

H-GAC

Houston-Galveston Area Council

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Subrecipient Agreement - Fort Bend County - Transportation -

HOUSTON-GALVESTON AREA COUNCIL REGIONAL DWI TASK FORCE SUBCONTRACT INTERGOVERNMENTAL AGREEMENT

GENERAL TERMS AND CONDITIONS

Definitions: For purposes of these Terms and Conditions, the "Department" is also known as the "TXDoT" and the "prospective primary participant". The "Subgrantee" is also known as the "H-GAC" and "prospective lower tier participant". The Subcontractor is the local government entity contracted to perform the duties outlined in the scope of work of this agreement.

ARTICLE 1. COMPLIANCE WITH LAWS

The Subcontractor 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 Subcontractor shall furnish the H-GAC and/or the Texas Department of Transportation (Department) with satisfactory proof of compliance.

ARTICLE 2. STANDARD ASSURANCES

The Subcontractor assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 2 CFR, Part 200; and the TXDoT's Traffic Safety Program Manual, as they relate to the application, acceptance, and use of federal or state funds for this project. Also, the Subcontractor 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 contractors 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 H-GAC and TXDoT 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 H-GAC and TXDoT 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 Subcontractor 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 H-GAC and TXDoT 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 Subcontractor's governing board or the Subcontractor'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 Subcontractor'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 from 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 Subcontractor must provide written

notification to the H-GAC, 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 from 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 from the 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, Subcontractor is 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, Subcontractor is 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 H-GAC.
- 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 Subcontractor 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 to H-GAC electronically utilizing H-GAC approved form documents.
- G. The Subcontractor agrees to submit the final Request for Reimbursement under this agreement within thirty (30) 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 H-GAC determines that the project has demonstrated merit or has potential long-range benefits, the Subcontractor 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 H-GAC determines that there is insufficient funding to continue the project, the H-GAC shall notify the Subcontractor, 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 H-GAC determines that there is sufficient funding and performance to continue the project, the H-GAC may notify the Subcontractor to continue this agreement.

ARTICLE 5. AMENDMENTS

This agreement may be amended prior to its expiration by mutual written consent of both parties. 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 Subcontractor is of the opinion that any assigned work is beyond the scope of this agreement and constitutes additional work, the Subcontractor shall promptly notify the H-GAC in writing. If the H-GAC finds that such work does constitute additional work, the H-GAC shall advise the Subcontractor 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 Subcontractor has submitted work in accordance with the terms of this agreement but the H-GAC 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 Subcontractor shall make those revisions as requested and directed by the H-GAC. This will be considered as additional work and will be paid for as specified in this Article.
- C. If the Subcontractor submits work that does not comply with the terms of this agreement, the H-GAC shall instruct the Subcontractor 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 Subcontractor 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 H-GAC. No additional compensation shall be paid for this work.
- E. The H-GAC shall not be responsible for actions by the Subcontractor or any costs incurred by the Subcontractor 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 Subcontractor shall submit a performance report to the H-GAC. 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. Subcontractor shall submit a performance report within 30 days of project completion.
 2. For longer projects, the reporting period is monthly. Subcontractor 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. Subcontractor 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 Subcontractor shall promptly advise the H-GAC in writing, 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 Subcontractor 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 H-GAC 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 Subcontractor shall submit the Final Performance Report to the H-GAC within fifteen (15) days after completion of the grant.

ARTICLE 8. RECORDS

The Subcontractor 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 Subcontractor further agrees to retain the Records for seven (7) 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.

The records to be thus maintained and retained by the Subcontractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Subcontractor'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 Subcontractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for ' and any other third parties' charges.

Duly authorized representatives of the H-GAC, TXDoT, 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

Both parties to this agreement agree, being government entities, 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 Subcontractor shall be responsible for the settlement of all contractual and administrative issues arising out of procurement made by the Subcontractor in support of work under this agreement. Disputes concerning performance or payment shall be submitted to the H-GAC for settlement, with the Executive Director or his or her designee making the final decision.

ARTICLE 11. TERMINATION

A. This agreement shall remain in effect until the Subcontractor has satisfactorily completed all services and obligations described in this agreement and these have been accepted by the H-GAC, 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 H-GAC determines that the performance of the project is not in the best interest of the H-GAC and informs the Subcontractor that the project is terminated immediately.
- B. The H-GAC shall compensate the Subcontractor 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 H-GAC. The Subcontractor shall not incur nor be reimbursed for any new obligations after the effective date of termination.

ARTICLE 12. INSPECTION OF WORK

- A. The H-GAC, the TXDoT 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 Subcontractor or its Subcontractor, the Subcontractor 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 ,000 may not be executed by the Subcontractor without prior written concurrence by the H-GAC. Subcontracts in excess of ,000 shall contain all applicable terms and conditions of this agreement. No subcontract will relieve the Subcontractor of its responsibility under this agreement.

ARTICLE 15. GRATUITIES

- A. Texas Transportation Commission policy mandates that employees of the TXDoT shall not

accept any benefit, gift, or favor from any person doing business with or who, reasonably speaking, may do business with the TXDoT under this agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the TXDoT's Executive Director.

- B. Any person doing business with or who reasonably speaking may do business with the TXDoT under this agreement may not make any offer of benefits, gifts, or favors to TXDoT employees, except as mentioned here above. Failure on the part of the Subcontractor to adhere to this policy may result in termination of this agreement.

ARTICLE 16. NONCOLLUSION

The Subcontractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subcontractor, 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 Subcontractor breaches or violates this warranty, the H-GAC or the TXDoT 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 Subcontractor 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 H-GAC or the TXDoT. The Subcontractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the H-GAC's or the TXDoT's interests.

ARTICLE 18. SUBCONTRACTOR'S RESOURCES

- A. The Subcontractor 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 H-GAC.
- B. All employees of the Subcontractor shall have the knowledge and experience that will enable them to perform the duties assigned to them. Any employee of the Subcontractor who, in the opinion of the H-GAC, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.
- C. Unless otherwise specified, the Subcontractor shall furnish all equipment, materials, supplies, and other resources required to perform the work.

ARTICLE 19. PROCUREMENT AND PROPERTY MANAGEMENT

The Subcontractor shall establish and administer a system to procure, control, protect, preserve, use, maintain, and dispose of any property furnished to it by the H-GAC 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 TXDoT'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 Subcontractor, and equipment and supplies purchased with grant funds shall, at the option of the TXDoT, become the property of the TXDoT. All sketches, photographs, calculations, and other data prepared under this agreement shall be made available, upon request, to the TXDoT 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 TXDoT. The TXDoT 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 Subcontractor. Classes and materials initially developed by the Subcontractor without any type of funding or resource assistance from the H-GAC remain the Subcontractor's intellectual property. For these classes and materials, the H-GAC payment is limited to payment for attendance at classes.

ARTICLE 21. SUCCESSORS AND ASSIGNS

The H-GAC and the Subcontractor 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 Subcontractor shall not assign, sublet, or transfer interest and obligations in this agreement without written consent of the H-GAC.

ARTICLE 22. CIVIL RIGHTS COMPLIANCE

- A. Compliance with regulations: The Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor of the Subcontractor'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 Subcontractor 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 H-GAC, the TXDoT or the USDOT to be pertinent to ascertain compliance with the Regulations or directives. Where any information required of the Subcontractor is in the exclusive possession of another who fails or refuses to furnish this information, the Subcontractor shall certify that to the H-GAC, the TXDoT or the USDOT, whichever is appropriate, and shall set forth what efforts the Subcontractor has made to

obtain the requested information.

- E. Sanctions for noncompliance: In the event of the Subcontractor is noncompliant with the nondiscrimination provision of this agreement, the H-GAC, or the TXDoT shall impose such sanctions as it or the USDOT may determine to be appropriate.
- F. Incorporation of provisions: The Subcontractor 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 Subcontractor shall take any action with respect to any subcontract or procurement that the H-GAC may direct as a means of enforcing those provisions, including sanctions for noncompliance. However, in the event a Subcontractor becomes involved in, or is threatened with litigation with a Subcontractor or supplier as a result of such direction, the Subcontractor may request the H-GAC or the TXDoT to enter into litigation to protect the interests of the state; and in addition, the Subcontractor 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 Subcontractor shall adopt, in its totality, the TXDoT's federally approved DBE program.
- C. The Subcontractor shall set an appropriate DBE goal consistent with the TXDoT's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Subcontractor shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Subcontractor shall follow all other parts of the TXDoT'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 Subcontractor 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 Subcontractor 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 TXDoT'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 from the H-GAC to the Subcontractor of its failure to carry out its approved program, the TXDoT 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 Subcontractor 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 H-GAC, 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 H-GAC, 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 TXDoT, the H-GAC or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the H-GAC, the TXDoT 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 H-GAC, the TXDoT 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 H-GAC, the TXDoT 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 H-GAC, the TXDoT 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 H-GAC, the TXDoT 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 H-GAC, the TXDoT 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 H-GAC, the TXDoT 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 H-GAC, the TXDoT 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 ,000 and not more than ,000 for each such failure.

ARTICLE 26. CHILD SUPPORT CERTIFICATION

Under Section 231.006, Texas Family Code, the Subcontractor 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 Subcontractor 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 Subcontractor 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 ,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 ,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 ,000 or more are met during the Subcontractor's fiscal year, the Subcontractor 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
- C. If expenditures are less than ,000 during the Subcontractor's fiscal year, the Subcontractor must submit a statement to TxDOT's Audit Office as follows: "We did not meet the ,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 Subcontractor 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 Subcontractor 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. REPAYMENTS

The Subcontractor 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 32. 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 33. 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 34. INSURANCE

Subcontractor shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Scope of Work.

ARTICLE 35. CRIMINAL PROVISIONS & SANCTIONS

The Subcontractor agrees to perform the Agreement 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 any related state or federal agency. The Subcontractor agrees to promptly notify H-GAC of any actual or suspected fraud, abuse, or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Subcontractor shall 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 Subcontractor 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 Subcontractor 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.

The Subcontractor shall notify Sugrantee of the threat of lawsuit or of any actual suit filed against the Subcontractor pertaining to this Agreement or which would adversely affect the Subcontractor's ability to perform services under this Agreement.

ARTICLE 36. 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 37. ORDER OF PRIORITY

In the case of any conflict between or within this Agreement, the following order of priority shall be utilized: 1) General Provisions, 2) Scope of Work, 3) Budget and, 4) Other Attachments

ARTICLE 38. SIGNATURES

SIGNATURES:

H-GAC and the Subcontractor have read, agreed, and executed the whole Agreement as of the date first written above, as accepted by:

Subcontractor

Signature

Name Robert Hebert

Title

Date

H-GAC

Signature

Name Jack Steele

Title Executive Director

Date