificates in accordance with the arrangements made by the governing body.

(e) In a county with a population of 3.3 million or more, the county and any district or authority created under Article XVI, Section 59, of the Texas Constitution of which the governing body is the commissioners court may require that a minimum of 25 percent of the work be performed by the bidder and, notwithstanding any other law to the contrary, may establish financial criteria for the surety companies that provide payment and performance bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1019, Sec. 3, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 749, Sec. 6, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(3), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 669, Sec. 83, eff. Sept. 1, 2001.

Sec. 271.056. EXEMPTIONS FROM ADVERTISEMENT REQUIREMENT. The provisions of this subchapter relating to the advertisement for

competitive bids do not apply to:

(1) a case of public calamity if it is necessary to act promptly to relieve the necessity of the residents or to preserve the property of the issuer;

(2) a case in which it is necessary to preserve or protect the public health of the residents of the issuer;

(3) a case of unforeseen damage to public machinery, equipment, or other property;

(4) a contract for personal or professional services;

(5) work done by employees of the issuer and paid for as the work progresses;

(6) the purchase of any land, building, existing utility system, or right-of-way for authorized needs and purposes;

(7) expenditures for or relating to improvements in municipal water systems, sewer systems, streets, or drainage, if at least one-third of the cost of the improvements is to be paid by special assessments levied against properties to be benefitted by the improvements;

(8) a case in which the entire contractual obligation is to be paid from bond funds or current funds or in which an advertisement for bids has previously been published in accordance with this subchapter but the current funds or bond funds are not adequate to permit the awarding of the contract and certificates are to be awarded to provide for the deficiency;

(9) the sale of a public security, as that term is defined by Section [1204.001](#), Government Code;

(10) a municipal procurement of a kind that, under Chapter [252](#), is not required to be made in accordance with competitive bidding procedures like those prescribed by this subchapter; or

(11) a county contract that, under the County Purchasing Act (Subchapter C, Chapter [262](#)), is not required to be made in

accordance with competitive bidding procedures like those prescribed by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.298, eff. Sept. 1, 2001.

Sec. 271.0565. PRE-BID CONFERENCE. (a) The commissioners court of a county or the governing body of a district or authority created under Section 59, Article XVI, Texas Constitution, if the governing body is the commissioners court of the county in which the district is located, may require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions of prospective bidders.

(b) After a conference is conducted under Subsection (a), any additional required notice for the proposed contract may be sent by certified mail, return receipt requested, only to prospective bidders who attended the conference. Notice under this subsection is not subject to the requirements of Section 271.055.

Added by Acts 2001, 77th Leg., ch. 255, Sec. 3, eff. May 22, 2001.  
Amended by Acts 2003, 78th Leg., ch. 660, Sec. 2, eff. Sept. 1, 2003.  
Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 13.001, eff. September 1, 2005.

Sec. 271.057. AWARD OF CONTRACT. (a) Except as provided by Subsection (b), a contract let under this subchapter for the construction of public works or the purchase of materials, equipment, supplies, or machinery and for which competitive bidding is required by this subchapter must be let to the lowest responsible bidder and, as the governing body determines, may be let on a lump-sum basis or unit price basis.

(b) The commissioners court may condition acceptance of a bid on compliance with a requirement for attendance at a mandatory pre-bid conference under Section [271.0565](#).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 255, Sec. 4, eff. May 22, 2001.

Sec. 271.058. AUTHORITY TO REJECT BIDS. The governing body may reject any and all bids submitted for a contract for which competitive bidding is required by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.059. CONTRACTOR'S BONDS. If a contract is for the construction of public works and is required by this subchapter to be submitted to competitive bidding, the successful bidder must execute a good and sufficient payment bond and performance bond. The bonds must each be:

(1) in the full amount of the contract price; and

(2) executed, in accordance with Chapter [2253](#), Government Code, with a surety company authorized to do business in this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 271.060. CHANGE ORDERS. (a) After performance of a construction contract begins, a governing body may approve change orders if necessary to:

(1) make changes in plans or specifications; or

(2) decrease or increase the quantity of work to be

performed or materials, equipment, or supplies to be furnished.

(b) The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

(c) A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.

(d) A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. 679), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.11, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001 (34), eff. September 1, 2013.

Sec. 271.061. COMPENSATION ON UNIT PRICE CONTRACTS. If a contract is let on a unit price basis, the compensation paid to the contractor must be based on the actual quantities of items constructed or supplied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.062. CERTAIN CONTRACTS NOT REQUIRED TO BE IN WRITING. A contract executed under Section 271.054 or 271.056 is not required to be in writing if the work to be performed under the contract:

- (1) is legal services;
- (2) is to be done by the regular salaried employees of the issuer; or
- (3) is to be paid for as the work progresses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.063. UNCONSTITUTIONAL PROCEDURE CORRECTED BY RESOLUTION OF ISSUER. If a procedure used under this subchapter is held to be in violation of the state or federal constitution, an issuer by resolution may provide an alternative procedure that conforms to the constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.064. CRIMINAL PENALTIES. (a) An officer or employee of an issuer commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 271.054. An offense under this subsection is a Class B misdemeanor.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(c) An officer or employee of an issuer commits an offense if the officer or employee intentionally or knowingly violates this

subchapter, other than by conduct described by Subsection (a).  
An offense under this subsection is a Class C misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 18, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 20, eff.  
September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 24, eff.  
September 1, 2011.

#### SUBCHAPTER D. STATE COOPERATION IN LOCAL PURCHASING PROGRAMS

Sec. 271.081. DEFINITION. In this subchapter, "local government" means a county, municipality, special district, school district, junior college district, a local workforce development board created under Section 2308.253, Government Code, or other legally constituted political subdivision of the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by  
Acts 2001, 77th Leg., ch. 1004, Sec. 4, eff. Sept. 1, 2001.

Sec. 271.082. PURCHASING PROGRAM. (a) The comptroller shall establish a program by which the comptroller performs purchasing services for local governments. The services must include:

(1) the extension of state contract prices to participating local governments when the comptroller considers it feasible;

(2) solicitation of bids on items desired by local governments if the solicitation is considered feasible by the comptroller and is desired by the local government; and

(3) provision of information and technical assistance to local governments about the purchasing program.

(b) The comptroller may charge a participating local government an amount not to exceed the actual costs incurred by the comptroller in providing purchasing services to the local government under the program.

(c) The comptroller may adopt rules and procedures necessary to administer the purchasing program. Before adopting a rule under this subsection, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section [2001.029\(b\)](#), Government Code, are met.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.103, eff. September 1, 2007.

Sec. 271.083. LOCAL GOVERNMENT PARTICIPATION. (a) A local government may participate in the purchasing program of the commission, including participation in purchases that use the reverse auction procedure, as defined by Section [2155.062\(d\)](#), Government Code, by filing with the commission a resolution adopted by the governing body of the local government requesting that the local government be allowed to participate on a voluntary basis, and to the extent the commission deems feasible, and stating that the local government will:

(1) designate an official to act for the local government in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the governing body will direct the decisions of the representative;

(2) be responsible for:

(A) submitting requisitions to the commission under any contract; or

(B) electronically sending purchase orders directly to vendors, or complying with commission procedures governing a reverse auction purchase, and electronically sending to the commission reports on actual purchases made under this paragraph that provide the information and are sent at the times required by the commission;

(3) be responsible for making payment directly to the vendor; and

(4) be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

(b) A local government that purchases an item under a state contract or under a reverse auction procedure, as defined by Section [2155.062\(d\)](#), Government Code, sponsored by the commission satisfies any state law requiring the local government to seek competitive bids for the purchase of the item.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 393, Sec. 3.07(2), eff. September 1, 2009.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 428, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 746, Sec. 6, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 494, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 436, Sec. 5, eff. May 28, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. [1705](#)), Sec. 3.07(2), eff. September 1, 2009.

#### SUBCHAPTER E. STATE INTERCEPT TO INCREASE CREDIT RATING

Sec. 271.091. DEFINITIONS. In this subchapter:

(1) "Local government" means a municipality, county, or hospital district of the State of Texas.

(2) "Payment" means the local sales and use tax authorized by the Municipal Sales and Use Tax Act (Chapter 321, Tax Code), the County Sales and Use Tax Act (Chapter 323, Tax Code), and Subchapter E, Chapter 285, Health and Safety Code.

(3) "Paying agent" means the financial institution that is designated by a local government as its agent for the payment of the principal of and interest on the obligation.

(4) "Obligation" means bonds, notes, certificates of obligation, and other obligations authorized to be issued by the local government.

(5) "Agreement" means the document referred to in Section 271.092 and Section 271.093.

(6) "Board" means the Bond Review Board.

(7) "Comptroller" means the comptroller of public accounts.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.299, eff. Sept. 1, 2001.

Sec. 271.092. AGREEMENT WITH TEXAS BOND REVIEW BOARD AND COMPTROLLER. Prior to the issuance of any obligation, the governing body of any local government may notify the board of the proposed issuance of an obligation and enter into an agreement with the board to authorize and direct the comptroller to withhold from such local government sufficient money from any payment to which such local government may be entitled and apply so much as shall be necessary to pay the principal of and interest on such obligation then due and to continue withholding additional payments until an amount sufficient to satisfy the amount then due has been met.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.093. FORM OF AGREEMENT; CONDITIONS. (a) The agreement shall set forth the following:

(1) the proposed date of issuance of the obligation and the name and series of the proposed obligation;

(2) each payment date with respect to the obligation and the principal of and interest on the obligation coming due on each such date; and

(3) the name and address of the financial institution serving as paying agent for the obligation to whom any payment by the comptroller should be made.

(b) This subchapter does not require or permit the state to make an appropriation to any local government and shall not be construed as creating an indebtedness of the state. Any agreement made pursuant to this subchapter shall contain a statement to that effect.

(c) The agreement terminates at the time the final payment of the principal of and interest on the obligation is made or the obligation is refunded.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.094. NOTICE, DEPOSIT OF DEBT SERVICE, AUTHORIZATION, AND TRANSMITTAL. (a) If a local government enters into an agreement with the board under Section [271.092](#), the board on notification from the local government, the custodian bank, or the paying agent for the local government that the local government is unable or has failed to pay amounts as required by the agreement or to pay principal of or interest on the obligation when due, shall notify the comptroller, who shall withhold sufficient money from any payment to which such local government may be entitled and apply so much thereof as shall be necessary to pay the amounts then due as provided in this section.

(b) The local government may in the agreement agree to make

monthly deposits of one-sixth of the semiannual debt service requirement, or such other amount at such other times as specified in the agreement, into an interest and sinking fund in a custodian bank. If a bank agrees to serve as custodian for the interest and sinking fund, it shall be the duty of the bank to notify the board if the agreed upon amount of funds is not deposited each month or other specified time on a timely basis as specified in the agreement.

(c) On receiving notification and direction from the board, the comptroller is authorized to withhold from any payment an amount equal to the amount to have been deposited by the local government pursuant to the agreement. The comptroller shall continue to withhold payments until the required amounts have been deposited in the interest and sinking fund with the custodian bank or with the paying agent. If the required amounts have not been deposited at the time interest on or principal of the obligation of the local government is required to be deposited pursuant to the agreement, the comptroller shall transmit, from payments withheld, the appropriate amount to the custodian bank or to the paying agent, as directed by the board.

(d) The board shall cause a copy of any notice given pursuant to this section to be promptly given to the local government.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.095. RIGHT TO PLEDGE PAYMENTS. (a) The local government may pledge payments to secure any obligation only if the amount of payments received by the local government in the fiscal year of the state preceding the proposed issuance equals or exceeds the amount required in each year to pay the sum of an amount equal to two times (i) the maximum annual principal and interest requirements for the obligation, and (ii) the maximum annual principal and interest requirements on any additional obligation for which payments have been pledged. The local government shall provide evidence that these requirements are met.

(b) A pledge of payments pursuant to this subchapter is a first priority for application of payments and the comptroller shall apply

such payments as provided by this subchapter prior to applying such payments pursuant to any other authorization to withhold or intercept such payments.

(c) While obligations which are the subject of an agreement remain outstanding, the local government may not repeal the sales tax or reduce the rate of the sales tax below the rate that would provide the amount required by Subsection (a), except as provided by this subsection. If at an election duly held in accordance with law a majority of the qualified voters approve the repeal of the sales tax, the local government shall, at the earliest practicable time, refund or defease the obligations, and after such defeasance or refunding the repeal shall become effective in accordance with law. If the qualified voters vote to reduce the rate of the sales tax, if such is provided for by law, below that which is required to provide the amount required by Subsection (a), the local government shall, at the earliest practicable time, refund or defease the obligations, and after such defeasance or refunding the reduction in rate shall become effective in accordance with law.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.096. ADMINISTRATION, RULES, FEES. The board shall administer the implementation of this subchapter and may adopt rules and set fees necessary for its administration.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

#### SUBCHAPTER F. COOPERATIVE PURCHASING PROGRAM

Sec. 271.101. DEFINITIONS. In this subchapter:

(1) "Local cooperative organization" means an organization of governments established to provide local governments access to contracts with vendors for the purchase of materials, supplies,

services, or equipment.

(2) "Local government" means a county, municipality, special district, school district, junior college district, regional planning commission, or other political subdivision of the state.

Added by Acts 1995, 74th Leg., ch. 746, Sec. 7, eff. Aug. 28, 1995.

Sec. 271.102. COOPERATIVE PURCHASING PROGRAM PARTICIPATION.

(a) A local government may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state.

(b) A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative organization stating that the signing local government will:

(1) designate a person to act under the direction of, and on behalf of, that local government in all matters relating to the program;

(2) make payments to another participating local government or a local cooperative organization or directly to a vendor under a contract made under this subchapter, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and

(3) be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

(c) A local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

Added by Acts 1995, 74th Leg., ch. 746, Sec. 7, eff. Aug. 28, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 261 (S.B. 1281), Sec. 1, eff. May 29, 2015.

#### SUBCHAPTER G. PURCHASES FROM FEDERAL SCHEDULE SOURCES OF SUPPLY

Sec. 271.103. FEDERAL SUPPLY SCHEDULE SOURCES. (a) A local government may purchase goods or services available under Federal supply schedules of the United States General Services Administration to the extent permitted by federal law.

(b) A local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

Added by Acts 1997, 75th Leg., ch. 826, Sec. 2, eff. June 18, 1997.

#### SUBCHAPTER I. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN

##### CONTRACTS WITH LOCAL GOVERNMENTAL ENTITIES

Sec. 271.151. DEFINITIONS. In this subchapter:

(1) "Adjudication" of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court and includes the bringing of an authorized arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the contract subject to this subchapter for the arbitration proceedings.

(2) "Contract subject to this subchapter" means:

(A) a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity; or

(B) a written contract, including a right of first refusal, regarding the sale or delivery of not less than 1,000 acre-feet of reclaimed water by a local governmental entity intended for industrial use.

(3) "Local governmental entity" means a political subdivision of this state, other than a county or a unit of state government, as that term is defined by Section [2260.001](#), Government Code, including a:

(A) municipality;

(B) public school district and junior college district; and

(C) special-purpose district or authority, including any levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, emergency service organization, and river authority.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. [2039](#)), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1138 (H.B. [3511](#)), Sec. 2, eff. June 14, 2013.

Sec. 271.152. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN CLAIMS. A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract

subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.153. LIMITATIONS ON ADJUDICATION AWARDS. (a) Except as provided by Subsection (c), the total amount of money awarded in an adjudication brought against a local governmental entity for breach of a contract subject to this subchapter is limited to the following:

(1) the balance due and owed by the local governmental entity under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;

(2) the amount owed for change orders or additional work the contractor is directed to perform by a local governmental entity in connection with the contract;

(3) reasonable and necessary attorney's fees that are equitable and just; and

(4) interest as allowed by law, including interest as calculated under Chapter 2251, Government Code.

(b) Damages awarded in an adjudication brought against a local governmental entity arising under a contract subject to this subchapter may not include:

(1) consequential damages, except as expressly allowed under Subsection (a)(1);

(2) exemplary damages; or

(3) damages for unabsorbed home office overhead.

(c) Actual damages, specific performance, or injunctive relief may be granted in an adjudication brought against a local governmental

entity for breach of a contract described by Section [271.151](#)(2)  
(B).

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. [2039](#)), Sec. 1, eff.  
September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. [987](#)), Sec. 8, eff.  
June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 226 (H.B. [345](#)), Sec. 1, eff.  
September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1138 (H.B. [3511](#)), Sec. 3, eff.  
June 14, 2013.

Sec. 271.154. CONTRACTUAL ADJUDICATION PROCEDURES ENFORCEABLE.  
Adjudication procedures, including requirements for serving notices or  
engaging in alternative dispute resolution proceedings before bringing  
a suit or an arbitration proceeding, that are stated in the contract  
subject to this subchapter or that are established by the local  
governmental entity and expressly incorporated into the contract or  
incorporated by reference are enforceable except to the extent those  
procedures conflict with the terms of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. [2039](#)), Sec. 1, eff.  
September 1, 2005.

Sec. 271.155. NO WAIVER OF OTHER DEFENSES. This subchapter  
does not waive a defense or a limitation on damages available to a  
party to a contract, other than a bar against suit based on sovereign  
immunity.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. [2039](#)), Sec. 1, eff.  
September 1, 2005.

Sec. 271.156. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL COURT. This subchapter does not waive sovereign immunity to suit in federal court.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.157. NO WAIVER OF IMMUNITY TO SUIT FOR TORT LIABILITY. This subchapter does not waive sovereign immunity to suit for a cause of action for a negligent or intentional tort.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.158. NO GRANT OF IMMUNITY TO SUIT. Nothing in this subchapter shall constitute a grant of immunity to suit to a local governmental entity.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.160. JOINT ENTERPRISE. A contract entered into by a local government entity is not a joint enterprise for liability purposes.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

SUBCHAPTER J. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS

Sec. 271.181. DEFINITIONS. In this subchapter:

Without reference to the amendment of this subdivision, this subchapter was repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011

(2) "Civil works project" means:

(A) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, navigation channels, dredge material placement areas, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B) and that are primarily civil engineering construction projects.

(6) "Local governmental entity" means a municipality, a county, a river authority, a defense base development authority established under Chapter 379B, a board of trustees under Chapter 54, Transportation Code, a municipally owned water utility with a separate governing board appointed by the governing body of a municipality, or any other special district or authority authorized by law to enter into a public works contract for a civil works project. The term does not include a regional tollway authority created under Chapter 366, Transportation Code, a regional mobility authority created under Chapter 370, Transportation Code, or a water district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, with a population of less than 50,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 21, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011.

Without reference to the amendment of this section, this subchapter was repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3) effective September 1, 2011

Sec. 271.182. APPLICABILITY. (a) This subchapter applies to:

(1) a local governmental entity with a population of more than 100,000 within its geographic boundaries or service area;

(2) a board of trustees under Chapter 54, Transportation Code; and

(3) a municipally owned combined electric, water, and wastewater utility situated in an economically distressed area and located within 30 miles of the Lower Texas Gulf Coast.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 2, eff. June 17, 2011

(b) For purposes of Subsection (a), "combined" means that the utilities are managed and controlled by one board whose members are

appointed by the governing body of the municipality and that the financing of capital improvements is secured from the revenue of all three utilities.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 22, eff. September 1, 2011

(b) For purposes of Subsection (a)(3), "combined" means that the utilities are managed and controlled by one board whose members are appointed by the governing body of the municipality and that the financing of capital improvements is secured from the revenue of all three utilities.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 135 (S.B. 1047), Sec. 1, eff. May 23, 2009.

Acts 2009, 81st Leg., R.S., Ch. 725 (S.B. 229), Sec. 1, eff. June 19, 2009.

Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 22, eff. September 1, 2011.

Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011.

Without reference to the amendment of this section, this subchapter

was repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3) effective September 1, 2011

Sec. 271.186. LIMITATION ON NUMBER OF PROJECTS.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 3

(a) During the first four years that this subchapter applies to a local governmental entity under Section 271.182:

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than three projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 or a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than two projects in any fiscal year; and

(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into a contract for not more than one civil works project in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 285  
(H.B. 1694), Sec. 23

(a) During the first four years that this subchapter applies to a local governmental entity under Section 271.182:

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than three projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 and a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than two projects in any fiscal year; and

(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into a contract for not more than one civil works project in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 1027  
(H.B. 2770), Sec. 3

(b) After the period described by Subsection (a):

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 or a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than four projects in any fiscal year; and

(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 285  
(H.B. 1694), Sec. 23

(b) After the period described by Subsection (a):

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 and a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than four projects in any fiscal year; and

(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 23, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011.

#### SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 271.901. PROCEDURE FOR AWARDING CONTRACT IF MUNICIPALITY OR DISTRICT RECEIVES IDENTICAL BIDS. (a) If a municipality or district is required to accept bids on a contract and receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, the governing body of the municipality or district shall enter into a contract with only one of those bidders and must reject all other bids.

(b) If only one of the bidders submitting identical bids is a resident of the municipality or district, the municipality or district must select that bidder. If two or more of the bidders submitting identical bids are residents of the municipality or district, the municipality or district must select one of those bidders by the casting of lots. In all other cases, the municipality or district must select from the identical bids by the casting of lots.

(c) The casting of lots must be in a manner prescribed by the mayor of the municipality or the governing body of the district and must be conducted in the presence of the governing body of the municipality or district. All qualified bidders or their legal representatives may be present at the casting of lots.

(d) This section does not prohibit a municipality or district from rejecting all bids.

(e) This section applies to all municipalities and districts required by general or special law or by municipal ordinance or charter to accept bids and award contracts on the basis of the lowest and best bid, but does not apply to bidding for contracts to act as a depository for public funds or as a depository for school funds under

Subchapter G, Chapter 45, Education Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 62(a), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 165, Sec. 6.71, eff. Sept. 1, 1997.

Sec. 271.902. PROHIBITION OF CONFLICT OF INTEREST IN PURCHASE BY MUNICIPALITY OR COUNTY FROM COOPERATIVE ASSOCIATIONS. If a member of the governing body or an appointed board or commission of a municipality or county belongs to a cooperative association, the municipality or county may purchase equipment or supplies from the association only if no member of the governing body, board, or commission will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.903. COMMITMENT OF CURRENT REVENUE. (a) If a contract for the acquisition, including lease, of real or personal property retains to the governing body of a local government the continuing right to terminate at the expiration of each budget period of the local government during the term of the contract, is conditioned on a best efforts attempt by the governing body to obtain and appropriate funds for payment of the contract, or contains both the continuing right to terminate and the best efforts conditions, the contract is a commitment of the local government's current revenues only.

(b) In this section, "local government" means a municipality, county, school district, special purpose district or authority, or other political subdivision of this state.

Added by Acts 1993, 73rd Leg., ch. 104, Sec. 2, eff. May 7, 1993.

Sec. 271.904. ENGINEERING OR ARCHITECTURAL SERVICES CONTRACTS: INDEMNIFICATION LIMITATIONS; DUTIES OF ENGINEER OR ARCHITECT. (a) A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the governmental agency against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

(b) Except as provided by Subsection (c), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, the agency's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the governmental agency exercises control. A covenant or promise may provide for the reimbursement of a governmental agency's reasonable attorney's fees in proportion to the engineer's or architect's liability.

(c) Notwithstanding Subsection (b), a governmental agency may require in a contract for engineering or architectural services to which the governmental agency is a party that the engineer or architect name the governmental agency as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

(d) A contract for engineering or architectural services to

which a governmental agency is a party must require a licensed engineer or registered architect to perform services:

(1) with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and

(2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

(e) In a contract for engineering or architectural services to which a governmental agency is a party, a provision establishing a different standard of care than a standard described by Subsection (d) is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described by Subsection (d) applies.

(f) In this section, "governmental agency" has the meaning assigned by Section [271.003](#).

Added by Acts 1995, 74th Leg., ch. 746, Sec. 8, eff. Aug. 28, 1995.  
Amended by Acts 2001, 77th Leg., ch. 351, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. [1886](#)), Sec. 8, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 757 (H.B. [2049](#)), Sec. 1, eff. September 1, 2015.

Sec. 271.905. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS. (a) In this section, "local government" means a municipality, a county, or another political subdivision authorized under this title to purchase real property or personal property that is not affixed to real property. The term does not include a school district.

(b) In purchasing under this title any real property or personal property that is not affixed to real property, if a local government receives one or more bids from a bidder whose principal place of business is in the local government and whose bid is within three percent of the lowest bid price received by the local government from a bidder who is not a resident of the local government, the local government may enter into a contract with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government.

(c) This section does not prohibit a local government from rejecting all bids.

Added by Acts 1999, 76th Leg., ch. 996, Sec. 1, eff. Aug. 30, 1999.

Amended by Acts 2001, 77th Leg., ch. 480, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 513 (H.B. 1869), Sec. 1, eff. June 17, 2011.

Sec. 271.9051. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality that is authorized under this title to purchase real property or personal property that is not affixed to real property.

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a

bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for construction services in an amount of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.

(c) This section does not prohibit a municipality from rejecting all bids.

(d) This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

Added by Acts 2005, 79th Leg., Ch. 1205 (H.B. [664](#)), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 660 (H.B. [2082](#)), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. [987](#)), Sec. 9, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 513 (H.B. [1869](#)), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.12, eff. September 1, 2011.

Sec. 271.906. REVERSE AUCTION METHOD OF PURCHASING. (a) A local government, as defined by Section 271.081, may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, in purchasing goods and services in place of any other method of purchasing that would otherwise apply to the purchase.

(b) A local government that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the local government and fair to vendors.

Added by Acts 2001, 77th Leg., ch. 436, Sec. 6, eff. May 28, 2001.

Sec. 271.907. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS. (a) In this section, "governmental agency" has the meaning assigned by Section 271.003.

(b) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are defined by Section 386.001, Health and Safety Code.

(c) A governmental agency procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(d) The preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 20, eff. June 20, 2003.  
Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 14.02, eff.  
Jan. 11, 2004; Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 2, eff.  
Oct 20, 2003.

Sec. 271.908. LOCAL GOVERNMENT CONTRACTS WITH PRIVATE ENTITIES FOR CIVIL WORKS PROJECTS AND IMPROVEMENTS TO REAL PROPERTY. (a) In this section, "civil works project" and "local governmental entity" have the meanings assigned by Section [271.181](#).

(b) A local governmental entity may contract with a private entity to act as the local governmental entity's agent in the design, development, financing, maintenance, operation, or construction, including oversight and inspection, of:

- (1) a civil works project; or
- (2) an improvement to real property.

(c) A local governmental entity contracting under this section shall:

- (1) select the private entity based on the private entity's qualifications and experience; and
- (2) enter into a project development agreement with the private entity.

(d) The selected private entity shall comply with:

- (1) Chapters [1001](#) and [1051](#), Occupations Code;
- (2) all laws relating to procurement of professional services under Chapter [2254](#), Government Code; and
- (3) all laws relating to procurement under this chapter that apply to the local governmental entity that selected the private entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1024 (H.B. [2729](#)), Sec. 1,

eff. June 17, 2011.

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2254. PROFESSIONAL AND CONSULTING SERVICES

SUBCHAPTER A. PROFESSIONAL SERVICES

Sec. 2254.001. SHORT TITLE. This subchapter may be cited as the Professional Services Procurement Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.002. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means:

(A) a state agency or department;

(B) a district, authority, county, municipality, or other political subdivision of the state;

(C) a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project; or

(D) a publicly owned utility.

(2) "Professional services" means services:

(A) within the scope of the practice, as defined by state law, of:

(i) accounting;

(ii) architecture;

(iii) landscape architecture;

(iv) land surveying;

- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising; or
- (ix) professional nursing; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser; or
- (ix) a registered nurse.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 244, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1542, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, Sec. 8, eff. Sept. 1, 2001.

Sec. 2254.003. SELECTION OF PROVIDER; FEES. (a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

- (1) on the basis of demonstrated competence and qualifications to perform the services; and
- (2) for a fair and reasonable price.

(b) The professional fees under the contract may not exceed any maximum provided by law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 14, eff. September 1, 2007.

Sec. 2254.0031. INDEMNIFICATION. A state governmental entity may require a contractor selected under this subchapter to indemnify or hold harmless the state from claims and liabilities resulting from the negligent acts or omissions of the contractor or persons employed by the contractor. A state governmental entity may not require a contractor to indemnify or hold harmless the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.37, eff. Sept. 1, 1999.

Sec. 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR. (a) In procuring architectural, engineering, or land surveying services, a governmental entity shall:

(1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall:

(1) formally end negotiations with that provider;

(2) select the next most highly qualified provider; and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The entity shall continue the process described in Subsection (b) to

select and negotiate with providers until a contract is entered into.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 119, Sec. 1, eff. Sept. 1, 1997.

Sec. 2254.005. VOID CONTRACT. A contract entered into or an arrangement made in violation of this subchapter is void as against public policy.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.006. CONTRACT NOTIFICATION. A state agency, including an institution of higher education as defined by Section [61.003](#), Education Code, shall provide written notice to the Legislative Budget Board of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the agency enters into the contract.

Added by Acts 1999, 76th Leg., ch. 281, Sec. 13, eff. Sept. 1, 1999.

Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This subchapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date a contract is awarded.

(b) This section does not apply to the enforcement of a contract entered into by a state agency as that term is defined by Section [2151.002](#). In this subsection, "state agency" includes the Texas Building and Procurement Commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. [1886](#)), Sec. 13, eff. September 1, 2007.

#### SUBCHAPTER B. CONSULTING SERVICES

Sec. 2254.021. DEFINITIONS. In this subchapter:

(1) "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

(2) "Major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(3) "Consultant" means a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

(4) "Political subdivision" means:

(A) a county;

(B) an incorporated or unincorporated municipality;

(C) a public junior college;

(D) a public school district or other educational or rehabilitative district;

(E) a metropolitan or regional transit authority;

(F) an airport authority;

(G) a river authority or compact;

(H) a regional planning commission, a council of governments, or a similar regional planning agency created under Chapter 391, Local Government Code;

(I) the Edwards Aquifer Authority or a district governed by Title 4, Water Code;

(J) a soil and water conservation district;

(K) a county or municipal improvement district;

(L) a county road or road utility district;

(M) a county housing authority;

(N) an emergency services or communications district;

(O) a fire prevention district;

(P) a public health or hospital authority or district;

(Q) a mosquito control district;

(R) a special waste district;

(S) a rural rail transportation district; or

(T) any other local government or special district of this state.

(5) "State agency" has the meaning assigned by Section 2151.002.

(6) "State governmental entity" means a state department, commission, board, office, institution, facility, or other agency the jurisdiction of which is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education, other than a public junior college, as defined by Section 61.003, Education Code. The term does not include a political subdivision.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.44(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(11), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1035, Sec. 3, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1266, Sec. 1.02, eff. June 20, 2003.

Sec. 2254.022. INTERPRETATION OF SUBCHAPTER. (a) This subchapter shall be interpreted to ensure:

(1) the greatest and fairest competition in the selection by state agencies of consultants; and

(2) the giving of notice to all potential consultants of the need for and opportunity to provide consulting services.

(b) This subchapter does not:

(1) discourage state agencies from using consultants if the agencies reasonably foresee that the use of consultants will produce a more efficient and less costly operation or project;

(2) prohibit the making of a sole-source contract for consulting services if a proposal is not received from a competent, knowledgeable, and qualified consultant at a reasonable fee, after compliance with this subchapter; or

(3) require or prohibit the use of competitive bidding procedures to

purchase consulting services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 4, eff. June 19, 1997.

Sec. 2254.023. APPLICABILITY OF SUBCHAPTER. This subchapter applies to consulting services that a state agency acquires with money:

- (1) appropriated by the legislature;
- (2) derived from the exercise of the statutory duties of a state agency; or
- (3) received from the federal government, unless a federal law or regulation conflicts with the application of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.024. EXEMPTIONS. (a) This subchapter does not apply to or discourage the use of consulting services provided by:

- (1) practitioners of professional services described in Subchapter A;
- (2) private legal counsel;
- (3) investment counselors;
- (4) actuaries;
- (5) medical or dental services providers; or

(6) other consultants whose services are determined by the governing board of a retirement system trust fund to be necessary for the governing board to perform its constitutional fiduciary duties, except that the governing board shall comply with Section [2254.030](#).

(b) If the governor and comptroller consider it more advantageous to the state to procure a particular consulting service under the procedures of Chapters 2155-2158, instead of under this subchapter, they may make a memorandum of understanding to that effect and each adopt the memorandum by rule. Procurement of a consulting service described in a memorandum of understanding under this subsection is subject only to Chapters 2155-2158.

(c) The comptroller by rule may define circumstances in which a state

agency may procure, without complying with this subchapter, certain consulting services that will cost less than a minimum amount established by the comptroller. The comptroller must determine that noncompliance in those circumstances is more cost-effective for the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(1), eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 3.14, eff. September 1, 2007.

Sec. 2254.025. EMERGENCY WAIVER. (a) The governor, after receipt of a request complying with this section, may grant a limited waiver of the provisions of this subchapter for a state agency that requires consulting services before compliance with this subchapter can be completed because of an unforeseen emergency.

(b) A state agency's request for a waiver must include information required by the governor, including:

- (1) information about the nature of the emergency;
- (2) the reason that the state agency did not foresee the emergency;
- (3) the name of the consultant with whom the agency intends to contract; and
- (4) the amount of the intended contract.

(c) As soon as possible after the governor grants a limited waiver, a state agency shall comply with this subchapter to the extent that the requirements of this subchapter are not superfluous or ineffective because of the waiver. The agency shall include with information filed with the secretary of state for publication in the Texas Register a detailed description of the emergency on which the request for waiver was predicated.

(d) The governor shall adopt rules to administer this section.

(e) In this section, "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a consultant. The term includes the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency

is not unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency.

(f) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 5, eff. June 19, 1997.

Sec. 2254.026. CONTRACT WITH CONSULTANT. A state agency may contract with a consultant only if:

(1) there is a substantial need for the consulting services; and

(2) the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 6, eff. June 19, 1997.

Sec. 2254.027. SELECTION OF CONSULTANT. In selecting a consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(2) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 7, eff. June 19, 1997.

Sec. 2254.028. NOTICE OF INTENT: MAJOR CONSULTING SERVICES CONTRACT.

(a) Before entering into a major consulting services contract, a state agency shall:

(1) notify the Legislative Budget Board and the governor's Budget and

Planning Office that the agency intends to contract with a consultant;

(2) give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Sections 2254.026 and 2254.027; and

(3) obtain a finding of fact from the governor's Budget and Planning Office that the consulting services are necessary.

(b) A major consulting services contract that a state agency enters into without first obtaining the finding required by Subsection (a)(3) is void.

(c) Subsection (a) does not apply to a major consulting services contract to be entered into by an institution of higher education other than a public junior college if the institution includes in the invitation published under Section 2254.029 a finding by the chief executive officer of the institution that the consulting services are necessary and an explanation of that finding.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 8, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 1266, Sec. 1.03, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.10, eff. June 17, 2011.

Sec. 2254.029. PUBLICATION IN TEXAS REGISTER BEFORE ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT. (a) Not later than the 30th day before the date it enters into a major consulting services contract, a state agency shall file with the secretary of state for publication in the Texas Register:

(1) an invitation for consultants to provide offers of consulting services;

(2) the name of the individual who should be contacted by a consultant that intends to make an offer;

(3) the closing date for the receipt of offers; and

(4) the procedure by which the state agency will award the contract.

(b) If the consulting services sought by a state agency relate to services previously provided by a consultant, the agency shall disclose that fact in the invitation required by Subsection (a). If the state agency intends

to award the contract for the consulting services to a consultant that previously provided the services, unless a better offer is received, the agency shall disclose its intention in the invitation required by Subsection (a).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 9, eff. June 19, 1997.

Sec. 2254.030. PUBLICATION IN TEXAS REGISTER AFTER ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT. Not later than the 20th day after the date of entering into a major consulting services contract, the contracting state agency shall file with the secretary of state for publication in the Texas Register:

- (1) a description of the activities that the consultant will conduct;
- (2) the name and business address of the consultant;
- (3) the total value and the beginning and ending dates of the contract; and
- (4) the dates on which documents, films, recordings, or reports that the consultant is required to present to the agency are due.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 10, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 1.30, eff. Sept. 1, 1999.

Sec. 2254.0301. CONTRACT NOTIFICATION. (a) A state agency shall provide written notice to the Legislative Budget Board of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the entity enters into the contract.

(b) This section does not apply to a university system or institution of higher education. In this subsection, "institution of higher education" and "university system" have the meanings assigned by Section [61.003](#), Education Code.

Added by Acts 1999, 76th Leg., ch. 281, Sec. 14, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.11, eff. June 17, 2011.

Sec. 2254.031. RENEWAL; AMENDMENT; EXTENSION. (a) A state agency that intends to renew a major consulting services contract shall:

(1) file with the secretary of state for publication in the Texas Register the information required by Section 2254.030 not later than the 20th day after the date the contract is renewed if the renewal contract is not a major consulting services contract; or

(2) comply with Sections 2254.028 and 2254.029 if the renewal contract is a major consulting services contract.

(b) A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(c) A state agency that intends to amend or extend a major consulting services contract shall:

(1) not later than the 20th day after the date the contract is amended or extended, file the information required by Section 2254.030 with the secretary of state for publication in the Texas Register if the contract after the amendment or extension is not a major consulting services contract; or

(2) comply with Sections 2254.028 and 2254.029 if the contract after the amendment or extension is a major consulting services contract.

(d) A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 11, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 1.31, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1266, Sec. 1.04, eff. June 20, 2003.

Sec. 2254.032. CONFLICTS OF INTEREST. (a) An officer or employee of a state agency shall report to the chief executive of the agency, not later than the 10th day after the date on which a private consultant submits an offer to provide consulting services to the agency, any financial interest that:

(1) the officer or employee has in the private consultant who submitted the offer; or

(2) an individual who is related to the officer or employee within the second degree by consanguinity or affinity, as determined under Chapter 573, has in the private consultant who submitted the offer.

(b) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.033. RESTRICTION ON FORMER EMPLOYEES OF A STATE AGENCY. (a) An individual who offers to provide consulting services to a state agency and who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer shall disclose in the offer:

(1) the nature of the previous employment with the agency or the other agency;

(2) the date the employment was terminated; and

(3) the annual rate of compensation for the employment at the time of its termination.

(b) A state agency that accepts an offer from an individual described in Subsection (a) shall include in the information filed under Section 2254.030 a statement about the individual's previous employment and the nature of the employment.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.034. CONTRACT VOID. (a) A contract entered into in violation of Sections 2254.029 through 2254.031 is void.

(b) A contract entered into with a private consultant who did not comply

with Section 2254.033 is void.

(c) If a contract is void under this section:

(1) the comptroller may not draw a warrant or transmit money to satisfy an obligation under the contract; and

(2) a state agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury.

(d) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1467, Sec. 1.32, eff. June 19, 1999.

Sec. 2254.035. DIVIDING CONTRACTS. (a) A state agency may not divide a consulting services contract into more than one contract to avoid the requirements of this subchapter.

(b) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.036. ARCHIVES. (a) On request, a state agency shall, after the agency's contract with a consultant has ended, supply the Legislative Budget Board and the governor's Budget and Planning Office with copies of all documents, films, recordings, or reports compiled by the consultant under the contract.

(b) Copies of all documents, films, recordings, or reports compiled by the consultant shall be filed with the Texas State Library and shall be retained by the library for at least five years.

(c) The Texas State Library shall list each document, film, recording, and report given to it under Subsection (b) and shall file the list at the end of each calendar quarter with the secretary of state for publication in the Texas Register.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 12, eff. June 19, 1997.

Sec. 2254.037. REPORTS. As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall report to the Legislative Budget Board and the governor's Budget and Planning Office on any actions taken in response to the recommendations of any consultant with whom the state agency contracts during the previous biennium.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 13, eff. June 19, 1997.

Sec. 2254.038. MIXED CONTRACTS. This subchapter applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.039. COMPTROLLER'S RULES. (a) The comptroller shall adopt rules to implement and administer this subchapter. The comptroller's rules may not conflict with or cover a matter on which this subchapter authorizes the governor to adopt rules.

(b) The comptroller shall give proposed rules to the governor for review and comment before adopting the rules.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 3.15, eff. September 1, 2007.

Sec. 2254.040. PROCUREMENT BY COMPTROLLER. (a) The comptroller may, on request of a state agency, procure for the agency consulting services that are covered by this subchapter.

(b) The comptroller may require reimbursement for the costs it incurs in procuring the services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 16, eff. June 18, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.75, eff. September 1, 2007.

Sec. 2254.041. DISTRIBUTION OF CONSULTANT REPORTS. (a) A consulting services contract must include provisions that allow the state agency contracting with the consultant and any other state agency and the legislature, at the contracting state agency's discretion, to distribute the consultant report, if any, and to post the report on the agency's Internet website or the website of a standing committee of the legislature.

(b) This section does not affect the application of Chapter 552 to a consultant's report.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1151 (S.B. 176), Sec. 1, eff. June 14, 2013.

#### SUBCHAPTER C. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES

Sec. 2254.101. DEFINITIONS. In this subchapter:

(1) "Contingent fee" means that part of a fee for legal services, under a contingent fee contract, the amount or payment of which is contingent on the outcome of the matter for which the services were obtained.

(2) "Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

(3) "State governmental entity":

(A) means the state or a board, commission, department, office, or other agency in the executive branch of state government created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(B) includes the state when a state officer is bringing a *parens patriae* proceeding in the name of the state; and

(C) does not include a state agency or state officer acting as a receiver, special deputy receiver, liquidator, or liquidating agent in connection with the administration of the assets of an insolvent entity under Article 21.28, Insurance Code, or Chapter 36, 66, 96, or 126, Finance Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.102. APPLICABILITY. (a) This subchapter applies only to a contingent fee contract for legal services entered into by a state governmental entity.

(b) The legislature by this subchapter is providing, in accordance with Section 44, Article III, Texas Constitution, for the manner in which and the situations under which a state governmental entity may compensate a public contractor under a contingent fee contract for legal services.

(c) This subchapter does not apply to a contract:

(1) with a state agency to collect an obligation under Section 2107.003(b), (c), or (c-1); or

(2) for legal services entered into by an institution of higher education under Section 153.006, Education Code.

(d) This subchapter does not apply to a contract for legal services entered into by the Teacher Retirement System of Texas if the services are paid for from money that is not appropriated from the general revenue fund, including funds of a trust administered by the retirement system.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 1266, Sec. 1.13, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 31, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1386 (S.B. 1615), Sec. 3, eff. September 1, 2007.

Sec. 2254.103. CONTRACT APPROVAL; SIGNATURE. (a) A state governmental entity that has authority to enter into a contract for legal services in its own name may enter into a contingent fee contract for legal services only if:

(1) the governing body of the state governmental entity approves the contract and the approved contract is signed by the presiding officer of the governing body; or

(2) for an entity that is not governed by a multimember governing body, the elected or appointed officer who governs the entity approves and signs the contract.

(b) The attorney general may enter into a contingent fee contract for legal services in the name of the state in relation to a matter that has been referred to the attorney general under law by another state governmental entity only if the other state governmental entity approves and signs the contract in accordance with Subsection (a).

(c) A state governmental entity, including the state, may enter into a contingent fee contract for legal services that is not described by Subsection (a) or (b) only if the governor approves and signs the contract.

(d) Before approving the contract, the governing body, elected or appointed officer, or governor, as appropriate, must find that:

(1) there is a substantial need for the legal services;

(2) the legal services cannot be adequately performed by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel of another state governmental entity; and

(3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

(e) Before entering into a contingent fee contract for legal services in which the estimated amount that may be recovered exceeds \$100,000, a state governmental entity that proposes to enter into the contract in its own name or in the name of the state must also notify the Legislative Budget Board that the entity proposes to enter into the contract, send the board copies of the proposed contract, and send the board information demonstrating that the

conditions required by Subsection (d)(3) exist. If the state governmental entity finds under Subsection (d)(3) that the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract for the legal services providing only for the payment of hourly fees, the state governmental entity may not enter into the proposed contract in its own name or in the name of the state unless the Legislative Budget Board finds that the state governmental entity's finding with regard to available appropriated funds is correct.

(f) A contingent fee contract for legal services that is subject to Subsection (e) and requires a finding by the Legislative Budget Board is void unless the board has made the finding required by Subsection (e).

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.104. TIME AND EXPENSE RECORDS REQUIRED; FINAL STATEMENT. (a) The contract must require that the contracting attorney or law firm keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract.

(b) The contracting attorney or law firm shall permit the governing body or governing officer of the state governmental entity, the attorney general, and the state auditor each to inspect or obtain copies of the time and expense records at any time on request.

(c) On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the contracting state governmental entity with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the contracting attorney's or law firm's computation of the amount of the contingent fee, and contains the final complete time and expense records required by Subsection (a). The complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure.

(d) This subsection does not apply to the complete written statement required by Subsection (c). All time and expense records required under this section are public information subject to required public disclosure under Chapter 552. Information in the records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements

of Section 552.103, the chief legal officer or employee of the state governmental entity determines that withholding the information is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure under this subsection shall be segregated from information that is subject to required public disclosure.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.105. CERTAIN GENERAL CONTRACT REQUIREMENTS. The contract must:

(1) provide for the method by which the contingent fee is computed;

(2) state the differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed;

(3) state how litigation and other expenses will be paid and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, state whether the amount recovered for purposes of the contingent fee computation is considered to be the amount obtained before or after expenses are deducted;

(4) state that any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with this subchapter; and

(5) state that the amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with this subchapter.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.106. CONTRACT REQUIREMENTS: COMPUTATION OF CONTINGENT FEE; REIMBURSEMENT OF EXPENSES. (a) The contract must establish the reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work. The contract may establish

the reasonable hourly rate for one or more persons by name and may establish a rate schedule for work performed by unnamed persons. The highest hourly rate for a named person or under a rate schedule may not exceed \$1,000 an hour. This subsection applies to subcontracted work performed by an attorney, law clerk, or paralegal who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm as well as to work performed by a contracting attorney or by a partner, shareholder, or employee of a contracting attorney or law firm.

(b) The contract must establish a base fee to be computed as follows. For each attorney, law clerk, or paralegal who is a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, multiply the number of hours the attorney, law clerk, or paralegal works in providing legal or support services under the contract times the reasonable hourly rate for the work performed by that attorney, law clerk, or paralegal. Add the resulting amounts to obtain the base fee. The computation of the base fee may not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(c) Subject to Subsection (d), the contingent fee is computed by multiplying the base fee by a multiplier. The contract must establish a reasonable multiplier based on any expected difficulties in performing the contract, the amount of expenses expected to be risked by the contractor, the expected risk of no recovery, and any expected long delay in recovery. The multiplier may not exceed four without prior approval by the legislature.

(d) In addition to establishing the method of computing the fee under Subsections (a), (b), and (c), the contract must limit the amount of the contingent fee to a stated percentage of the amount recovered. The contract may state different percentage limitations for different ranges of possible recoveries and different percentage limitations in the event the matter is settled, tried, or tried and appealed. The percentage limitation may not exceed 35 percent without prior approval by the legislature. The contract must state that the amount of the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed under Subsections (a), (b), and (c).

(e) The contract also may:

- (1) limit the amount of expenses that may be reimbursed; and
- (2) provide that the amount or payment of only part of the fee is

contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter.

(f) Except as provided by Section [2254.107](#), this section does not apply to a contingent fee contract for legal services:

(1) in which the expected amount to be recovered and the actual amount recovered do not exceed \$100,000; or

(2) under which a series of recoveries is contemplated and the amount of each individual recovery is not expected to and does not exceed \$100,000.

(g) This section applies to a contract described by Subsection (f) for each individual recovery under the contract that actually exceeds \$100,000, and the contract must provide for computing the fee in accordance with this section for each individual recovery that actually exceeds \$100,000.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.107. MIXED HOURLY AND CONTINGENT FEE CONTRACTS; REIMBURSEMENT FOR SUBCONTRACTED WORK. (a) This section applies only to a contingent fee contract:

(1) under which the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter; or

(2) under which reimbursable expenses are incurred for subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(b) Sections [2254.106](#)(a) and (e) apply to the contract without regard to the expected or actual amount of recovery under the contract.

(c) The limitations prescribed by Section [2254.106](#) on the amount of the contingent fee apply to the entire amount of the fee under the contingent fee contract, including the part of the fee the amount and payment of which is not contingent on the outcome of the matter.

(d) The limitations prescribed by Section [2254.108](#) on payment of the fee apply only to payment of the contingent portion of the fee.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.108. FEE PAYMENT AND EXPENSE REIMBURSEMENT. (a) Except as provided by Subsection (b), a contingent fee and a reimbursement of an expense under a contract with a state governmental entity is payable only from funds the legislature specifically appropriates to pay the fee or reimburse the expense. An appropriation to pay the fee or reimburse the expense must specifically describe the individual contract, or the class of contracts classified by subject matter, on account of which the fee is payable or expense is reimbursable. A general reference to contingent fee contracts for legal services or to contracts subject to this subchapter or a similar general description is not a sufficient description for purposes of this subsection.

(b) If the legislature has not specifically appropriated funds for paying the fee or reimbursing the expense, a state governmental entity may pay the fee or reimburse the expense from other available funds only if:

(1) the legislature is not in session; and

(2) the Legislative Budget Board gives its prior approval for that payment or reimbursement under Section 69, Article XVI, Texas Constitution, after examining the statement required under Section 2254.104(c) and determining that the requested payment and the contract under which payment is requested meet all the requirements of this subchapter.

(c) A payment or reimbursement under the contract may not be made until:

(1) final and unappealable arrangements have been made for depositing all recovered funds to the credit of the appropriate fund or account in the state treasury; and

(2) the state governmental entity and the state auditor have received from the contracting attorney or law firm the statement required under Section 2254.104(c).

(d) Litigation and other expenses payable under the contract, including expenses attributable to attorney, paralegal, accountant, expert, or other professional work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, may be reimbursed only if the state governmental entity and the state auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity, and paid for by the

contracting attorney or law firm. The contingent fee may not be paid until the state auditor has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the state governmental entity under the contract.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 2254.109. EFFECT ON OTHER LAW. (a) This subchapter does not limit the right of a state governmental entity to recover fees and expenses from opposing parties under other law.

(b) Compliance with this subchapter does not relieve a contracting attorney or law firm of an obligation or responsibility under other law, including under the Texas Disciplinary Rules of Professional Conduct.

(c) A state officer, employee, or governing body, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the state under this subchapter. This subchapter does not waive the state's sovereign immunity from suit or its immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

#### SUBCHAPTER D. OUTSIDE LEGAL SERVICES

Sec. 2254.151. DEFINITION. In this subchapter, "state agency" means a department, commission, board, authority, office, or other agency in the executive branch of state government created by the state constitution or a state statute.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.

Sec. 2254.152. APPLICABILITY. This subchapter does not apply to a contingent fee contract for legal services.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.

Sec. 2254.153. CONTRACTS FOR LEGAL SERVICES AUTHORIZED. Subject to Section [402.0212](#), a state agency may contract for outside legal services.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.

Sec. 2254.154. ATTORNEY GENERAL; COMPETITIVE PROCUREMENT. The attorney general may require state agencies to obtain outside legal services through a competitive procurement process, under conditions prescribed by the attorney general.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.



## **Council Agenda Item October 10, 2016**

### **10. ADMINISTRATIVE REPORTS**

- City Council Meeting, Monday, October 24, 2016

### **11. COUNCIL COMMENTS** regarding matters appearing on the agenda; recognition of communitymembers, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies. Councilmembers Clausen, J. Martin, K. Martin, Kaminski, Zemanek, Leonard, Engelken, Earp and Mayor Rigby

### **12. ADJOURN**

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