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Final Document 9/24/2024

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

**AMENDED AND RESTATED INTERLOCAL ADVANCE REIMBURSEMENT AGREEMENT
BETWEEN WEST FORT BEND WATER AUTHORITY AND FORT BEND COUNTY**

THIS AMENDED AND RESTATED AGREEMENT is made and entered into by and between **Fort Bend County**, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and **West Fort Bend Water Authority** (hereinafter "Authority"), a political subdivision of the State of Texas under Subchapter A, Section 8878.002 of the Texas Special Districts Local Laws Code.

WHEREAS, since 2002, County has had an ongoing commitment to protecting water supplies and identifying possible water conservation and reuse alternatives in Fort Bend County;

WHEREAS, the Authority is a regional water authority created by the 79th Texas Legislature, in May 2015 primarily to facilitate compliance with the Fort Bend Subsidence District's groundwater reduction mandates by creating a viable single entity to acquire, develop and deliver a long term supply of potable surface water to the water users in the Authority's boundaries;

WHEREAS, this Agreement is entered into pursuant to the authority, under the provisions of, and in accordance with, Chapter 791 of the Texas Government Code, for the performance of governmental functions and services: specifically planning and developing strategies to avoid water supply shortfalls in Fort Bend County, a function in which the contracting parties are mutually interested;

WHEREAS, on December 15, 2015, the Parties entered into an Interlocal Advance Reimbursement Agreement (the "Original Agreement");

WHEREAS, the County has advanced pursuant to the Original Agreement funds to or on behalf of the Authority in the amount of \$340,000 for the purposes of funding its operational water supply planning and development activities (the "Original Advances"); and

WHEREAS, the Parties deem it to be in the best interest of both entities to enter into this Amended and Restated Interlocal Advance Reimbursement Agreement (the "Agreement") to amend and restate the Original Agreement in its entirety.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

09/26/2024 Original (e) sent to Ed Sturdivant, Auditor

02/05/2025 Original (e) received from Ed Sturdivant, Auditor

- I. Advance Funding and Reimbursement for Approved Activities
- A. In addition to the Original Advances, the County hereby agrees to promptly advance funds to or on behalf of the Authority an additional amount not to exceed three hundred and forty thousand dollars and 00/100 (\$340,000.00) for the purposes of funding the operational expenses of the Authority (the "New Advances").
- B. It is expressly understood and agreed that advance funding for operational expenses is necessary for the Authority to perform their statutory responsibilities of assisting western and southern areas of Fort Bend County to plan for, finance, and obtain long-term water supplies and enable the adoption and implementation of a groundwater reduction plan and that the funds shall only be used for this purpose.
- C. The funds advanced by the County shall be deposited into a special fund designated the "West Fort Bend Water Authority Fund" in the County Treasury, or its successor. Funds may only be disbursed from the special fund upon approval of the Commissioners Court.
- D. As of the date of this Agreement, the following requirements shall apply to all expenditures by the Authority:
1. The Authority shall utilize the County's Purchasing Agent for the purchase of all goods and services.
 2. To the extent allowed by law, all expenditures by the Authority shall comply with Section 262 of the Texas Local Government Code and the Fort Bend County Purchasing Manual, attached and incorporated at Exhibit A to this Agreement.
 3. All reimbursable travel by Authority members shall comply with the most recently adopted Fort Bend County Travel Policy, attached and incorporated as Exhibit A to this Agreement.
- E. The Authority will repay the County all sums advanced to or on behalf of the Authority pursuant to the Original Agreement and this Agreement, plus interest at the rate of 2% per annum. The source of repayment shall be from water well pumpage fees, water sale fees, and any other applicable fees charged by the Authority, as authorized by Texas Special Districts Local Laws Code Section 8878.103.
- F. Repayment of all funds advanced under the Original Agreement and this Agreement, plus interest must be received no later than thirty-six months (36) after the date the Authority is authorized to charge fees pursuant to Texas Special Districts Local Laws Code Section 8878.103.

G. Payment(s) shall be made payable to Fort Bend County and shall be delivered to the Fort Bend County Treasurer, P.O.Box 1202, Richmond, Texas 77406-1202.

H. The Authority shall respond to all requests for documentation from the County Auditor without delay to ensure that proper accounting records for deposits and expenditures are appropriately documented with County.

II. Term of Agreement

The term of this Agreement begins upon signature of both Parties and shall continue until the date (the "Termination Date") on which the Authority has fully reimbursed the County for all amounts advanced to the Authority and interest on such amounts in accordance with Section IE of this Agreement.

III. Relationship of Parties

It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the Authority and the County, or as creating or establishing the relationship by either party as agent, representative, or employee of the other party for any purpose, or in any manner, whatsoever.

IV. Notice to Parties

A. Any notice given hereunder by either party to the other shall be in writing and sent by certified mail, return receipt requested.

B. Notice to County shall be sent to:

Notice to Fort Bend County
Attn: County Judge
401 Jackson
Richmond, Texas 77469

Notice to West Fort Bend Water
Authority Allen Boone Humphries
Robinson LLP
Attn: David Oliver
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

C. Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

V. Benefit of Term, No Third-Party Rights

This Agreement is intended for the exclusive and sole benefit of the Authority and the County, and neither this Agreement nor any provision thereof shall be construed to confer or provide any benefit or right to any other person. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in Parties not signatories hereto.

VI. Severability Clause

If any provision of this Agreement or any application hereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby.

VII. Governing Law and Venue

This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. Venue for any legal actions arising out of this Agreement shall lie exclusively in Fort Bend County, Texas

VIII. Governmental Immunity

It is expressly understood and agreed that in the execution of this Agreement, the Parties hereto do not intend to waive, nor shall be deemed to waive, any immunity or defense at law or in equity, that would otherwise be available to each against claims arising in the exercise of governmental powers and functions including the defense of governmental immunity.

IX. Authorization

The undersigned officers and/or agents are properly authorized to execute this contract on behalf of the Parties hereto, and each hereby certifies to the other that any necessary resolution or order extending such authority have been duly passed and are now in full force and effect.

X. Interpretation

This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

XI. Amended and Restated Agreement

This Agreement amends, restates, supersedes and replaces in its entirety the Original Agreement as well as all prior amendments, modifications and supplements thereto.

XII. Multiple Counterparts

This Agreement may be simultaneously executed in several counterparts each of which shall be an original and all of which shall be considered fully executed as of the date when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and their respective seals to be hereunto affixed and attested, as of the date and year noted below.

FORT BEND COUNTY:



K.P. George, Fort Bend County Judge

Date: September 24, 2024

Approved by Commissioners Court on 9/24/24

Attest:

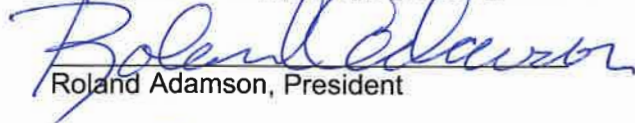


Laura Richard, Fort Bend County Clerk



Date: September 26, 2024

WEST FORT BEND WATER AUTHORITY:



Roland Adamson, President

Date: January 7, 2025

Attest:

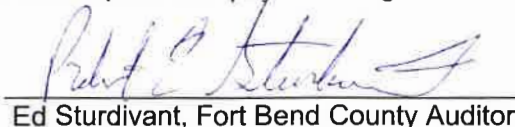


Jeff Haley, Secretary

Date: January 7, 2025

AUDITOR'S CERTIFICATE

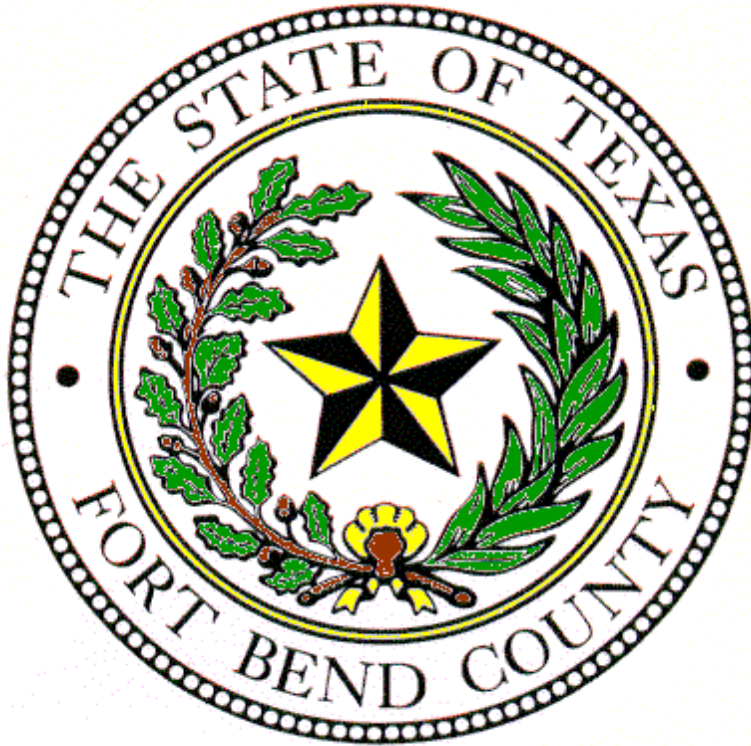
I hereby certify that funds are available from current revenues legally available in the amount of \$340,000.00 to accomplish and pay the obligation of Fort Bend County under this Interlocal Agreement.



Ed Sturdivant, Fort Bend County Auditor

Exhibit A:
Fort Bend County Purchasing Manual

FORT BEND COUNTY PURCHASING DEPARTMENT



PURCHASING MANUAL

Approved Commissioners Court: 27 SEPTEMBER 2011

Amended Commissioners Court: 02 June 2015–Effective 01 August 2015

Amended Commissioners Court: 28 July 2015 – Effective 01 August 2015

Amended Commissioners Court: 26 July 2016 – Effective 01 August 2016

Amended Commissioners Court: 28 March 2017 – Effective 01 April 2017

Amended Commissioners Court: 12 December 2017 – Effective 01 January 2018

Amended Commissioners Court: 07 August 2018 – Effective 08 August 2018

Amended Commissioners Court: 05 March 2019 – Effective 05 March 2019

Amended Commissioners Court: 06 July 2021 – Effective 06 July 2021

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FORWARD

THE COUNTY PURCHASING AGENT HAS A TWO-FOLD MISSION:

To work in concert with the County Auditor as part of the system of checks and balances to ensure the proper expenditure of taxpayer's dollars.

To develop policies and procedures to ensure the proper, prompt and responsive purchase of all supplies, materials, equipment, and services required or used, and to contract for all repairs to property used by the County or employees of the County, and to implement such policies and procedures in the operation of his or her office.

This manual explains the policies and procedures to be followed in the implementation of the duties of the County Purchasing Agent.

1.0 RELATIONSHIPS:

1.1 Relationship of the County Purchasing Agent and County Elected Officials and Department Heads:

1.1.1 The County Purchasing Agent directs the activities of the County Purchasing Department, a service organization representing the procurement requirements of each County Office/Department. To successfully represent the best interest of the County, it is essential to have a strong working relationship with all County Offices/Departments. The intent of this section is to guide and assist in identifying the responsibilities and obligations required in the procurement process.

1.1.2 Hereinafter, the following apply:

County Purchasing Department will be referred to as "Purchasing".
County Office/Departments will be referred to as "Office".
Fort Bend County, Texas will be referred to as "County".

1.2 Relationship with vendor's representative:

1.2.1 The buyer-seller relationship is one of mutuality. The responsibility of establishing and maintaining a professional relationship between the County and its suppliers lies with Purchasing. For this reason, it is imperative that Purchasing be made aware of all proposed transactions involving the County.

1.2.2 It is the responsibility of Purchasing to represent County Offices in the purchasing process. This includes the contact normally associated with sales calls. By observing the policies and procedures outlined in this manual the time of both the County and its suppliers will be maximized.

1.2.3 The relationship between the Purchasing and vendor representatives will be as follows:

1.2.3.1 Representatives of vendors will be received by Purchasing promptly and courteously with scheduled appointment.

1.2.3.2 All correspondence with suppliers will originate in Purchasing. Should an Office find it necessary to correspond with a vendor for any reason, a copy of the correspondence should be sent to Purchasing.

1.2.3.3 All Offices must keep themselves free from the image of conflict of interest by not accepting favors, gifts or entertainment offered by any supplier of the County.

2.0 RESPONSIBILITIES:

2.1 PURCHASING AGENT: The County Purchasing Agent is responsible for:

- 2.1.1 Assisting all Offices in meeting their needs for operating equipment, supplies, materials, and services.
- 2.1.2 Acquainting with, and endeavoring to know, the needs of all the Offices of the County.
- 2.1.3 Securing products that meet the requirements of the Office at the lowest and best price to the County.
- 2.1.4 Knowing the sources and availability of needed products.
- 2.2 **REQUISITIONER:** The Requisitioner is responsible for:
 - 2.2.1 Allowing Purchasing sufficient time to shop each requisition submitted, select the vendor, place the order and allow the vendor to make delivery.
 - 2.2.2 Preparing detailed specifications.
 - 2.2.3 Supplying in advance, as requested, a list of anticipated purchases.
 - 2.2.4 Notifying Purchasing of any abnormal or unusual demands.
 - 2.2.5 Under no circumstances, obligating the County.
 - 2.2.6 Participating in avoiding illegal purchases.
 - 2.2.7 Providing Purchasing with a complete, clear, concise description of the item(s) or service(s) requested to ensure each requisitioner receives proper item(s) or service(s).

3.0 THE PURCHASING POLICY:

- 3.1 The County Purchasing Agent shall purchase all supplies, materials and equipment required or used, and contract for all repairs to property used, by the County or a subdivision, officer, or employee of the County, except purchases and contracts required by law to be made on competitive solicitation. A person other than the County Purchasing Agent may not make the purchase of the supplies, materials or equipment or make the contract for repairs (§262.011(d) Texas Local Government Code).
- 3.2 The County Purchasing Agent shall supervise all purchases made on competitive solicitation and shall see to it that all purchased supplies, materials, and equipment are delivered to the proper county officer or department in accordance with the purchase contract (§262.011(e) Texas Local Government Code).
- 3.3 A purchase made by the County Purchasing Agent shall be paid for by an electronic transfer, check, or warrant drawn by the County Auditor on funds in the county treasury in the manner provided by law. The County Auditor may not draw and the County Treasurer may not honor a warrant for a purchase unless the purchase is made by the County Purchasing Agent or on competitive solicitation as provided by law (§262.011(f) Texas Local Government Code).

- 3.4 All purchases will be of a quality suitable for the purpose intended at the best value possible to the County.
- 3.5 All purchases require the use of a requisition from the requesting Office.
- 3.6 Purchase Orders will be prepared and issued only by the County Purchasing Agent.
- 3.7 It is a punishable offense for any person other than the County Purchasing Agent to make purchases or enter into contracts.
- 3.8 Selection of vendor on non-bid purchases rests exclusively with the County Purchasing Agent. The County Purchasing Agent has neither the duty, power, authority, nor desire to determine whether or not a purchase should be made; his or her authority extends only to selection of vendor. This duty is zealously guarded.
- 3.9 No purchase order will be issued after the fact. There are two reasons for this policy:
 - 3.9.1 The Texas Local Government Code is clear on the point that the County Purchasing Agent makes all purchases (except those made on competitive solicitation).
 - 3.9.2 Should the County Purchasing Agent issue a purchase order, after a County employee has already made the purchase, dual deliveries may result.

4.0 THE REQUISITION:

- 4.1 The purpose of a Requisition is to inform Purchasing of the needs of the requesting Office, and to correctly identify the material requested.
- 4.2 A Requisition is required for all purchases regardless of dollar value, except those purchases made by procurement card (see Annex A).
- 4.3 The Requisition must be prepared far enough in advance of the required delivery date to enable Purchasing to perform his or her duties, and to allow time for delivery by the vendor.
- 4.4 The elected official/department head, or duly authorized person within the Office prepares the on-line requisition.
- 4.5 On-line requisitions must contain all required data, as follows:
 - 4.5.1 Complete description of desired item(s)
 - 4.5.2 Quantity of desired item(s)
 - 4.5.3 Unit of measure

- 4.5.4 Delivery date
- 4.5.5 Suggested vendor
- 4.5.6 Ship to address
- 4.5.7 Funding source
- 4.5.8 Estimated unit cost
- 4.5.9 Commodity code
- 4.5.10 Fixed asset category (if applicable)
- 4.6 When possible please refer Purchasing to a particular vendor whose product has been used previously and has been found to be satisfactory. The vendor suggested will be contacted by Purchasing.
- 4.7 If a trade-in is involved, requisitions must show the County tag number, serial number, make, model and any other pertinent information of the equipment to be traded.

5.0 PURCHASE ORDERS:

5.1 THE ROUTINE PURCHASE ORDER:

- 5.1.1 The Purchase Order is the sellers' authorization to invoice and deliver the equipment, materials, supplies or service specified. All Purchase Orders will be written concisely and clearly to avoid misunderstandings and unnecessary correspondence with vendors.
- 5.1.2 The Purchase Order will be issued by the County Purchasing Agent only. The using Office will submit all requisitions to Purchasing and will not enter into negotiations with any vendor for the purchase of equipment, materials, supplies or services except as outlined in the "Expedited Purchase Order" procedure (see section 5.3) or Procurement Card policy (see Annex A). Purchasing will transmit all Purchase Orders to the vendor.

5.2 THE BLANKET PURCHASE ORDERS:

- 5.2.1 The Blanket Purchase Order (sometimes referred to as an open purchase order) is a cost cutting tool used in the more advanced purchasing departments throughout Texas and the remaining United States. The Blanket P.O. is used to reduce time, reaction time, effort, and paperwork; it is not, however designed as a means to circumvent the competitive pricing system employed in sound purchasing departments.
- 5.2.2 Blanket Purchase Orders are appropriate in the following situations:

5.2.2.1 When the vendor and price of the desired item is set by competitive bid or contract and various quantities may be needed during the period of the contract.

5.2.2.2 As determined by Purchasing, for specific products or services with established vendors (i.e. Utilities, equipment repairs, etc.).

5.2.2.3 Equipment rental when length of rental period is unknown. Total must not exceed \$50,000 (bid limit).

5.2.2.4 When a remodeling project is planned and the logical material suppliers are known but the purchase of all required materials at one time would be impractical.

5.2.2.5 At the discretion of the County Purchasing Agent when to do so would be in the best interest of the County.

5.2.3 Blanket Purchase Orders are inappropriate for the following:

5.2.3.1 "Going Shopping". The taxpayers of the County deserve the best planning of which we are capable. The rationale that "I have \$200.00 left and I need a blanket purchase order to XYZ Supply Company to use it up" is contrary to the trust placed in each of us.

5.2.3.2 "Just in Case". Requesting Blanket Purchase Orders to a number of vendors on a regular basis "just in case we may need them" is a direct reflection on the planning capabilities of the end user. Moreover, with the encumbrance system in place each Blanket Purchase Order withdraws the appropriate amount of money from the appropriate line item and places it in escrow pending payment to the vendor.

5.2.4 Blanket Purchase Orders must be requisitioned as with any other purchase and must contain the same information listed in 4.5 above.

5.2.5 When a Blanket Purchase Order is issued to an Office it will be the responsibility of that Office to keep a running total of their purchases. Payment for purchases in excess of the amount authorized by the Purchase Order will be the responsibility of the offending office.

5.3 THE EXPEDITED PURCHASE ORDER

5.3.1 The Expedited Purchase Order is used to lessen the downtime of equipment when idleness of that equipment would result in unnecessary hardship or expense to the County. An Expedited Purchase Order may also be used for extreme emergency cases involving public health, safety, or welfare.

5.3.2 Expedited Purchase Orders must be requisitioned as with any other purchase and must contain the same information listed in 4.5 above. The using Office will notify Purchasing of the nature of the urgency, and

requesting a Purchase Order number. As deemed appropriate by Purchasing a Purchase Order number will be issued. The Office will give this number to the vendor and secure an invoice for the material. The Office will then forward the invoice to the County Auditor for processing. Ensure that the appropriate purchase order number is on the face of the invoice(s) submitted.

- 5.3.3 When an emergency arises during a time when Purchasing is closed, the Office will use the same procedure as above, except the Purchase Order number cannot be obtained and cannot be given to the supplier at the time of purchase. Contact Purchasing the next working day to obtain a purchase order.

5.4 EXCEPTIONS THAT REQUIRE NO PURCHASE ORDER:

- 5.4.1 Payments to government entities for fees, fines and taxes (IRS, Cities, Counties, State Agencies).
- 5.4.2 Court ordered expenditures by County Court at Law or District Courts related to official court activities.
- 5.4.3 Public Assistance payments (Social Services, Indigent Health, Community Development).
- 5.4.4 Deposit Refunds (Rentals).
- 5.4.5 EMS Overpayment Refunds.
- 5.4.6 Employee Reimbursements for business travel.
- 5.4.7 Bond payments related to the issuance of bonds.
- 5.4.8 Worthless Check and Commissary Funds.
- 5.4.9 Component Units – Toll Road, Flood Control, Industrial Development but not Drainage District.
- 5.4.10 Payroll Related distributions.
- 5.4.11 Internal Service fund payments.
- 5.4.12 Payments to jurors.
- 5.4.13 Fee Officer and Non-Fee Officer Distributions (Co. Clerk, District Clerk, JPs, Sheriff, Constables).
- 5.4.14 Replenishment of missing funds pursuant to audit findings.
- 5.4.15 Petty Cash and Change Fund allocations.
- 5.4.16 Payments on credit accounts.

5.4.17 Child Protective Service Payments.

5.4.18 Any specific funds expressly stated by law excluding the requirement of a purchase order.

5.5 VARIANCES:

Any request for a variance, prior to the expenditure, must be submitted to the County Attorney to issue an opinion on whether the variance can be allowed by Commissioners Court.

6.0 PROCUREMENT CARD PURCHASE:

See Annex A

7.0 INVOICES:

7.1 The invoice is an itemized statement of merchandise delivered or services rendered and is a guide for the County in settling financial obligations incurred. Invoices are based upon Purchase Orders and therefore should contain the same information.

7.2 Information an invoice should contain:

7.2.1 The Purchase Order number.

7.2.2 An itemized list of merchandise received or services rendered.

7.2.3 The prices, terms, quantities, and other pertinent information on the Purchase Order.

7.2.4 Charges for delivery, freight, etc., must be listed separately if listed separately on Purchase Order.

8.0 CONTRACT MANAGEMENT INCLUDING INSPECTING, TESTING AND RECEIVING:

8.1 All equipment, materials and supplies received will be inspected by a designated individual from each Office to determine whether or not they conform to the specifications set forth in the Purchase Order or contract. The designated individual will be appointed by the head of each Office. Review shall include ensuring that:

- (a) Quantities specified are made available and delivered;
- (b) Delivery times and schedules are being met per contract terms;
- (c) Product deliveries and/or services are occurring at the correct location if multiple locations are part of the awarded contract;
- (d) Products and/or services are meeting the specifications as described in the solicitation and/or Purchase Order or contract;
- (e) Products and/or services pricing listed on invoices matches pricing amounts

- listed in the Purchase Order or contract;
- (f) Substitutions of products are being handled as outlined in the Terms and Conditions and are adequate to the specified product;
- (g) Vendor response time to product or service issues is appropriate in regard to each situation, if any.

Each Office will ensure that qualified personnel within each Office are fully aware of their responsibility to perform such inspections and review of product delivery or services.

- 8.2 Upon receipt of merchandise, and after inspection and testing, the Office will create a receiver online through financial system.
- 8.3 If the Office refuses to accept the merchandise because of a failure to meet the specifications, they will immediately contact Purchasing, and state their reasons for withholding acceptance. Purchasing will then take immediate action to compel replacement by the vendor, cancel the order, or otherwise take action to supply the Office with the needed merchandise.
- 8.4 If for any reason only partial shipments are received, Purchasing should be notified immediately. Purchasing will then contact the supplier to determine the reason for delay and the date of delivery of the balance of the order.
- 8.5 If an instance arises requiring outside testing laboratories to be utilized, the necessary arrangements will be made by Purchasing. Payment for testing will normally be made from the Office's Fees & Services budget line; however, if the test reveals non-spec materials have been supplied, the vendor will pay for the testing or face possible disqualification from future bidding.

9.0 THE COMPETITIVE SOLICITATION PROCESS:

- 9.1 Statutorily Purchasing is not the responsible agency to conduct the competitive solicitation process; however, it is the desire of Commissioners Court, approved by the Purchasing Agent Appointment Board, that the County Purchasing Agent be the chief coordinator and operator of the solicitation system. The County Purchasing Agent takes no exception to this duty.
- 9.2 Purchasing shall:
 - 9.2.1 Seek Commissioners Court authorization to advertise for sealed competitive bids, requests for proposals, statements of qualification, with the Office present should any Court member have questions or comments.
 - 9.2.2 Prepare, with technical assistance from the responsible Office, the solicitation.
 - 9.2.3 As deemed appropriate, submit specifications to Commissioners Court for approval.
 - 9.2.4 Advertise as required by law.

- 9.2.5. Post solicitation packages on website and notify potential vendors.
- 9.2.6 Open the responses on the proper date at the indicated time.
- 9.2.7 Prepare analysis of responses to include cost and price analysis
- 9.2.8 Consult with requesting Office when deemed necessary and submit recommendations and analysis to Commissioners Court.
- 9.2.9 In concert with the County Attorney prepare contracts as required.
- 9.2.10 Obtain signed contract from successful vendor.
- 9.2.11 Advise requesting Office when the above has been completed.
- 9.2.12 Present to Commissioners Court for approval.
- 9.2.13 Obtain performance and payment bonds, if required in solicitation.
- 9.2.14 Issue the Purchase Order.
- 9.3 Any solicitations utilizing Federal Transit Administration (FTA) funds shall follow the process as approved in the most current "Fort Bend County Guidelines for FTA Funded Procurements".
- 9.4 Any solicitations utilizing Federal funds other than FTA shall follow the process detailed in Section 9.2 above and all requirements as stated in 2 CFR 200 to include but not limited to the following:
 - 9.4.1 § 200.318 General procurement standards. (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of

conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. (j)(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound

business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

- 9.4.2 § 200.319 Competition. (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on retainer contracts; (5) Organizational conflicts of interest; (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and (7) Any arbitrary action in the procurement process. (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations: (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. (e) The non-Federal

entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

- 9.4.3 § 200.320 Methods of procurement to be followed. The non-Federal entity must use one of the following methods of procurement. (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. (b) Procurement by small purchase procedures. The small purchase method is an "Informal Procurement Method" for purchases that exceed the micro-purchase threshold but have an aggregate amount no greater than the Simplified Acquisition Threshold of \$50,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply. (1) In order for sealed bidding to be feasible, the following conditions should be present: (i) A complete, adequate, and realistic specification or purchase description is available; (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. (2) If sealed bids are used, the following requirements apply: (i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids; (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond; (iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids; (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and (v) Any or all bids may be rejected if there is a sound documented reason. (d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is

used, the following requirements apply: (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;(2) Proposals must be solicited from an adequate number of qualified sources;(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. (e) [Reserved](f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:(1) The item is available only from a single source;(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or(4) After solicitation of a number of sources, competition is determined inadequate.

9.4.4. § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.(b) Affirmative steps must include:(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

9.4.5 § 200.323 Domestic preferences for procurements. (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced

in the United States (including but not limited to iron, aluminum, steel, cement, and other manufacturer products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. (b) For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- 9.4.6 § 200.324 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 9.4.7 § 200.324 Contract cost and price. (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles. (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
- 9.4.8 § 200.325 Federal awarding agency or pass-through entity review. (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on

proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis; (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

- 9.4.9 § 200.326 Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of

the bid, execute such contractual documents as may be required within the time specified. (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

9.4.10 2 C.F.R. § 200.327 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses:

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.
 - a. Standard: Contracts for more than the simplified acquisition threshold (\$250,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
2. Termination for Cause and Convenience.
 - a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
3. Equal Employment Opportunity.
 - a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal

Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.

b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or

representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency 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 vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with

the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 29 C.F.R. Part 200, Appendix II, ¶ D.

b. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors' must be required to pay wages not less than once a week.

c. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

d. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland AntiKickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency,

e. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act." However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of

these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

a. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.

b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

d. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act”

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such

territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day of the workweek on which such individual was required or permitted to work

in excess of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section. (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

a. Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

b. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and

Cooperative Agreements). See 2 C.F.R. Part 200, Appendix II, ¶ F. c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the awarding Federal agency and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act”

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

“Federal Water Pollution Control Act”

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.”

8. Debarment and Suspension.

a. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

b. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter PDAT Supplement]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; PDAT Supplement, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

c. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.

d. Specifically, a covered transaction includes the following contracts for goods or services:

(1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

(2) The contract requires the approval of the Federal funding agency, regardless of amount.

(3) The contract is for federally-required audit services.

(4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of the Federal funding agency or is in excess of \$25,000.

d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are

not excluded or disqualified:

“Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

a. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; PDAT Supplement, Chapter IV, 6.c; Appendix C, ¶ 4.

b. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

c. The following provides a Byrd Anti-Lobbying contract clause: “Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds

to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000) The undersigned [Contractor] certifies, to the best of his or her knowledge, 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 an 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

The Contractor, _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

10. Procurement of Recovered Materials.

a. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322;

b. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

c. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.”

11. Additional FEMA Requirements.

a. The Uniform Rules authorize FEMA to require additional

provisions for nonfederal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

b. Changes. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

c. Access to Records. All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS

agency officials without specific FEMA preapproval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

a. All non-Federal entities must place into their contracts an acknowledgement that Federal financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and Federal funding agency policies, procedures, and directives.

b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

16. Buy American.

Purchasing shall adhere to the Buy American provision (7 CFR 210.21) for the purchase of commercial food products to be served in SNP meals.

Per Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 {Public Law 105-336} added a provision, Section 12(n) to the NSLA (42 USC 1760(n)}, requiring School Food Authorities (SFA’s) to purchase, to the maximum extent practicable, domestic commodity or product. Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity that is produced in the United States and a

food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. Substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States. The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFA’s must comply with when purchasing commercial food products served in the school meals programs.

The following provision will be included in all solicitations for food to be used in the school nutrition programs:

Contractor certifies that the food product was processed in the U.S. and certifies the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to County.

Purchasing will purchase domestic food products per the Buy American Provision unless:

1. The product needed is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or
2. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product

Purchasing will maintain all documentation provided by the Office in regard to any food purchases that are deemed “non-domestic” to include cost comparisons if the product is available as a “domestic” product that is seen as unreasonable in cost; or if not available as a U.S. grown product the documentation will include the “country of origin.”

9.4.10 Procedures for Federal purchases follows Section 9.2 in addition Purchasing obtains an Independent Cost Estimate (ICE) from the requesting department and solicitation must include any and all required Federal clauses and language.

10.0 AUDIT SERVICES:

The Purchasing Department will solicit for professional audit services in accordance with the U.S. General Accounting Office’s (GAO) *Government Auditing Standards*, the provisions of the federal Single Audit Act of 1984, and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of State and Local Governments*. Agreement will be for a three (3) year term with an optional two-year extension.

11.0 STANDARDS OF CONDUCT AND CONFLICT OF INTEREST:

This section defines responsibility to identify and prevent a real or apparent conflict of interest.

- 11.1 Conflict of Interest: In order to promote governmental integrity and to guard against even the appearance of impropriety, all County employees engaged in any vendor-related activity shall comply with the following standards of ethical conduct:
 - 11.1.1 County employees shall discharge their duties impartially so as to assure fair access to governmental procurement by responsible vendors and service providers and to foster public confidence in the integrity of the County procurement system.
 - 11.1.2 County employees shall not solicit, demand, accept or agree to accept a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement, specification, standard or contract.
 - 11.1.3 The following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they or persons related to them have a financial interest:
 - 11.1.3.1 The employee, officer, or agent
 - 11.1.3.2 Any member of his/her immediate family
 - 11.1.3.3 His or her partner, or
 - 11.1.3.4 An organization that employs, or is about to employ, any of the above.
 - 11.1.4 In cases where there may be a benefit, either direct or indirect, there is a responsibility to report in writing such benefit to the County. If anyone fails to report such benefit, he or she may be subject to disciplinary proceedings deemed appropriate by the County, as may be permitted by law.
- 11.2 Gratuities, Kickbacks, and Contingent Fees: No member of the groups listed in item (11.1.3) above shall solicit, demand or accept from any person, contractor, potential contractor, or potential subcontractors, any gifts that have an aggregate value of more than \$100 in the preceding 12-month period. Exception: Food accepted as a guest of a vendor. Anyone failing to adhere to the above may be subject to disciplinary proceedings deemed appropriate by the County, as may be permitted by law.
- 11.3 Confidential Information: No member of the groups listed in item (11.1.3) above shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above may be subject to any disciplinary proceeding deemed appropriate by the County, including possible dismissal, as may be permitted by law.

11.4 Organizational Conflict of Interest: Each entity that enters into a contract with the County is required, prior to entering into such contract, to inform the County of any real or apparent organizational conflict of interest. Such organizational conflicts of interest exist when the nature of the work to be performed under a contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor, or may impact the contractor's objectivity in performing the contract work.

11.5 In the case of any illegal acts or irregularities utilizing federal agency funds the Purchasing Department will immediately notify the federal funding agency in writing with a full detailed explanation.

12.0 CREDIT APPLICATIONS:

All credit applications will be completed by Purchasing.

13.0 DEBARMENT:

Purchasing shall ensure to the best of its knowledge and belief that none of its purchases involve contractors debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements.

14.0 PROTEST PROCEDURE:

Any vendor objecting to an award recommendation must contact the Purchasing Agent in writing on company letterhead with the vendor's contact information prior to award.

14.1 The written formal protest must contain a minimum of the following:

- Identification number of the solicitation.
- A specific identification of the statutory or regulatory provision(s) that the Purchasing staff member or department is alleged to have violated.
- A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above
- A precise statement of the relevant facts that include time lines and all involved parties.
- An identification of the issue or issues that need to be resolved that support the protest.

14.2 The Purchasing Agent shall:

- Gather information and prepare documentation outlining the County's process.
- Determine to contact the County Attorney's Office concerning the protest, if necessary.
- Issue a written decision which states the reasons for the action taken and send to the aggrieved vendor.

A decision shall be final and conclusive, unless otherwise directed by Court Order.

15.0 STATE LAW REQUIREMENTS FOR CONTRACTS:

The contents of this section are required by Texas Law and are included by FBC regardless of content.

- 15.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature on vendor form, Contractor verifies that if Contractor employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.
- 15.2 Texas Government Code Section 2251.152 Acknowledgment: By signature on vendor form, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

16.0 TRAINING:

Purchasing Department conducts in-house training quarterly to cover requisitions, purchase orders, contracts, insurance, bonds, federally funded procurements, etc. On an ongoing basis, Purchasing offers training classes for all County department for the financial software.

17.0 FIXED ASSET POLICY AND PROCEDURES:

17.1 RESPONSIBILITIES FOR ASSET PROCUREMENT AND DOCUMENTATION:

- 17.1.1 Definition: "Fixed Asset" includes County personal property that falls under the "Capital Asset" definition as well as all "Tracking Assets".
- 17.1.2 Definition: "Capital Asset" is any real or personal property that has a value of \$10,000 or more and an estimated useful life of at least two (2) years.
- 17.1.3 Definition: "Tracking Asset" is any tangible personal property that has a value of \$5,000 or more, but under the capitalization threshold of \$10,000 that the County has established the need to track the security and use of. These assets include, but are not limited to office equipment, computers, furniture, and road equipment. Tasers and weapons will be tracked regardless of value.
- 17.1.4 Definition: "Betterment" includes all costs incurred during the year of acquisition that are components that make the equipment operate as one unit. Any such component costs that are incurred in subsequent years will be added to the existing equipment only if the component cost is \$10,000 or more and the additional costs improve or extend the functionality of the equipment. Betterments exclude repairs and replacement parts, which restore an asset to

regular functioning status.

- 17.1.5 Definition: "Vehicle Betterment" includes equipment purchased with an individual value of \$5,000 or more that is affixed to the vehicle at the time of purchase for a permanent use and improves or extends the vehicle's functionality beyond its' original state (examples: light bars, radios, radars, MDT's, video systems, etc.). The individual values of the additional equipment will need to be added to the unit cost of the vehicle for a complete asset value of that vehicle. Any parts or services under \$5,000 added to the vehicle (examples: consoles, partitions, storage boxes, window tinting, decals, etc.) will not be added to the value of the vehicle.
- 17.1.6 The County Purchasing Agent is the person responsible for the acquisition, tagging, inventory, and disposal of all County fixed assets and surplus property working with the County Auditor to ensure the correctness of all records and reports as reflected on the County's general ledger relating to general fixed assets of the County, in accordance with laws of the State of Texas (§ 262.011(i) Texas Local Government Code) and instructions of the Commissioners' Court.
- 17.1.7 The County Auditor is the person responsible for maintenance of property records. All transactions having to do with fixed assets of the County must flow through the County Auditor who is responsible for monitoring and maintaining fixed assets records. County Auditor will supply County Offices with all necessary forms and information concerning the transfer and accountability of fixed assets assigned to the various County Offices.

17.2 FIXED ASSET PURCHASE PROCEDURES:

- 17.2.1 When an Office generates a request for an item that qualifies as a fixed asset the Office must select proper fixed asset category code resulting in automatic notification to the County Auditor. This process introduces the asset into the fixed assets records.
- 17.2.2 The County Auditor initiates an Inventory Action Notice for Tag Number form. An asset barcode number is assigned, printed and affixed to the form.
- 17.2.3 The County Auditor makes a copy of the Inventory Action Notice for Tag Number form and forwards to the ordering department. The County Auditor sends the original form with the barcode tag to Purchasing.
- 17.2.4 Purchasing receives the Inventory Action Notice.
- 17.2.5 Office receives a copy of the Inventory Action Notice from the County Auditor. This alerts the Office of their responsibility to notify Purchasing when the new asset arrives.

- 17.2.6 Purchasing monitors expected delivery dates by reviewing purchase orders on file and by periodic contact with the ordering Office.
- 17.2.7 When the new asset arrives at the ordering Office, the Office is responsible for contacting Purchasing to schedule asset tagging.
- 17.2.8 On the scheduled date, Purchasing arrives at the ordering Office, and identifies the asset to determine whether the asset meets specifications. Once specifications are verified, Purchasing will affix the assigned barcode tag to the asset, and complete the original Inventory Action Notice. A representative of the Office signs the Inventory Action Notice thus accepting responsibility for the new asset.
- 17.2.9 The Inventory Action Notice is completed and executed. Copy is sent to Purchasing, copy is retained by originating Office and original sent to the Auditor.
- 17.2.10 County Auditor updates fixed asset database.

17.3 INVENTORY OF FIXED ASSETS:

- 17.3.1 100% physical inventory of all fixed assets will be conducted annually under the supervision of the County Purchasing Agent. The purpose of the inventory is to verify the accuracy of the fixed assets records.
- 17.3.2 Prior to the start of the annual inventory, Purchasing will decide the inventory schedule for the next inventory cycle. Dates are assigned for each Office. After the schedule is established, Purchasing will send notification to each Office with their assigned date. Two (2) weeks prior to the Office's scheduled date, the County Auditor will forward their current inventory with instruction to review by a predetermined date. The Offices are to forward all corrections to the County Auditor to update the database prior to the start of their physical inventory.
- 17.3.3 Following the database updates by the County Auditor, Purchasing will go through the Office conducting a physical inventory, scanning each asset with a barcode scanner. Scanning with the barcode reader ensures the identification and accuracy of the inventory based on all fixed assets identified in the County Auditor's fixed asset property records. Any corrections identified during the physical inventory process will be sent to the County Auditor to update the database.
- 17.3.4 If during the inventory there are items in the Office, which are not listed on the Office's inventory, those items will be documented and turned in with the inventory to the County Auditor so that the

assets may be added to the inventory records.

- 17.3.5 Immediately following the physical search, the barcode scanner data is downloaded into the fixed asset property records by Purchasing and is acknowledged by the County Auditor. All assets that have been located are acknowledged within the system and those not located are identified. The County Auditor will update all records and create a list of missing assets. The list is provided to Purchasing who in turn forwards to the Office. A one-week deadline is established for locating unaccounted items.
- 17.3.6 The Office is required to account for the missing assets within one week of receiving the list and forward their findings to Purchasing for verification. Purchasing will return to the Office to physically verify the item(s) located. Any outstanding assets will be reported to the County Auditor for action.
- 17.3.7 The County Auditor will give the Office a one-week period for explanation of the missing asset. After this time frame, the unaccounted for assets will be presented to Commissioner's Court for their action.
- 17.3.8 Commissioner's Court will be provided with a full detailed report of the missing asset(s). This report will include the original purchase price, the acquired date, and the depreciated value of the asset(s) to current date, etc. At the discretion of the Commissioner's Court, the elected official/department head may be required to reimburse the County for the missing asset(s).
- 17.3.9 When the inventory is completed, the elected official/department head will sign a final copy of their inventory printout denoting their acceptance of the findings on the inventory.
- 17.3.10 A final inventory of all County property will be provided to each member of the Purchasing Agent Appointment Board and the County Auditor on July 1st of each year.

17.4 FIXED ASSET DISPOSAL AND TRANSFER PROCEDURES:

- 17.4.1 Definition: "Salvage property" means personal property, other than items routinely discarded as waste that because of use, time, accident, or other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended.
- 17.4.2 Definition: "Surplus property" means personal property that: Is not salvage property or items routinely discarded as waste; Is not currently needed by it's owner; Is not required for the owner's foreseeable needs; and Possesses some usefulness for the purpose for which it was intended.
- 17.4.3 Definition: "Redistribution" means to prevent unnecessary

purchases, the County Purchasing Agent, with the approval of Commissioners Court, shall transfer County supplies, materials and equipment from a subdivision, department, officer, or employee of the County that are not needed or used to another subdivision, department, officer, or employee requiring supplies or materials or the use of the equipment. The County Purchasing Agent shall furnish to the County Auditor a list of transferred supplies, materials and equipment. § 262.011(j) Texas Local Government Code.

- 17.4.4 All transfers and dispositions of assets will be directly transferred to Purchasing with the proper paperwork. Examples are as follows: assets sent to auction, assets to be transferred to another County Office, or destroyed assets. All transfers and dispositions must go to or through Purchasing. Offices are to continue to complete paperwork with both releasing Office and accepting Office, which will always be Purchasing.
- 17.4.5 All disposals and transfers of County fixed assets require the use of Fort Bend County's Auditor's Form 1059-B, Revised 12/03.
- 17.4.6 All forms must be completed, indicating the specific request or action, and signed by the requesting Office. Purchasing will sign as the accepting Office.
- 17.4.7 County property, which is broken or no longer needed by an Office, will be transferred to the County Surplus Property Warehouse located at 9110 Long Street, Needville. The warehouse accepts these items on Fridays from 8:00 am – 3:00 pm. Purchasing will arrange for pickup and delivery of such property.
- 17.4.8 Two copies of the completed Form 1059-B are made. The original is sent to the County Auditor for recording into the fixed asset records, one copy is sent to Purchasing for the disposal files, and one copy is kept on file within the Office.
- 17.4.9 County Purchasing Agent will periodically request that Commissioners' Court declare property "surplus" (in excess of needs - - useful) or "salvage" (has no value -- not useful). Surplus and salvage property shall be disposed of according to State laws on disposition of property. County employees will be allowed to bid on surplus property offered to the public, just as any other citizen of the County.
- 17.4.10 Any stolen, abandoned or confiscated property seized by a peace officer may be disposed of in accordance with Article 18.17, Texas Code of Criminal Procedures.
- 17.4.11 The County Auditor shall determine the required entries in the general ledger to reflect the disposition of an asset.

- 17.4.12 The County Auditor will conduct “exit” inventories when a change in an elected official/department head responsibility occurs.
- 17.4.13 Conclusion: While all issues pertaining to fixed assets cannot be addressed in this manual, the intent is to provide sufficient direction for the daily operations of the County. Any issue not specifically addressed by this manual should be directed to the County Purchasing Agent or the County Auditor prior to any action being taken.

ANNEX A

Fort Bend County Procurement Card Policy and Procedures

Approved: 31 AUGUST 2015

***Revised: 21 November 2006: 17 November 2009, Revised: 01 May 2012,
Revised: 03 July 2012, Revised: 02 June 2015,
Revised: 28 July 2015 Effective 1 August 2015,
Revised: 26, July 2016 Effective 1 August 2016
Revised: 12, December 2017 Effective 1 January 2018***

1.0 PURPOSE

To establish a methodology for use and to define the limits of use of County issued Procurement Cards provided to authorized personnel in order to make purchases of goods and/or services and to establish penalties for unauthorized use.

2.0 ATTACHMENTS

- 2.1 Employee Agreement
- 2.2 Enrollment/Request Form
- 2.3 Dispute Report
- 2.4 Document Submission Form

3.0 GENERAL

3.1 DEFINITIONS

3.1.1 *Vendor:* A company (partnership, sole proprietorship, or corporation) from which a cardholder is purchasing materials and/or equipment or services under the provisions of this procedure.

3.1.2 *Cardholder:* Personnel who have been authorized to use a Procurement Card and who are authorized to make purchases in accordance with these procedures.

3.1.3 *Department Procurement Card Coordinator:* The person responsible for all program details, including all cardholder inquires.

3.1.4 *Statement of Account:* This is the monthly listing of all transactions by the cardholder, issued by the bank and distributed to the cardholder.

3.1.5 *Requisitioner:* An employee who has a need for materials or services that can only be fulfilled by a vendor. Under this Procurement Card Procedure, a requisitioner may be a cardholder.

3.1.6 *Card Issuer Account Manager:* Managing representative from the bank who issues the Procurement Card.

3.1.7 *Unauthorized Purchase:* Any use of the Procurement Card that does not comply with all requirements of this policy.

3.1.8 *Procurement Card Administrator:* Purchasing Agent representative.

3.1.9 *Original Transaction Documentation:* Onsite documented evidence of procurement.

4.0 PROCEDURE:

4.1 INTRODUCTION:

4.1.1 This program is being established in order to provide a more rapid turnaround of requisitions for low-dollar value goods and to reduce paperwork and handling costs. By using the Procurement Card you dramatically shorten the payment cycle from the traditional requisition process. The traditional process includes pricing inquiry, order placement, delivery of goods, invoice and voucher review. Those requisitioners who have been issued Procurement Cards may now initiate transactions in person, by telephone or on internet, within the limits of this procedure and receive goods. Purchases **must first be approved by the Purchasing Agent's Office with the exception of the following: 1) travel arrangements (hotel, airfare, car rental, registration fees and fee for service transportation (i.e. cab or airport shuttle)) in accordance with Fort Bend County Travel Policy, 2) County declared disasters and emergency response events (within the single limit purchase stated herein) or 3) Item serves a public purpose (within the single limit purchase stated herein).** The Cardholder must provide a printed copy of the approval email (dated prior to purchase) from Purchasing with required documentation, if required. This program also relieves employees and officials of the burden of using personal funds to pay material travel and training expenses such as lodging, airfare, rental car, and registration. Payments to vendors are made via the MasterCard settlement system. Accounts payable will make monthly settlements with the Bank.

4.2 DEPARTMENT PROCUREMENT CARD COORDINATOR:

4.2.1 Elected Officials/Department Heads must designate a department procurement card coordinator to oversee their department's expenditures and receipts.

4.2.2 Department procurement card coordinators are responsible for receiving transaction documentation, matching transaction documentation and submitting to the Auditor's Office for payment. The original transaction documentation must be submitted to the Auditor's Office on the documentation submission form within three (3) days after the transaction date or within two (2) days after the cardholder returns to work after the transaction date. Copies of all documentation must be kept by the Department Procurement Card Coordinator to allow reconciliation at the end of the month.

4.2.3 Department procurement card coordinators will contact the Procurement Card Administrator to order new cards, cancel cards or request limit changes on the card.

4.3 RECEIVING A PROCUREMENT CARD

4.3.1 Elected Officials/Department Heads and managers may propose personnel to be cardholders by having their department procurement card coordinator complete the enrollment request form and submitting to the Procurement Card Administrator.

4.3.2 The proposed cardholder shall be issued a copy of this procedure and shall be required to attend a Procurement Card training session, sign an Enrollment Request Form and an Employee Agreement. The Agreement (Attachment 1) indicates that the cardholder understands the procedure and the responsibilities of a cardholder. The Enrollment Form (Attachment 2) contains all information required to properly enter the Cardholder in the Procurement Card Program. On the Enrollment Form, the Elected Official/Department Head will designate:

- 4.3.2.1 a monthly purchase limit
- 4.3.2.2 purchases or uses requested for the cardholder
- 4.3.2.3 justification for any commodity purchases

4.3.3 The maximum limit shall be \$500.00 for a single purchase with the exception of travel arrangements (hotel, airfare, car rental and registration fees in accordance with Fort Bend County Travel Policy) or item serves a public purpose or with written approval by Purchasing Agent's Office.

4.3.4 The Procurement Card Administrator shall maintain all records of Procurement Card requests, limits, cardholder transfers and lost/stolen/ destroyed card information.

4.4 AUTHORIZED PURCHASING CARD USE

4.4.1 The unique Procurement Card that the cardholder receives will have his/her name embossed on it and shall **ONLY** be used by the cardholder. **NO OTHER PERSON IS AUTHORIZED** to use that card. The cardholder may make transactions on behalf of others in their department with the approval of a supervisor authorized to approve such purchases. However, the cardholder is responsible for all use of their card.

4.4.2 Use of the Procurement Card shall be limited to the following conditions:

4.4.2.1 A total value of a transaction shall not exceed a cardholder's single purchase limits. Payment of a purchase **WILL NOT** be split into multiple transactions to stay within the limit.

4.4.2.2 All items purchased "over the counter" must be immediately available at time of Procurement Card use. No backordering of merchandise is allowed.

4.4.2.3 Transaction volumes must not be exceeded (i.e. # and \$ amount of

authorized transactions).

4.4.2.4 Spending limits and commodity restrictions must be adhered to.

4.4.2.5 Fuel purchased while out-of-County on official business only when traveling in County vehicle or during County declared disasters or during emergency response events. Only exception is if all County fuel sites are out of service. Vehicle Maintenance will notify Procurement Card Administrator if a fuel site is inoperable. Cardholder must provide written notice of out of service conditions from Vehicle Maintenance and/or Procurement Card Administrator with required documentation. If fuel site is unknowingly inoperable, the driver may use the card to purchase up to \$5.00 of fuel to get to the next County fueling site. Driver must notify Department Procurement Card Coordinator of any non-working fuel sites, in turn the Department Procurement Card Coordinator must notify Vehicle Maintenance.

4.4.2.6 County declared disasters or emergency response events (within the single purchase limit stated herein).

4.4.2.7 Item serves a public purpose (within the single limit purchase stated herein).

4.5 UNAUTHORIZED PROCUREMENT CARD USE

4.5.1 The Procurement Card **SHALL NOT BE USED** for the following:

4.5.1.1 A single purchase that exceeds the limit of \$500.00; unless travel or written approval has been received by Purchasing.

4.5.1.1 Any commodity or service not expressly authorized by Purchasing to the cardholder.

4.5.1.2 Personal purchases or purchases for family members or friends or for identification.

4.5.1.3 Entertainment expenses, meals and travel expenses for non-County related business.

4.5.1.4 Meals, except those required during activation of Emergency Operation Center, County declared disasters, emergency response events, Jurors, Lunch and Learn seminars or as approved by the County Auditor.

4.5.1.5 Cash Advances.

4.5.1.6 Telephone calls/monthly service (non-county related).

4.5.1.7 Fuel for non-County related trips or in-County travel, except for County declared disasters and emergency response events.

4.5.1.8 Car washes.

4.5.1.9 Alcoholic Beverages.

4.5.1.10 Item(s) or service(s) purchased via the Internet see 4.1.1.

4.5.1.11 Any additional items/services as may be restricted by County policy.

4.5.2 A cardholder transaction that fails to comply with the current Fort Bend County Travel Policy while using their Procurement Card will qualify as an unauthorized purchase and will be borne as a personal expense by the cardholder.

4.5.3 A cardholder who makes unauthorized purchases or carelessly uses the Procurement Card will be liable (without the option for reimbursement) for the total dollar amount of such unauthorized purchases plus any administrative fees charged

by the Bank or other associated costs in connection with the misuse. Any cardholder who incurs two (2) unauthorized purchases and/or failures to follow procurement card procedures within a 12 month period, as verified by the Auditor's Office, will have card revoked by Procurement Card Administrator. The cardholder will also be subject to disciplinary action, up to and including termination.

4.6 MAKING A PURCHASE

4.6.1 Each cardholder is responsible for ensuring the transaction will be accurately executed before completion of the transaction. To achieve this the cardholder will utilize the following "checklist" when making a purchase (before and during the transaction):

4.6.1.1 Coordinate with Purchasing to determine if vendors and prices have already been established for the required goods. If not, solicit a number of sources according to policy. If vendors furnish standing price quotations or catalog prices on a recurring basis, check that the price listed is current.

4.6.1.2 Assure that sales taxes are not added to the purchase. You must require that the supplier remove any sales tax before completing the transaction. If you are executing an on-line transaction, you must review the transaction before submission. If the supplier refuses to honor the County's tax-exempt status, you may not use the Procurement Card for the purchase. The two (2) exceptions to this requirement are hotel occupancy taxes and fuel taxes, which are allowable charges to the Procurement Card.

4.6.1.3 Convenience fees are an allowable charge on the Procurement Card if charged when incurred from another public entity (cities, counties, state agencies). These fees are also allowed when the only form of payment requires a convenience fee (such as Paypal).

4.6.1.4 Once a vendor is designated and that vendor confirms that the product or service is available which meets the specification and delivery requirements, take the following steps.

4.6.1.4.1 Confirm that the vendor agrees to accept MasterCard.

4.6.1.4.2 Direct the vendor to include the following information on the packing list/shipping label:

4.6.1.4.2.1 Cardholder's name and telephone number;

4.6.1.4.2.2 Complete delivery address;

4.6.1.4.2.3 The words "Procurement Card Purchase";

4.6.1.4.2.4 The vendor's order number.

4.6.1.4.3 It is extremely important that all purchases be sent to the cardholder ordering the merchandise, as this will ensure that the documents necessary for record keeping are readily available to the cardholder.

4.6.1.4.4 If necessary, advise the individual within your area who receives merchandise of the vendor's name and order number, anticipated delivery date, number of boxes expected, carrier (UPS, Fed Ex, etc.). The receiver must notify the actual cardholder when delivery is made so that proper documentation is recorded.

4.7 CARDHOLDER RECORD KEEPING

4.7.1 Whenever a Procurement Card purchase is made, either over the counter or by telephone, original detailed/itemized documentation shall be retained as proof of the purchase. Such documentation will be used to verify the purchases listed on the cardholder's statement of account.

4.7.2 When the purchase is made over the counter, the cardholder shall retain the invoice and "customer" copy of the charge receipt (both). Prior to signing this slip, the cardholder is responsible for making sure that the vendor lists the quantity, and fully describes the item(s) on the charge slip.

4.7.3 When making a purchase by telephone or internet, the cardholder shall also document the transaction, confirmation number, subsequent detailed/itemized invoice, and all shipping documentation.

4.8 REVIEW AND SUBMISSION OF TRANSACTION DOCUMENTATION

4.8.1 The Department Procurement Card Coordinator shall prepare and submit the documentation (packing slip, invoice, cash register tape and Procurement Card slips, etc.) provided by the cardholder on the documentation submission form to the Auditor's Office within three (3) days of the transaction date or within two (2) days after the cardholder returns to work after the transaction date.

4.8.2 The Auditor's Office shall reconcile the cardholders transactions documentation to the online activity and confirm the following items as a minimum:

4.8.2.1 Detailed/itemized receipts and shipping documents exist for each purchase.

4.8.2.2 The goods were received or the services were performed.

4.8.2.3 The cardholder has complied with applicable procedures, including this Procurement Card procedure.

4.8.2.4 The Department Procurement Card Coordinator signs each documentation submission form ensuring each transaction was authorized and executed in accordance with the applicable policies and procedures.

4.8.3 The original detailed/itemized sales documents (packing slip, invoice, cash register tape and Procurement Card slips, etc.) for all purchases **MUST** be neatly attached on the documentation submission form and submitted to the Auditor's Office within three (3) days of the transaction or within two (2) days after the cardholder returns to work after the transaction date. Each documentation submission form must include: department name; cardholder name; accounting distribution; transaction description; and Department Procurement Card coordinator signature. This data is critical to enable audit substantiation. **IF THIS PROCEDURE IS NOT ADHERED TO, the transaction will be considered an unauthorized purchase resulting in card revocation upon the second occurrence within a 12 month period.**

4.8.4 If the cardholder does not have documentation of a transaction the cardholder shall attach a signed documentation submission form that includes a

description of the item(s) purchased, date of purchase, vendor's name and reason for lack of supporting documentation. The cardholder must also remit a full reimbursement by check or money order to the Treasurer's Office for the unauthorized purchase and include a copy of the payment and Treasurer's receipt with the statement submitted to the Auditor's Office.

4.8.5 Procurement Card Returns – If the wrong item is received, is not satisfactory, or damaged and/or defective, duplicate order, etc., the cardholder shall make contact with the vendor to explain the problem to inquire about return policies.

4.8.6 When disputing a charge the cardholder shall:

4.8.6.1 First contact Vendor in an effort to determine a resolution. If that does not correct the issue,

4.8.6.2 The cardholder shall contact Department Procurement Card Coordinator who will then contact the Procurement Card Administrator.

4.8.6.3 Complete a dispute Report (Attachment 3) and submit same to the Department Procurement Card Coordinator who will then submit to the Procurement Card Administrator. Immediate action to resolve a dispute is of extreme importance.

4.8.6.4 If an item has been returned and a credit voucher received, the cardholder shall verify to the Auditor's Office that this credit will be reflected on the monthly statement. **Under no circumstances are cardholders to accept a cash refund.**

4.8.7 If items purchased by the use of the procurement Card are found to be unacceptable, the cardholder is responsible for obtaining replacement or correction of the item immediately. If the vendor has not replaced or corrected the item within 10 business days, then the purchase of that item will be considered in dispute.

4.9 CARD SECURITY

4.9.1 It is the cardholder's responsibility to safeguard the Procurement Card and account number to the same degree that a cardholder safeguards his/her personal credit information.

4.9.1.1 The cardholder must not allow anyone to use their account number. A violation of this trust will result in that cardholder having their card withdrawn and disciplinary action may occur.

4.9.2 If the Procurement Card is lost or stolen the cardholder shall immediately notify Department Procurement Card Coordinator who in turn will notify the Procurement Card Administrator.

4.9.3 A new Procurement Card shall be promptly issued to the cardholder after the reported loss or theft. A Procurement Card that is subsequently found by the cardholder after being reported lost shall be sent to Procurement Card Administrator and destroyed.

4.9.4 Failure to notify the Department Procurement Card Coordinator or Procurement Card Administrator of a lost or stolen Procurement Card immediately shall result in procurement card program revocation, disciplinary action, up to and including termination.

4.10 CARDHOLDER SEPARATION

Prior to separation from the County or transfer to another department, the cardholder shall surrender the Procurement Card and current Procurement Card purchasing log to Department Procurement Card Coordinator. Upon receipt, the Department Procurement Card Coordinator shall deliver to the Procurement Card Administrator. Please be aware that the responsibility of the void card remains with the cardholder/ Department Head until it has been received by the Procurement Card Administrator.

EMPLOYEE CARD AGREEMENT

I, _____, hereby request a Procurement Card through the County's Procurement Card Program. As a cardholder, I agree to comply with the following terms and conditions regarding card utilization.

I understand that I am being entrusted with the Procurement Card and will be making financial commitments on behalf of the County.

I understand that the County is liable to the card issuer for all charges made on the card. I understand that I am personally liable for all charges not in compliance with this Agreement or with the Fort Bend County Procurement Card Policy Procedures Manual, (the Manual).

I agree to use the Procurement Card for purchases in compliance with the Manual and agree not to make personal purchases or any purchase in violation of the policy set forth in the Manual. I understand that the County Auditor and/or Procurement Card Administrator will audit the use of the Procurement Card and that appropriate actions will be taken to enforce this Agreement and violations of the Manual. Failure to follow the Manual may result in the revocation of my use of the Procurement Card and other possible disciplinary actions, including termination

I have received a copy of the Manual and understand the requirements of the use of the Procurement Card. I agree to return the Procurement Card immediately upon request or upon termination of my employment (including retirement).

If the Procurement Card is lost or stolen, I agree to notify the Department Procurement Card Coordinator immediately. I further agree to safeguard the Procurement Card in the same manner that I safeguard my personal financial items and information, such as cash, checks and credit cards. If the Procurement Card is used in a manner not authorized by the Manual, I agree to notify the Department Procurement Card Coordinator immediately.

I understand that the burden of proof will be upon me to show that the items purchased were made in compliance with the policy as set forth in the Manual. I agree to comply with competitive procurement policies and will obtain the best value when using the Procurement Card to make a purchase.

Purchases made in violation of the policy as set forth in the Manual will subject me to personal liability for the total dollar amount of such unauthorized purchase(s).

Employee Signature

SS# (last 4 digits)

Date

Department

Elected Official/Department Head

Date

ENROLLMENT/REQUEST FORM

This form is to request and enroll in the County's Procurement Card Program. I understand that if approved, I will be issued a Procurement Card in my name to be used for official County business only. As a cardholder, I understand that I will be required to sign a Procurement Card Agreement and attend a Procurement Card training session prior to issuance of a Procurement Card.

DEPARTMENT: _____

DEPARTMENT ACCOUNTING UNIT: _____

CARDHOLDER'S NAME: _____

SOCIAL SECURITY NUMBER (LAST 4 DIGITS): _____

BIRTH DATE: _____

HOME ADDRESS: _____

COUNTRY OF CITIZENSHIP: _____

EMAIL ADDRESS: _____

DEPARTMENT HEAD NAME: _____

SIGNATURE OF DEPARTMENT HEAD: _____

Request a monthly purchase limit of \$_____,

For Procurement Card Coordinator Use Only

Card Number: _____ Expiration Date: _____

Date of Training/Manual Issuance: _____

As cardholder, my signature acknowledges that I have received the listed Procurement Card, training and Procurement Card procedures manual.

Cardholder Signature

Date

DISPUTE REPORT

In accordance with the Fort Bend County Procurement Card Program procedures, the listed product/service is in dispute:

Item Ordered: _____

Date Ordered: _____

Date Received: _____

Authorized Amount: _____

Statement Amount: _____

Vendor: _____

Card Number: _____

Cardholder Name: _____

Phone Number: _____

Department: _____

Department Account: _____

Reason for Dispute: _____

Actions taken to Remedy: _____

Annex B

Fort Bend County Travel Policy

Approved in Commissioners' Court on November 3, 2009

Effective November 4, 2009

Revised September 7, 2010

Revised June 2, 2015, Effective August 1, 2015

Revised July 28, 2015, Effective August 1, 2015

Revised July 26, 2016, Effective August 1, 2016

Revised December 12, 2017, Effective January 1, 2018

Revised September 26, 2023, Effective October 1, 2023

The Commissioners' Court allocates funds annually for the payment of travel expenditures for county employees and officials within the individual departmental budgets. Travel expenditures paid from these budgets must serve a public purpose for Fort Bend County. These expenditures may be paid directly to the vendor or provided as a reimbursement to the employee/official upon completion of their travel. Advance payments to vendors may be accommodated by issuance of a check or use of a County procurement card. Eligible expenditure categories under this policy include: Lodging, meals, transportation, registration fees, and other fees (with justification). Each category is further defined below.

CONTRACT RATES:

Fort Bend County is a 'Cooperative Purchasing Participating Entity' with the State of Texas. This program is also known as TPASS (Texas Procurement and Support Services) State Travel Management Program (STMP). This gives County employees and officials access to the contract rates negotiated by the State for hotels and rental cars. Procurement procedures for these contract services are explained within the categories below.

OUT OF STATE TRAVEL:

Authorization: The traveler must obtain Commissioners' Court approval for out-of-state travel before departure. The duration must include travel days along with the event scheduled days. To prevent delays in processing travel reimbursement, ensure that the travel duration is accurately defined when submitting the agenda request.

Documentation: The traveler must provide an excerpt from the Commissioners' Court minutes (<http://www.fortbendcountytexas.gov/index.aspx?page=55>) with the travel reimbursement form.

LODGING (In and Out of State):

Hotel:

Hotel reimbursements are limited to the Federal Travel Regulations set forth by US General Services Administration (GSA) by location not including taxes. The rates are set annually and vary by month and location. The maximum rates for lodging per day can be found at:

http://www.gsa.gov/portal/content/104877?utm_source=OGP&utm_medium=print-radio&utm_term=perdiem&utm_campaign=shortcuts based on travelers destination.

Fort Bend County is a 'Cooperative Purchasing Participating Entity' with the State of Texas. This gives County employees and officials access to the contract rates negotiated by the State for hotels. Participating hotels can be found at: https://portal.cpa.state.tx.us/hotel/hotel_directory/index.cfm (be sure to check the correct fiscal year). **When making a reservation the traveler must ask for the State of Texas**

Contract rate (not the government rate) and be prepared to provide the County's agency #: C0790. Traveler must verify confirmed rate matches the negotiated contract rates found on the State's website listed above and does not exceed the GSA daily allowance.

If the organizer of a conference/seminar has negotiated discount rates with a hotel(s), the traveler may choose these lodging services without penalty but the traveler must reserve the room at the group rate and provide documentation of the group rate with the reimbursement request.

If all rooms are booked at the host hotel and no accommodation is available at or below the GSA rate, you may book a room at another hotel at a rate equal to or lower than the conference/seminar rate.

If all rooms are booked at the host hotel and no accommodation is available at or below the GSA rate or at the conference/seminar rate, you may provide three (3) comps to support the higher rate. This will serve as the justification for the higher rate. The comparable hotels should be within five miles of the host event and should be of similar hotel class.

The traveler will be responsible for the excess charge over the GSA per diem rate for the city/county even if using the State rate. The Auditor's Office will deduct from the travelers' reimbursement any excess charges over the GSA per diem rate.

If a traveler cannot find a traditional hotel, a direct rental (Airbnb, VRBO, etc.) is allowable. All previous maximum daily rates still apply. Any fees incurred through a direct rental must also be included in the daily rate calculation and remain below the limits. Fees may include, but are not limited to, cleaning fees, extra guest fees, or service fees. (Taxes are not included in this calculation, as they are charged to hotel stays as well).

Travel websites including but not limited to Expedia and Travelocity shall not be used to book lodging.

In order to qualify for any of the above-mentioned exceptions, a lodging reservation must be made 14 days prior to travel. If travel is required without 14-day notice, the traveler must provide back-up which explains why the 14-day advance booking was not possible.

Travel Days: If the traveler must leave before 7:00AM to arrive at the start of the event and/or return to the County after 6:00PM after the event concludes, an additional night's lodging is allowable before and/or after the event.

Additional fees allowable: Self-parking

Additional fees allowable with justification: Valet parking is allowable if an extreme hardship exists due to physical disability of the traveler or if no self-parking is available.

Fees not allowable: Internet, phone charges, laundry, safe fees

Gratuities: Gratuities are not reimbursable for any lodging services.

Overpayments by County: Any lodging overpayment by the County must be reimbursed by the hotel before processing a reimbursement to the traveler for any of the categories addressed in this policy. Prepaid lodging services should be accurately calculated or underestimated by excluding the taxes to prevent delays in processing travel reimbursements.

Procurement Card: The traveler may use the procurement card to make lodging reservations. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: A final settled hotel bill with a zero balance from the front desk is required even if lodging is paid by the procurement card. The hotel bill left under the door is not acceptable. The hotel bill should be scrutinized before traveler departs to make sure all charges are valid and notify hotel of any invalid charges and resolve issues before departing. Make sure all parking has been added to your bill and all personal incidentals have been paid by traveler. Any invalid charges will be the responsibility of the traveler. A copy of the itemized hotel statement must be submitted with the travel reimbursement claim if the traveler used a County procurement card to purchase lodging services or prepaid by County check. Event agenda/documentation or a letter from the traveler describing the event/meeting is required. If utilizing conference negotiated hotel rates, documentation of rates is required.

Changes/Modifications to Reservation – Any modifications including cancellation of reservation, the traveler must obtain a confirmation number and note the name of the person they spoke with in case the hotel charges the traveler. If the traveler does not obtain a confirmation number then any expenses incurred will be the responsibility of the traveler. Expenses resulting from changes or modifications to travel reservations will be paid by the County if the traveler produces documentation that a family emergency exists.

County Exemption Status – Fort Bend County Employees traveling on County Business are not exempt from State and local hotel taxes, state taxes, etc. with the exception of District Judges and the District Attorney.

MEALS:

Meals including in-state and out-of-state will be reimbursed to the traveler at a flat rate of \$70 (full day). The travelers per diem on the departure day and final day will be at 75% of the per diem, which is \$52.50. The amount reimbursed will be paid through payroll and is subject to federal taxation.

Late Night Arrival – If a traveler arrives in Fort Bend County between midnight and 6am the traveler will receive a full day per diem for the previous day.

Day trips: Prior to 01/01/2024 – Meals will not be reimbursed for trips that do not require an overnight stay. Effective 01/01/2024 - The traveler is subject to per diem reimbursement. Day trip includes a trip outside the County that requires a traveler to leave Fort Bend before 7:00 AM and/or return to the County after 6:00 PM will be eligible for reimbursement at 75% of the per diem, which is \$52.50. Amount reimbursed for day trips will be paid through payroll and are subject to federal taxation.

Procurement Card: No meal purchases are allowed on any County procurement card.

Documentation: No meal receipts are required for reimbursement. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

TRANSPORTATION:

Personal Vehicle: Use of personal vehicle will be reimbursed at the current rate/mile set by Commissioners' Court. Mileage should be calculated using the County office location of the traveler and the event location. Mileage may not be calculated using the traveler's home. Mileage should be calculated using an employees vehicle odometer reading or by

a readily available online mapping service for travel out of Fort Bend County. If using the mileage of an online mapping service, state which mapping service was used or provide a printout of your route detailing the mileage. For local travel, odometer readings or mapping service details are not required. Departments should develop a mileage guide for employees for local travel points, if a department does not have a mileage guide, the Auditor's Office will determine if the mileage listed is reasonable.

Allowable expenses: Parking and tolls with documentation.

County Vehicle: Fuel purchases when using a County vehicle should be made with the County Procurement card if available. Original receipts will accompany the Procurement Card statement but a copy must be provided with the travel reimbursement request.

Allowable expenses: Parking and tolls with documentation required.

Airfare: The County will only reimburse direct travel to and from a location where County-related business is being conducted. Airfare is reimbursable at the lowest available rate based on 14 day advance purchase of a discounted coach/economy full-service seat based on the required arrival time for the event. The payment confirmation and itinerary must be presented with the travel reimbursement form. The traveler will be responsible for the excess charges of an airline ticket purchase other than a coach/economy seat. When using Southwest Airlines a traveler should choose the "wanna get away" flight category.

Allowable Expenses: Bag fees. Fare changes are allowable if business related or due to family emergency.

Unallowable Expenses/Fees: Trip insurance, Early Bird Check In, Front of the line, Leg Room, Fare changes for personal reasons.

Rental Car: Rental cars are limited to the negotiated TPASS rates listed at: <http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/vendor-comparison/>. The contact information for Enterprise for the State Travel Management Program is listed here: <https://comptroller.texas.gov/purchasing/programs/travel-management/rental/enterprise.php>

When making a reservation traveler should provide the County's agency # [REDACTED]. The traveler will not be reimbursed for any amount over the negotiated contract rates if a non-contract company is used at a higher rate. The traveler should select a vehicle size comparable to the number of County travelers. The traveler may use a non-contract vendor at an overall rate lower than the contract rates with no penalty. The original contract/receipt must be presented with the travel reimbursement form or a copy if a County procurement card is used. . The traveler will be responsible for any excess charges not included in the TPASS rates or for choosing a vehicle size not comparable with the number of travelers on the trip. Insurance is included in the negotiated TPASS rates, if a traveler chooses to take out additional insurance the cost is on the traveler.

Enterprise:

- Optional Customer, Coupon or Corporate number is [REDACTED]
- Please enter the first 3 characters of your company's name or PIN number **FOR**
- Enterprise will automatically bill FBC when you reserve your vehicle so you need to have a purchase order before your departure.

Unallowable Fees/Charges: GPS, prepaid fuel, premium radio, child safety seats, additional insurance, one way rentals.

Allowable expenses: Parking and tolls allowed with documentation.

Other Transportation: Other forms of transit (bus, taxi, train) are reimbursable with an original receipt.

Gratuities: Gratuities are permitted if original receipt includes gratuity (20% maximum allowed) for any transportation services.

Procurement Card: The traveler may use a County procurement card to make transportation reservations for air travel and rental car services. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: Original receipts are required for all transportation reimbursements paid by the traveler. Transportation services obtained with a County procurement card require a copy of the receipt. Additional requirements are noted within each category above. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

REGISTRATION:

Registration fees: Registration fees are reimbursable for events that serve a Fort Bend County purpose. Registration fees for golf tournaments, tours, guest fees and other recreational events are not reimbursable.

Procurement Card: The traveler may use a County procurement card to register for an event. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

Documentation: An original receipt must be obtained upon registration and submitted with the reimbursement request if paid by the traveler. A copy of the receipt must be provided if registration is paid on a County procurement card. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

GRANTS:

Travel expenditures from Federal and State grants must also conform to the granting agency's funding requirements.

TRAVEL REIMBURSEMENT FORM:

The traveler must use the current travel reimbursement form <https://econnect.fortbendcountytexas.gov/documents-forms/auditors-office-forms> for all travel related services addressed in this policy. No other expenditures may be submitted for reimbursement on the travel reimbursement form. After completing all required information, the travel form must be signed/dated by the traveler and the department head/elected official. Travel reimbursement request should be submitted within 30 days from when traveler returns from trip. Mileage reimbursement request should be submitted no less frequently than quarterly. Mileage reimbursement request for the fourth quarter should be submitted no later than October 30th for yearend processing.

EXCLUSIONS:

If the traveler has custody of a person pursuant to statute or court order or if the traveler is required by court or legal entity to appear at a particular time and place the traveler will not be penalized for accommodations that require a 14 day advance purchase ticket if travel is required with less than 14 days' notice.

If the traveler has custody of a person pursuant to statute or court order the traveler will not be held to the 75% per diem on the departure and final day of travel.

ANNEX C

Requirements of Fort Bend County Commissioners Court for Participation in the Texas Law Enforcement Support Office (Formerly 1033 Program)

Approved: 5 March 2019

The Law Enforcement Support Office, LESO (formerly 1033 Program) allows local law enforcement agencies to receive Department of Defense (DOD) excess property. In Texas, the program is administered by a Department of Public Safety (www.dps.texas.gov/LawEnforcementSupport). The State Operating Plan outlines the responsibilities of the local law enforcement agency as well as the State's role in the administration of the program. Many of the items available are considered a controlled item and have additional requirements.

The Fort Bend County Commissioners Court wants to ensure that the procurement of excess property through the LESO program does not result in unbudgeted expenses for the County after securing through the LESO program. The local Law Enforcement Agency (LEA) is authorized to obtain only that property that can be supported and maintained by the current department/office budget with no additional funds from the general fund.

Annual Participation Application:

A county LEA must submit an application to the Texas Department of Public Safety before September 1st each year for participation in the program. The application requires the signature of the Authorized Official of the County, therefore the application must be authorized by Commissioners Court before signature by the County Judge and submission to the State.

- Local law enforcement agency will submit the application in the AgendaQuick system with sufficient lead time to allow approval prior to sending the application to Texas Department of Public Safety.
- The submission must include the application and any required guidelines, policies and/or protocols for compliance with 10 U.S. Code 2576a, as certified by the local law enforcement official in the application.

Minimum Requirements for Procurement

Following are the minimum requirements for securing any and all items through the LESO program:

- The Budget Officer will be consulted before the property is acquired to confirm that the office has the appropriate budget to support the property.

- Local law enforcement will submit a copy of the annual inventory due to LESO program before November 15th of each year to be recorded in the Commissioners Court records by submitting an agenda request.

Additional Requirements for Procurement of Controlled LESO Items and Motorized Vehicles

In addition to the above, any asset defined as a controlled item in the federal guidelines for the DOD, LESO program

http://www.dla.mil/Portals/104/Documents/DispositionServices/LESO/DISP_ControlledPropertyDefinition_11012017.pdf

Or, a request for **any motorized vehicle** whether a controlled item or not, will require the approval of Commissioners Court.

LEA must submit to Commissioners Court through AgendaQuick when sending to the State Coordinator at DPS. If in the judgement of members of the Commissioners Court the assets does not meet a need in the county or the item is not acceptable, the request may be denied. Any member of Commissioners Court may request additional information as needed to make an informed decision.

The following must be included with the LEA's initial request to Commissioners Court (see Check List attached):

- The complete packet of information prepared for submission to the Texas State LESO program accompanied by the Justification Letter and appropriate forms specific for each type of requests,
- List of any accessories, equipment, upgrades, or retrofitting that may be required during the life span of the asset,
- Identification of staff necessary for the utilization of the asset as well as any training requirements or special licensing required for operation of the asset including the cost associated with personnel or licensing,
- Itemized list of fees for transport, repairs or any other services necessary to ensure the asset is fully functional and has been funded within the local law enforcement's annual budget,
- Insurance Verification from Risk Management
- Vehicle Maintenance input on any repairs and maintenance needed for the proposed vehicle.

The LEA understands that the County Auditor will perform an annual audit of any acquisition secured under the program guidelines to determine the equipment is utilized as intended. The audit will include assessment of the equipment as well as review of the documentation maintained for the asset under the File Management and Property Accounting guidelines of the DPS, State LESO program.

**Fort Bend County Commissioners Court Texas Department of Public Safety LESO Program
Procurement of Controlled Asset or Motorized Vehicle Checklist must be completed:**

The following special equipment is being requested:

____ Weapons ____ Aircraft ____ Armored Vehicle ____ Non militarized motorized vehicle

____ The appropriate Justification Letter on agency letterhead is included in this procurement request.

____ All forms required by the Texas DPS to make the above request are included.

____ The Budget Office has reviewed the request – recommendation enclosed.

____ Risk Management has been consulted and a quote for insurance is included.

____ Vehicle Maintenance has been contact and ____ will be able to perform repairs
or ____ will not be able to make repairs.

Local Law Enforcement Official