1. AGENDA FOR JUNE 02, 2020
   Documents:
   
   A-06-02-2020.PDF

2. PACKET FOR JUNE 02, 2020
   Documents:
   
   PACKET 06-02-2020.PDF
NOTICE OF A PUBLIC MEETING OF THE
CITY COMMISSION OF THE CITY OF BROWNSVILLE

TELECONFERENCE OPEN MEETING

Pursuant to Chapter 551, Title 5, Section 551.041, of the Texas Government Code, the Texas Open Act, notice is hereby given that the City Commission of the City of Brownsville will conduct a Regular Meeting on Tuesday, June 02, 2020, at 5:00 P.M. via WebEx Teleconference Meeting by logging on at: https://brownsville.webex.com/brownsville/j.php?MTID=md620d7067e10f0575ddbd132dac589

Meeting Number 969 933 100
Password: meeting

This Notice and Meeting Agenda, are posted online at: http://www.cob.us/AgendaCenter

The members of the public wishing to participate in the meeting hosted through WebEx Teleconference can join at the following numbers:

Or you can Join by phone
+1-408-418-9388 United States Toll
Access code: 969 933 100

Members of the public who submitted a “Public Comment Form” will be permitted to offer public comments as provided by the agenda and as permitted by the presiding officer during the meeting. A recording of the meeting will be made and will be available to the public in accordance with the OpenMeetings Act.

CALL TO ORDER

a) ROLL CALL
b) INVOCATION

PROCLAMATION(S)

Ms. Lupita Moreno
(Mayor T. Mendez/Commissioner N. Galonsky Pizana)
Brownsville Fashion Week
(Commissioners N. Galonsky Pizana/J. Cowen, Jr.)
PRESENTATION(S)

Presentation by Dr. McCormick and UT-School of Public Health on COVID-19 Dashboard.
Presentation of Crossroads 2020 Report.

PUBLIC COMMENT PERIOD

- **Non-Agenda Items:** Kindly submit a “Public Comment Form” stating the City business or City policy you wish to speak to an hour before the start of the scheduled meeting time with the City Secretary. Forms are not reserved for anyone nor may time be deferred to anyone. PowerPoint presentations may not be accommodated. This period is limited to five (5) speakers with a time limit of three (3) minutes per speaker.

- **Agenda Items:** Kindly submit a “Public Comment Form” stating which item(s) on the agenda you wish to speak to an hour before the start of the scheduled meeting time with the City Secretary. Speakers will be allowed to address the Commission on the agenda item before it is to be considered. The speaker is limited to three (3) minutes.

- **Time Limits:** The City Commission shall have the discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit may be shortened to accommodate a lengthy agenda or it could be lengthened to allow additional time for discussion on a complicated matter or if there is a need for an interpreter.

WORK SESSION(S)

As a governmental body, the City Commission will not vote or take any formal action on any items discussed in the work session portion of the agenda.

1) Discussion regarding the City of Brownsville response to the urgent public necessity concerning COVID-19, otherwise known as Coronavirus, including but not limited to:
   a. Continuity Plan Update: City staffing, facilities and services, including actions and continuity of such operations;
   b. Financial Update: Emergency Procurement; and
   c. Drive-thru collections/testing site update

2) Presentation on Taxi Ordinance Chapter #106 Vehicles for Hire . (Brownsville Police Department)

CONSENT AGENDA ITEM(S)

The following are considered to be routine by the City Commission and will be approved by one motion. There will be no separate discussion of these items unless a City Commissioner so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.

1) Consideration and **ACTION** on Resolution Number 2020-045, authorizing the execution of an advance funding agreement between the City of Brownsville and the Texas Department of Transportation regarding the Brownsville to Los Fresnos Hike and Bike Trail Phase I. (Multimodal Transportation Department - Mobility)

2) Consideration and **ACTION** on Resolution Number 2020-047, authorizing the execution of an advance funding agreement between the City of Brownsville and the Texas Department of Transportation regarding the Brownsville to Los Fresnos Hike and Bike Trail Phase II. (Multimodal Transportation Department - Mobility)

3) Consideration and **ACTION** on letter of support for Brownsville Metro's HOPE grant application. (Multimodal Transportation Department - Transit)
4) Consideration and **ACTION** for the City Commission to approve the Ride Systems Service Agreement Addendum No. 2, in the amount of $5,220 and allowing for a three-month extension of the current service agreement, from May 31, 2020 to August 31, 2020, for a total cost of the Ride System Service Agreement of $39,330. (Multimodal Transportation Department - Transit)

5) Consideration and **ACTION** on Memorandum of Understanding (MOU) between the Texas Joint Counterdrug Task Force and the Brownsville Police Department for FY 2020. (Brownsville Police Department)

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**ITEMS FOR INDIVIDUAL CONSIDERATION(S)**

1) Consideration and **ACTION** to approve Sixth Amendment Declaration of Local State Disaster for Public Health Emergency. (City Manager's Office)

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1) Closed session pursuant to Section 551.087(1), Texas Gov’t Code regarding commercial or financial information that the City of Brownsville has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the City; and with which the City is conducting economic development negotiations; and to deliberate financial or other incentives to the same; regarding “Project Stone.” (City Manager’s Office)

POSSIBLE ACTION ON ANY ITEM(S) AS DISCUSSED IN EXECUTIVE SESSION

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By: Trey Mendez
Mayor of the City of Brownsville

I certify that a copy of the June 2, 2020, Agenda of items to be considered by the Brownsville City Commission was posted on the Bulletin Area at City Hall – Federal Building, on May 29, 2020. I further certify that the Agenda was posted on the City’s website and can be downloaded by accessing: http://www.cob.us/AgendaCenter

Griselda Rosas, Interim City Secretary
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By: Trey Mendez
Mayor of the City of Brownsville

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Griselda Rosas, Interim City Secretary
PROCLAMATION

A PROCLAMATION OF THE CITY COMMISSION
OF BROWNSVILLE, TEXAS,
RECOGNIZING AND HONORING LUPITA MORENO

WHEREAS, Lupita Moreno has graduated from The University of Texas Rio Grande Valley at the age of 75, earning a Bachelor’s Degree in Psychology with a minor in History, an endeavor worthy of high praise and recognition; and

WHEREAS, this Brownsville native has displayed fierce determination to accomplish a lifelong goal, all the while becoming a role model for her family and countless community members that will follow in her footsteps; and

WHEREAS, Lupita is no stranger to hard work, having served the Brownsville community as a nurse for 50 years, she began her career at Mercy Hospital in 1966 as a LVN after graduating from the Canales School of Vocational Nursing; Moreno went on to earn her Associates Degree in Nursing at Texas Southmost College in 1980 and became a Registered Nurse working at the Brownsville Medical Center, Valley Regional Medical Center, and as a traveling nurse at Laredo Medical Hospital and lastly at South Texas Rehabilitation Hospital; her service included work as triage nurse at the Brownsville Community Health Center and as a Clinical Nursing Instructor at the University of Texas Brownsville for two years; and

WHEREAS, Lupita has two daughters, five grandchildren and eight great-grandchildren and is also a devoted parishioner at Holy Family Church, her indomitable spirit and faith moved her to volunteer with Valley Interfaith and be active in two ministries, The Sacred Heart Society and The Devine Mercy Ministry; and it was the Sisters of Mercy, Moreno’s professors and mentors, who taught her to be a Spiritual Nurse and to see Jesus in all her patients... this life lesson has stayed in her heart ever since; and

WHEREAS, a higher education degree is a valuable asset and benefits families, businesses, and a variety of organizations in our region, and because Lupita Moreno has exemplified the importance of education no matter what your situation in life may be.

NOW THEREFORE, WE THE MEMBERS OF THE CITY COMMISSION of the City of Brownsville, Texas, by virtue of the authority vested by the Charter of said City, and on behalf of all our citizens, do hereby RECOGNIZE & HONOR LUPITA MORENO and encourage the residents of Brownsville to celebrate her contributions to our community.

DONE, on this, the 2nd day of June 2020.

[Signatures]

Juan "Trey" Mendez
Mayor

John Cowen, Jr.
At-Large Commissioner "A"

Nurith Galonsky Pizana
Commissioner District 1

Joel Munguia
Commissioner District 3

Griselda Rosas
City Secretary

Rose M. Z. Gown
At-Large Commissioner "B"

Jessica Tetrea-Kalifa
Commissioner District 2

B. Ben Neece
Commissioner District 4
A PROCLAMATION OF THE CITY COMMISSION
OF BROWNSVILLE, TEXAS,
RECOGNIZING BROWNSVILLE FASHION WEEK

WHEREAS, the second annual Brownsville Fashion Week was celebrated from Sunday, May 24, 2020, to Saturday, May 30, 2020, and came together within a month because the COVID-19 pandemic affected the original plans to have a total of twenty-nine runway shows at unique locations throughout the City of Brownsville; and

WHEREAS, this year’s Brownsville Fashion Week evolved as a result of the pandemic to observe social distancing but at the same time provide that shift in creative energy to entertain and inspire by producing five online runway shows, two online parties, and six online workshops exploring topics such as breaking into the industry, photographing editorials, fashion sustainability, fashion entrepreneurship, and a master class in makeup; and

WHEREAS, a team of five — Victor Hugo Jaramillo, Maybelle Joy, Brianna Lozano, Alex Villarreal, and Nolan Navarro aka Fish — came together to put on the week-long festival and have vowed to continue creating and promoting fashion opportunities in Brownsville so that creative types and interested parties have a safe and supportive environment to experiment and envision their fashion fantasies; and

WHEREAS, a group of independent organizers, volunteers, designers, stylists, models, and the City of Brownsville aims to empower local designers and goes beyond conservative, heteronormative culture by prioritizing designers and artists who come from disadvantaged households and marginalized communities; and

WHEREAS, fashion is a nascent industry in the City of Brownsville but nonetheless much appreciated and much needed because of the artistic beauty it adds to the community and the inspiration it provides to artists across different mediums including but not limited to visual art, music, theatre, and dance.

NOW THEREFORE, WE THE MEMBERS OF THE CITY COMMISSION of the City of Brownsville, Texas, by virtue of the authority vested by the Charter of said City, and on behalf of all our citizens, do hereby encourage the residents of Brownsville to RECOGNIZE BROWNSVILLE FASHION WEEK.

DONE, on this, the 2nd day of June 2020.
### Executive Session (City Attorney Only)

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**Action Item:**

### Workshop

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### Agenda

- [ ] Public Hearing
- [ ] Contract
- [ ] Grant
- [ ] Action
- [ ] Consent

### Ordinance

- [ ] First Reading
- [ ] Second Reading

### Information

Please include additional information/request.

Presentation Regarding Taxi Ordinance Chapter # 106 Vehicles for Hire

### Reviewing Departments:

Please review and forward to the next reviewing department in a timely manner.

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<th>Reviewing Departments</th>
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### City Commission

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### Assistant City Manager

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### Deputy City Manager

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### City Manager’s Approval

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Revised 3/2019
To: Mayor and City Commission

Through: Noel Bernal, City Manager

From: Felix Saucedo, Chief of Police

Date: May 27, 2020

Agenda: Presentation on Taxi Ordinance Chapter #106 Vehicles for Hire. (Brownsville Police Department)

On October 1, 2019, a City Commission work session regarding taxi operations and ordinance requirements was discussed. During the Work Session, the City Commission suggested the exploration of the use of more technology and less restrictive ordinance regulations regarding taxi operations. The police department and City Attorney’s Office have worked on an ordinance revision to be presented on the June 2nd commission meeting. A phased approach was developed for this task. The ordinance revision allows for the taxis to solicit businesses – simply put, the cabs can actually be in the area of restaurants and bars. The change in the ordinance would promote more usage of taxis in our city and also provides a more even playing field with the advent of ride-sharing. The other two sections on the amended ordinance repeal the number of permits as well as repeal the number of taxi companies allowed to operate within the city.

On May 26, 2020, we met with the owners of the taxi companies at the Brownsville Police Department. The revisions for the taxi ordinance was generally well-received. Competing with ride-sharing was the major theme throughout meeting. The group was receptive to updating their current systems of technology. Several owners suggested reducing the licensing cost or extending the licensing of cabs from annual to biennial. The current annual fee for the first permit or taxicab is $125.00 and $75.00 for each subsequent vehicle.

We have tentatively set another meeting for June 24, 2020 in order to further visit these topics as we move forward with phasing-in changes to the ordinance.
EXECUTIVE SESSION (City Attorney Only)

AGENDA ITEM

Secretary

First Reading

Second Reading

Public Hearing

Contract

Grant

Action

Consent

INFORMATION: Please include additional information/request.

Consideration and ACTION on Resolution Number 2020-045, authorizing the execution of an Advance Funding Agreement between the City of Brownsville and the Texas Department of Transportation regarding the Brownsville Los Fresnos Hike & Bike Trail, Phase One, (CSJ#: 0921-06-322), (Multimodal Transportation)

Reviewing Departments: Please review and forward to the next reviewing department in a timely manner.

City Attorney
Date Reviewed:
By:
Comments:

Finance Department
Date Reviewed:
By:
Comments:

City Commission
Approved:
Yes
No
Date:
Initials:
Date:

Assistant City Manager
Approved:
Yes
No
Date:
Initials:
Date:

Deputy City Manager
Approved:
Yes
No
Date:
Initials:
Date: 5/18/2020

City Manager's Approval
Signature:
Date:
To: Mayor and City Commission
Though: Noel Bernal, City Manager
From: Joel Garza, Mobility Director – Multimodal Transportation
Date: May 20, 2020
Agenda: Consideration and ACTION on Resolution Number 2020-045, authorizing the execution of an Advance Funding Agreement between the City of Brownsville and the Texas Department of Transportation regarding the Brownsville Los Fresnos Hike & Bike Trail, Phase One, (CSJ#: 0921-06-322), (Multimodal Transportation)

Summary:

The City established a long term partnership with the National Park Service (NPS) for the use of NPS land at the Palo Alto Battlefield N.H.S. through the development of the Historic Battlefield Trail. Thanks to the Valley Baptist Legacy Foundation, the City of Brownsville began to develop and construct the 1st segment of the Historic Battlefield Trail Extension.

Furthermore, the City has received Transportation Alternative Program (TAP) funds to continue the development and construction of the Historic Battlefield Trail. This Advanced Funding Agreement (AFA) between the City of Brownsville and the Texas Department of Transportation (TxDOT) is required to design and construct the next segment of the trail, which we are identifying as Phase One of the Brownsville Los Fresnos Hike & Bike Trail (Brownsville Los Fresnos Connect).

Once the trail exits the NPS property, the trail will utilize right-of-way alongside a drainage ditch. City staff secured an agreement with the Cameron County Drainage District #1 in 2013 to utilize the district’s right-of-way for trail purposes. The construction of the trail project will be about $999,080, which 80% will be covered through the RGVMPO’s Category 9 funding. The 20% match will be covered using the City’s sidewalk/trail fund 803-8200-9219 in FY 2022.

Staff recommends approval of this agreement.
RESOLUTION NO. 2020-045

A RESOLUTION OF THE CITY OF BROWNSVILLE TO EXECUTE THE ADVANCED FUNDING AGREEMENT BETWEEN THE CITY OF BROWNSVILLE AND THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT), REGARDING THE BROWNSVILLE TO LOS FRESNOS HIKE & BIKE TRAIL, PHASE I (CSJ#0921-02-322)

WHEREAS, the City of Brownsville received funding under Category 9, Transportation Alternative Program, (TAP) funds; and,

WHEREAS, to make use of said federal funds, an Advanced Funding Agreement shall be executed between the City of Brownsville and TXDOT; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BROWNSVILLE, TEXAS:

That the City Commission approves the Advance Funding Agreement between the City of Brownsville and TXDOT; and

That the City Commission authorizes the City Manager to execute the Advance Funding Agreement attached as Exhibit A and made part hereof for all purposes.

Adopted by the City Commission of the City of Brownsville, Texas on June _____, 2020.

_________________________________________
Trey Mendez
Mayor, City of Brownsville

ATTESTED TO:

_________________________________________
Griselda Rosas
Interim City Secretary
STATE OF TEXAS §
COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES
SET-ASIDE (TASA) PROGRAM PROJECT
MPO-Selected Off-System

This Advance Funding Agreement for a Transportation Alternatives Set-Aside (TASA) Program Project ("Agreement") is made between the State of Texas (State), acting through the Texas Department of Transportation, and the City of Brownsville (Local Government), acting through its duly authorized officials.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, Federal law, 23 USC §134 and 49 USC §5303, requires that State and Metropolitan Planning Organizations (MPOs) develop transportation plans and programs for urbanized areas of Texas, and

WHEREAS, Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the rules and procedures for the Transportation Alternatives Set-Aside Program (TASA) are established in 23 USC §133(h), and 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418, and

WHEREAS, the Local Government prepared and submitted to the State or Metropolitan Planning Organization (MPO) a project nomination package for TASA funding consideration, which is briefly described as Brownsville/Los Fresnos Hike & Bike Trail (Project), and
WHEREAS, the Texas Transportation Commission (Commission) passed Minute Order Number 115550 (MO) dated August 9, 2019 awarding funding for TASA projects in the TASA Program Call of the Brownsville MPO, including Project, and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated [enter date of resolution], which is attached to and made a part of this Agreement as Attachment A, Resolution or Ordinance. A map showing the Project location appears in Attachment B, Project Location Map, which is attached to and made a part of this Agreement, and

NOW, THEREFORE, the State and the Local Government agree as follows:

AGREEMENT

1. Responsible Parties:
   For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

   |   | Utilities                                | Article 8 |
---|---|------------------------------------------|-----------|
1  | N/A|                                          |           |
2  | N/A| Environmental Assessment and Mitigation  | Article 9 |
3  | Local Government | Architectural and Engineering Services | Article 11|
4  | Local Government | Construction Responsibilities          | Article 12|
5  | N/A| Right of Way and Real Property           | Article 14|

2. Period of Agreement and Performance
   A. Period of Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided below.
   B. Period of Performance.
      1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization and Agreement (FPAA) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (SLOA) for that phase of work.
      2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

3. Scope of Work and Use of Project
   A. The scope of work for Project consists of construction of a 10’ wide hike and bike trail, which is 1.29 miles in length, to include lighting, rest areas with picnic tables, a fixit (bike) station, trash compactor, pergola(s) and fencing/barrier along canal as needed. The trail (Phase I) begins at 2 miles North of the FM 511/FM1847 intersection and proceeds eastward and thence North to a terminus (opposite a reservoir), wherein Phase II begins.
B. Any project changes proposed must be submitted in writing by Local Government to State. Substantive changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

4. Project Sources and Uses of Funds

The total estimated development cost of the Project is shown in Attachment C, Project Budget Estimate and Source of Funds (Attachment C).

A. If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled “Local Government Project Procedures and Qualification for the Texas Department of Transportation” and retains qualification in accordance with applicable TxDOT procedures. Upon request, Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of the Project.

B. The total estimated project cost as shown in Attachment C includes the Local Government’s estimated itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. Local Government must submit to State evidence of payment for eligible in-kind costs at least once per calendar quarter using the State’s In-Kind Match Reporting form.

C. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

D. The Project budget and source of funds estimate based on the budget provided in the application is included in Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal TASA funds assigned by the Commission or MPO in consultation with State. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the TASA, FPAA, or other federal documents.

E. State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the
actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.

F. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.

G. The budget in Attachment C will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.

H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government’s requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.

I. Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment C for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment C for State’s estimated construction oversight and construction cost.

J. In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment C and 100 percent of any overruns above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State’s written notification.

K. Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the “Texas Department of Transportation”. The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.

L. Upon completion of Project, State will perform a final accounting of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party.

M. In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State’s notification.

N. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats
or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.

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

P. State will not pay interest on any funds provided by Local Government.

Q. State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.

R. Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.

S. If Local government is an Economically Disadvantaged County (EDC) and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

5. Termination of the Agreement
   A. This Agreement may be terminated by any of the following conditions:
      1. By mutual written consent and agreement of all parties;
      2. By any party with 90 days written notice; or
      3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.
   B. If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
   C. The Agreement may be terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government’s proposed work scope identifies greatly differing costs from those estimated. The State will reimburse
Local Government remaining funds to the Local Government within ninety (90) days of termination;

D. If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State’s cost accounting system and with 2 CFR Part 200 recapture requirements.

E. A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:


2. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.

3. Local Government withdraws from participation in Project.

4. State determines that federal funding may be lost due to Project not being implemented and completed.

5. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.

6. A construction contract has not been awarded or construction has not been initiated within three years after the date that the Commission or MPO selected the project or by a letting date determined by the state and agreed to by the Local Government.

7. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.

F. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice from Local Government within 270 days of FPAA.

6. Amendments
This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

7. Remedies
This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities
Local Government shall be responsible for the adjustment, removal, or relocation of utilities or utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government’s failure to ensure that utilities or utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. At the State’s discretion, State may reimburse Local Government
for minor, incidental utility adjustments that are identified during the preliminary engineering phase if they are eligible for federal reimbursement. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State's request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TASA participation if the following conditions are met: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TASA funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

9. Environmental Assessment and Mitigation
Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.
   A. The Party identified in Article 1 is responsible for the identification and assessment of any environmental problems associated with the development of Project.
   B. Local Government is responsible for the cost of any environmental problem’s mitigation and remediation. These costs will not be reimbursed or credited towards Local Government’s financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.
   C. Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment, including any public hearing requirements that may be necessary when adding a bike lane.
   D. Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards
All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

11. Architectural and Engineering Services
   A. Architectural and engineering services for preliminary engineering will be provided by the Party identified in Article 1. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services or if these services will be used as in-kind contributions; and with Texas Government Code Subchapter 2254.A., in all cases. Professional services contracts for federally funded projects must conform to federal requirements. For State-selected projects, architectural and engineering services are not eligible for TASA reimbursement.
   B. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior’s...
Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with State’s applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials’ (“AASHTO”) publications, “A Policy on Geometric Design of Highways and Streets” and “Guide for the Development of Bicycle Facilities,” as applicable. All design criteria for bicycle and pedestrian bridges must comply with TxDOT’s Bridge Design Manual and AASHTO’s Load and Resistance Factor Design (LRFD) Guide Specifications for the Design of Pedestrian Bridges (latest edition) as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.

C. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval on an agreed upon schedule. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.

D. When architectural and engineering services are provided by or through State, then the State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work, including any proposed changes to the scope of work, as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

12. Construction Responsibilities

A. The Party identified in Article 1 shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. To ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.

B. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.

C. All contract change order review and approval procedures must be approved by State prior to start of construction.

D. If the Local Government is the responsible party, the State must review and approve change orders.

E. Upon completion of Project, the party constructing Project will issue and sign a “Notification of Completion” acknowledging Project’s construction completion.
F. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the latest version of Form “FHWA-1273” in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.

G. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

13. Project Maintenance

A. Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period commensurate with the federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project’s original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

B. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.

C. Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.

D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must
continue to be preserved regardless of any approved changes that may occur throughout the life of Project.

14. Right of Way and Real Property Acquisition
   A. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property.
   B. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.
   C. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR §24.2(g). Documentation to support such compliance must be maintained and made available to State and its representatives for review and inspection.
   D. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, or (2) Local Government, if the real property is not to be made part of the State Highway System. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.
   E. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.
   F. Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel’s value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values. Local Government will not be reimbursed for right-of-way costs on state-selected projects.
G. For State-selected TASA projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TASA Project.

H. Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State’s predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Local Government will not be reimbursed for right-of-way costs on state-selected projects.

I. Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.

J. If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment. For State-selected projects, this is outlined in 43 Tex. Admin. Code §11.417. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.

K. Local Government shall execute individually or produce a legal document as necessary to provide for Project’s continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.

L. Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State’s Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project’s continued use and upkeep.

M. Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

15. Insurance
A. Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed copy of State’s Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If
coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.

B. For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a “Loss Payee” should the building be destroyed.

16. Notices, Invoices, Payments, and Project Inquiries

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

<table>
<thead>
<tr>
<th>Local Government:</th>
<th>State:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Brownsville</td>
<td>Texas Department of Transportation</td>
</tr>
<tr>
<td>ATTN: {Enter Position Title}</td>
<td>ATTN: Director of Contract Services</td>
</tr>
<tr>
<td>P.O. Box 911</td>
<td>125 E. 11th Street</td>
</tr>
<tr>
<td>Brownsville, Texas 78522</td>
<td>Austin, TX 78701</td>
</tr>
</tbody>
</table>

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

Invoicing, payment, and project inquiries must be sent to the following address, which the State may change by sending written notice of the change to the Local Government:

Texas Department of Transportation
ATTN: District Engineer
600 West IH 2
Pharr, Texas 78577

All invoicing, payment, and project inquiries must include the following information:

County: Cameron
Local Government: City of Brownsville
CSJ No.: 0921-06-322
Project Name: Brownsville/Los Fresnos Hike & Bike Trail
Highway or Roadway: Various

17. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

18. Responsibilities of the Parties
Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

19. Ownership of Documents
Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

20. Document and Information Exchange
Local Government agrees to electronically deliver to State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft Word or similar format. If requested by State, Local Government will use State’s document template. Local Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by State. This requirement applies whether Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of State, Local Government shall submit any information required by State in the format directed by State.

21. Compliance with Laws
The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

22. Sole Agreement
This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement’s subject matter.

23. Cost Principles
In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR Part 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to Project.

24. Procurement and Property Management Standards
The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

25. Inspection of Books and Records
The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

26. **Civil Rights Compliance**

The parties to this Agreement are responsible for the following:

A. **Compliance with Regulations:** Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

B. **Nondiscrimination:** The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

C. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government’s obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

D. **Information and Reports:** The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance:** In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
2. cancelling, terminating, or suspending of the Agreement, in whole or in part.

F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

27. Pertinent Non-Discrimination Authorities
During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:


B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).


F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).

G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).

H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38.

I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

28. Disadvantaged Business Enterprise Program Requirements

A. The parties shall comply with the Disadvantaged Business Enterprise (“DBE”) Program requirements established in 49 CFR Part 26.

B. Local Government shall adopt, in its totality, State’s federally approved DBE program.

C. Local Government shall set an appropriate DBE goal consistent with State’s DBE guidelines and in consideration of Local market, project size, and nature of the goods or services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. Local Government shall follow all other parts of State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address: [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).

E. Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. State’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).

F. Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: “The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the
termination of this agreement or such other remedy as the recipient deems appropriate.”

29. Debarment Certifications
The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, “Debarment and Suspension.” By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

30. Lobbying Certification
In executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, that:
A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal 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.
B. 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 federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC §1352 for making or entering into this transaction. 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.
31. Federal Funding Accountability and Transparency Act Requirements
   A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: [http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf](http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf) and [http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf](http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf).
   B. Local Government agrees that it shall:
      1. Obtain and provide to State a System for Award Management (SAM) number (Federal Acquisition Regulation (FAR) Subpart 4.11) if this award provides more than $25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: [https://sam.gov/SAM/pages/public/index.jsf](https://sam.gov/SAM/pages/public/index.jsf)
      2. Obtain and provide to State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website [http://fedgov.dnb.com/webform](http://fedgov.dnb.com/webform); and
      3. Report the total compensation and names of its top five executives to State if:
         a. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and
         b. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

32. Single Audit Report
   A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.
   B. If threshold expenditures of $750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
   C. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows: We did not meet the $_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____.
   D. For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

33. Signatory Warranty
   Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.
Each party is signing this agreement on the date stated under that party's signature.

<table>
<thead>
<tr>
<th>THE STATE OF TEXAS</th>
<th>THE LOCAL GOVERNMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>Kenneth Stewart</td>
<td>Typed or Printed Name</td>
</tr>
<tr>
<td>Typed or Printed Name</td>
<td>Typed or Printed Title</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
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**TDOT:**
- CSJ #: 0921-06-322
- District #: 21 – Pharr
- Code Chart 64 #: 05950
- Project Name: Brownsville/Los Fresnos Hike & Bike Trail

**Federal Highway Administration:**
- CFDA No.: 20.205
- CFDA Title: Highway Planning and Construction
- AFA Not Used For Research & Development
### ATTAHCMENT C

**PROJECT ESTIMATE AND SOURCE OF FUNDS**

LG Performs PE Work or Hires Consultant / LG Lets Project for Construction

<table>
<thead>
<tr>
<th>Description of Project Costs to be Incurred</th>
<th>Total Project Cost Estimate</th>
<th>Federal Participation</th>
<th>State Participation</th>
<th>Local Government Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>%</td>
<td>Cost</td>
<td>%</td>
</tr>
<tr>
<td>Preliminary Engineering¹ (100% LG)</td>
<td>$48,954</td>
<td>0%</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>Construction (3LC)</td>
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<td>Construction² (Cat 9)</td>
<td>$640,000</td>
<td>80%</td>
<td>$512,000</td>
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<tr>
<td><strong>Work by LG Subtotal</strong></td>
<td><strong>$1,048,034</strong></td>
<td></td>
<td><strong>$512,000</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Description of Project Costs to be Incurred</th>
<th>Total Project Cost Estimate</th>
<th>Federal Participation</th>
<th>State Participation</th>
<th>Local Government (LG) Participation</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>%</td>
<td>Cost</td>
<td>%</td>
</tr>
<tr>
<td>Preliminary Engineering¹</td>
<td>$14,686</td>
<td>0%</td>
<td>$0</td>
<td>0%</td>
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<tr>
<td>Environmental Cost¹</td>
<td>$-</td>
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<td>Right of Way¹</td>
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<td>$0</td>
<td>0%</td>
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<td><strong>Direct State Costs Subtotal</strong></td>
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<td><strong>$0</strong></td>
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<tr>
<td>Indirect State Cost</td>
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<td><strong>TOTAL PARTICIPATION</strong></td>
<td><strong>$1,143,557</strong></td>
<td></td>
<td><strong>$512,000</strong></td>
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</table>

- The estimated total participation by Local Government is $575,697.00, plus 100% of overruns.
- Total estimated payment by Local Government to State is $39,663.00.
Local Government’s first payment of $14,686.00 is due to State within 30 days from execution of this contract.

Local Government’s second payment of $24,977.00 is due to State within 60 days prior to the Construction contract being advertised for bids.

If ROW is to be acquired by State, Local Government’s share of property cost will be due prior to acquisition.

The local match must be 20% or greater and may include eligible in-kind contributions, EDC adjustments, or TDCs if authorized as part of project selection.

This is an estimate; the final amount of Local Government participation will be based on actual costs.

Maximum federal TASA funds available for Project are $512,000.00.
TO:    Noel Bernal, City Manager  
FROM:  Joel Garza, Mobility Director  
SUBJECT: Brownsville Los Fresnos H & B Trail Phase 2 AFA  
DATE:   5/20/2020  
THROUGH:  

AGENDA ITEM  

<table>
<thead>
<tr>
<th>Executive Session (City Attorney Only)</th>
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<th>Agenda</th>
<th>Ordinance</th>
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<td>Time Needed:</td>
<td>Time Needed:</td>
<td>Public Hearing</td>
<td>First Reading</td>
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<td>Action Item:</td>
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<td>Contract</td>
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<td>✔ Action</td>
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<td></td>
<td>Consent</td>
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**Information:** Please include additional information/request.  

Consideration and ACTION on Resolution Number 2020-XXX, authorizing the execution of an Advance Funding Agreement (AFA) between the City of Brownsville and the Texas Department of Transportation regarding Phase 2 of the Brownsville Los Fresnos Hike and Bike Trail (CSJ#: 0921-02-324); (Multimodal Transportation)  

**Reviewing Departments:** Please review and forward to the next reviewing department in a timely manner.  

<table>
<thead>
<tr>
<th>City Attorney</th>
<th>Date Reviewed:</th>
<th>By:</th>
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<tbody>
<tr>
<td>Comments:</td>
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<tr>
<th>Finance Department</th>
<th>Date Reviewed:</th>
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<tbody>
<tr>
<td>Comments:</td>
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<thead>
<tr>
<th>City Commission</th>
<th>Assistant City Manager</th>
<th>Deputy City Manager</th>
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</thead>
<tbody>
<tr>
<td>Approved:</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Date:</td>
<td>Initials:</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td>5/18/2020</td>
<td></td>
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</table>

**City Manager's Approval**  

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Date:</th>
</tr>
</thead>
</table>
To: Mayor and City Commission  
Though: Noel Bernal, City Manager  
From: Joel Garza, Mobility Director – Multimodal Transportation  
Date: May 20, 2020

Agenda: Consideration and ACTION on Resolution Number 2020-047, authorizing the execution of an Advance Funding Agreement between the City of Brownsville and the Texas Department of Transportation regarding the Brownsville Los Fresnos Hike & Bike Trail, Phase Two, (CSJ#: 0921-06-324), (Multimodal Transportation)

Summary:

Years ago the City established a partnership with the National Park Service (NPS) for use of NPS land at the Palo Alto Battlefield N.H.S. to build the Historic Battlefield Trail. Thanks to the Valley Baptist Legacy Foundation, City of Brownsville began to develop and construct the 1st segment of the Historic Battlefield Trail Extension.

Furthermore, the City has received Transportation Alternative Program (TAP) funds to continue the development and construction of the Historic Battlefield Trail. This Advanced Funding Agreement (AFA) between the City of Brownsville and the Texas Department of Transportation (TxDOT) is needed to design and construct the next segment of the trail, which we are calling Phase Two of the Brownsville Los Fresnos Hike & Bike Trail (Brownsville Los Fresnos Connect).

Once the trail leaves the NPS property, the trail will utilize right-of-way alongside a drainage ditch. City staff secured an agreement with Cameron County Drainage District #1 in 2013 to utilize the district’s right-of-way for trail purposes.

The construction of the trail project will be about $999,080, which 80% will be covered through the RGVMPO’s Category 9 funding. The 20% match will be covered using the City’s sidewalk/trail fund 803-8200-9219 in FY 2023.

Staff recommends approval of this agreement.
RESOLUTION NO. 2020-047

A RESOLUTION OF THE CITY OF BROWNSVILLE TO EXECUTE THE ADVANCED FUNDING AGREEMENT BETWEEN THE CITY OF BROWNSVILLE AND THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT), REGARDING THE BROWNSVILLE TO LOS FRESNOS HIKE & BIKE TRAIL, PHASE II (CSJ#0921-02-324)

WHEREAS, the City of Brownsville received funding under Category 9, Transportation Alternative Program, (TAP) funds; and,

WHEREAS, to make use of said federal funds, an Advanced Funding Agreement shall be executed between the City of Brownsville and TXDOT; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BROWNSVILLE, TEXAS:

That the City Commission approves the Advance Funding Agreement between the City of Brownsville and TXDOT; and

That the City Commission authorizes the City Manager to execute the Advance Funding Agreement attached as Exhibit A and made part hereof for all purposes.

Adopted by the City Commission of the City of Brownsville, Texas on June ______, 2020.

____________________________
Trey Mendez
Mayor, City of Brownsville

ATTESTED TO:

____________________________
Griselda Rosas
Interim City Secretary

"Approved as to Form and Legality
This 27th day of May 2020
Title:  Office of the Brownsville City Attorney"
STATE OF TEXAS

COUNTY OF TRAVIS

ADVANCE FUNDING AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES
SET-ASIDE (TASA) PROGRAM PROJECT
MPO-Selected Off-System

This Advance Funding Agreement for a Transportation Alternatives Set-Aside (TASA) Program Project ("Agreement") is made between the State of Texas (State), acting through the Texas Department of Transportation, and the City of Brownsville (Local Government), acting through its duly authorized officials.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, Federal law, 23 USC §§134 and 49 USC §5303, requires that State and Metropolitan Planning Organizations (MPOs) develop transportation plans and programs for urbanized areas of Texas, and

WHEREAS, Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the rules and procedures for the Transportation Alternatives Set-Aside Program (TASA) are established in 23 USC §133(h), and 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418, and

WHEREAS, the Local Government prepared and submitted to the State or Metropolitan Planning Organization (MPO) a project nomination package for TASA funding consideration, which is briefly described as Brownsville/Los Fresnos Trail – Phase II (Project), and
WHEREAS, the Texas Transportation Commission (Commission) passed Minute Order Number 115550 (MO) dated August 9, 2019 awarding funding for TASA projects in the TASA Program Call of the Brownsville MPO, including Project, and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated [enter date of resolution], which is attached to and made a part of this Agreement as Attachment A, Resolution or Ordinance. A map showing the Project location appears in Attachment B, Project Location Map, which is attached to and made a part of this Agreement, and

NOW, THEREFORE, the State and the Local Government agree as follows:

AGREEMENT

1. Responsible Parties:
   For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

<table>
<thead>
<tr>
<th></th>
<th>Utilities</th>
<th>Article 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>N/A</td>
<td>Environmental Assessment and Mitigation</td>
</tr>
<tr>
<td>3</td>
<td>Local Government</td>
<td>Architectural and Engineering Services</td>
</tr>
<tr>
<td>4</td>
<td>Local Government</td>
<td>Construction Responsibilities</td>
</tr>
<tr>
<td>5</td>
<td>N/A</td>
<td>Right of Way and Real Property</td>
</tr>
</tbody>
</table>

2. Period of Agreement and Performance
   A. Period of Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided below.
   B. Period of Performance.
      1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization and Agreement (FPAA) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (SLOA) for that phase of work.
      2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

3. Scope of Work and Use of Project
   A. The scope of work for Project consists of construction of 10’ Hike and Bike Trail which is 1.48 miles in length, to include lighting, rest areas with picnic tables, trash receptacles, pergola(s) and fencing/barrier along canal (as needed). The trail begins at the Phase 1 terminus and proceeds northward to stop next to an existing subdivision in Los Fresnos.
   B. Any project changes proposed must be submitted in writing by Local Government to State. Substantive changes may also require an amendment to this Agreement and the

Page 2 of 19
approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

4. **Project Sources and Uses of Funds**

   The total estimated development cost of the Project is shown in Attachment C, Project Budget Estimate and Source of Funds (Attachment C).

   A. If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled “Local Government Project Procedures and Qualification for the Texas Department of Transportation” and retains qualification in accordance with applicable TxDOT procedures. Upon request, Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of the Project. State in its discretion may deny reimbursement if Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

   B. The total estimated project cost as shown in Attachment C includes the Local Government’s estimated itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. Local Government must submit to State evidence of payment for eligible in-kind costs at least once per calendar quarter using the State’s In-Kind Match Reporting form.

   C. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

   D. The Project budget and source of funds estimate based on the budget provided in the application is included in Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal TASA funds assigned by the Commission or MPO in consultation with State. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the TASA, FPAA, or other federal documents.

   E. State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be
reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.

F. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.

G. The budget in Attachment C will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.

H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government’s requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.

I. Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment C for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment C for State’s estimated construction oversight and construction cost.

J. In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment C and 100 percent of any overruns above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State’s written notification.

K. Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the “Texas Department of Transportation.” The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.

L. Upon completion of Project, State will perform a final accounting of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party.

M. In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State’s notification.

N. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of
way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.

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

P. State will not pay interest on any funds provided by Local Government.

Q. State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.

R. Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.

S. If Local government is an Economically Disadvantaged County (EDC) and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

5. Termination of the Agreement

A. This Agreement may be terminated by any of the following conditions:
   1. By mutual written consent and agreement of all parties;
   2. By any party with 90 days written notice; or
   3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.

B. If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.

C. The Agreement may be terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government’s proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination;
D. If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State’s cost accounting system and with 2 CFR Part 200 recapture requirements.

E. A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:


2. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.

3. Local Government withholds from participation in Project.

4. State determines that federal funding may be lost due to Project not being implemented and completed.

5. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.

6. A construction contract has not been awarded or construction has not been initiated within three years after the date that the Commission or MPO selected the project or by a letting date determined by the state and agreed to by the Local Government.

7. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.

F. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice from Local Government within 270 days of FPAA.

6. Amendments
This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

7. Remedies
This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities
Local Government shall be responsible for the adjustment, removal, or relocation of utilities or utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government’s failure to ensure that utilities or utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. At the State’s discretion, State may reimburse Local Government for minor, incidental utility adjustments that are identified during the preliminary engineering phase if they are eligible for federal reimbursement. Local Government must obtain advance
approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State's request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TASA participation if the following conditions are met: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TASA funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

9. Environmental Assessment and Mitigation
Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.
A. The Party identified in Article 1 is responsible for the identification and assessment of any environmental problems associated with the development of Project.
B. Local Government is responsible for the cost of any environmental problem’s mitigation and remediation. These costs will not be reimbursed or credited towards Local Government’s financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.
C. Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment, including any public hearing requirements that may be necessary when adding a bike lane.
D. Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards
All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

11. Architectural and Engineering Services
A. Architectural and engineering services for preliminary engineering will be provided by the Party identified in Article 1. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services or if these services will be used as in-kind contributions; and with Texas Government Code Subchapter 2254.A., in all cases. Professional services contracts for federally funded projects must conform to federal requirements. For State-selected projects, architectural and engineering services are not eligible for TASA reimbursement.
B. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior’s Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for
Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with State’s applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials’ (“AASHTO”) publications, “A Policy on Geometric Design of Highways and Streets” and “Guide for the Development of Bicycle Facilities,” as applicable. All design criteria for bicycle and pedestrian bridges must comply with TxDOT’s Bridge Design Manual and AASHTO’s Load and Resistance Factor Design (LRFD) Guide Specifications for the Design of Pedestrian Bridges (latest edition) as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.

C. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval on an agreed upon schedule. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.

D. When architectural and engineering services are provided by or through State, then the State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work, including any proposed changes to the scope of work, as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

12. Construction Responsibilities

A. The Party identified in Article 1 shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. To ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.

B. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.

C. All contract change order review and approval procedures must be approved by State prior to start of construction.

D. If the Local Government is the responsible party, the State must review and approve change orders.

E. Upon completion of Project, the party constructing Project will issue and sign a “Notification of Completion” acknowledging Project’s construction completion.

F. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the...
<table>
<thead>
<tr>
<th>TxDOT:</th>
<th>Federal Highway Administration:</th>
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<tbody>
<tr>
<td>CSJ #</td>
<td>CFDA No.</td>
</tr>
<tr>
<td>0921-06-324</td>
<td>20.205</td>
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<tr>
<td>District #</td>
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<tr>
<td>21 – Pharr</td>
<td>Highway Planning and Construction</td>
</tr>
<tr>
<td>Code Chart 64 #</td>
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<tr>
<td>05950</td>
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</tr>
<tr>
<td>Project Name</td>
<td>AFA Not Used For Research &amp; Development</td>
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<tr>
<td>Brownsville/Los Fresnos Trail – Phase II</td>
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The latest version of Form “FHWA-1273” in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.

G. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

13. Project Maintenance

A. Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period commensurate with the federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project's original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a prorata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

B. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.

C. Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.

D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of Project.
14. **Right of Way and Real Property Acquisition**

A. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property.

B. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.

C. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR §24.2(g). Documentation to support such compliance must be maintained and made available to State and its representatives for review and inspection.

D. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, or (2) Local Government, if the real property is not to be made part of the State Highway System. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.

E. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.

F. Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel’s value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values. Local Government will not be reimbursed for right-of-way costs on state-selected projects.

G. For State-selected TASA projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TASA Project.
H. Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State’s predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Local Government will not be reimbursed for right-of-way costs on state-selected projects.

I. Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.

J. If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment. For State-selected projects, this is outlined in 43 Tex. Admin. Code §11.417. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.

K. Local Government shall execute individually or produce a legal document as necessary to provide for Project’s continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.

L. Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State’s Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project’s continued use and upkeep.

M. Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

15. Insurance
A. Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed copy of State’s Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.
B. For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a “Loss Payee” should the building be destroyed.

16. Notices, Invoices, Payments, and Project Inquiries
All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

<table>
<thead>
<tr>
<th>Local Government:</th>
<th>State:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Brownsville</td>
<td>Texas Department of Transportation</td>
</tr>
<tr>
<td>ATTN: {Enter Position Title}</td>
<td>ATTN: Director of Contract Services</td>
</tr>
<tr>
<td>P.O. Box 911</td>
<td>125 E. 11th Street</td>
</tr>
<tr>
<td>Brownsville, Texas 78522</td>
<td>Austin, TX 78701</td>
</tr>
</tbody>
</table>

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

Invoicing, payment, and project inquiries must be sent to the following address, which the State may change by sending written notice of the change to the Local Government:

Texas Department of Transportation
ATTN: District Engineer
600 West IH 2
Pharr, Texas 78577

All invoicing, payment, and project inquiries must include the following information:

County: Cameron
Local Government: City of Brownsville
CSJ No.: 0921-06-324
Project Name: Brownsville/Los Fresnos Trail – Phase II
Highway or Roadway: Various

17. Legal Construction
In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

18. Responsibilities of the Parties
Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

19. **Ownership of Documents**
Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

20. **Document and Information Exchange**
Local Government agrees to electronically deliver to State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft Word or similar format. If requested by State, Local Government will use State’s document template. Local Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by State. This requirement applies whether Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of State, Local Government shall submit any information required by State in the format directed by State.

21. **Compliance with Laws**
The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

22. **Sole Agreement**
This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement’s subject matter.

23. **Cost Principles**
In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR Part 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to Project.

24. **Procurement and Property Management Standards**
The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

25. **Inspection of Books and Records**
The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

26. **Civil Rights Compliance**

The parties to this Agreement are responsible for the following:

A. **Compliance with Regulations**: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

B. **Nondiscrimination**: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

C. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment**: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

D. **Information and Reports**: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance**: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
2. cancelling, terminating, or suspending of the Agreement, in whole or in part.

F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

27. Pertinent Non-Discrimination Authorities
During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38.
I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

28. Disadvantaged Business Enterprise Program Requirements

A. The parties shall comply with the Disadvantaged Business Enterprise ("DBE") Program requirements established in 49 CFR Part 26.

B. Local Government shall adopt, in its totality, State’s federally approved DBE program.

C. Local Government shall set an appropriate DBE goal consistent with State’s DBE guidelines and in consideration of Local market, project size, and nature of the goods or services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. Local Government shall follow all other parts of State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address: http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

E. Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in award and administration of DOT-assisted contracts. State’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).

F. Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: “The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the
termination of this agreement or such other remedy as the recipient deems appropriate.”

29. **Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, “Debarment and Suspension.” By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

30. **Lobbying Certification**

In executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal 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.

B. 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 federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC §1352 for making or entering into this transaction. 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.
31. **Federal Funding Accountability and Transparency Act Requirements**
   A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:  http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf and http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf.
   B. Local Government agrees that it shall:
      1. Obtain and provide to State a System for Award Management (SAM) number (Federal Acquisition Regulation (FAR) Subpart 4.11) if this award provides more than $25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: https://sam.gov/SAM/pages/public/index.jsf
      2. Obtain and provide to State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website http://fedgov.dnb.com/webform; and
      3. Report the total compensation and names of its top five executives to State if:
         a. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and
         b. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

32. **Single Audit Report**
   A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.
   B. If threshold expenditures of $750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
   C. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows:  *We did not meet the $_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____.*
   D. For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

33. **Signatory Warranty**
   Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.
<table>
<thead>
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<tr>
<td>CSJ #</td>
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<tr>
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<td>21 – Pharr</td>
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<td>Code Chart 64 #</td>
<td>05950</td>
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<tr>
<td>Project Name</td>
<td>Brownsville/Los Fresnos Trail – Phase II</td>
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| CFDA No.         | 20.205                          |
| CFDA Title       | Highway Planning and Construction |

| AFA Not Used For Research & Development |

Each party is signing this agreement on the date stated under that party's signature.

**THE STATE OF TEXAS**

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**THE LOCAL GOVERNMENT**

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### ATTACHMENT C
PROJECT ESTIMATE AND SOURCE OF FUNDS
LG Performs PE Work or Hires Consultant / LG Lets Project for Construction

#### Work Performed by Local Government (LG)

<table>
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<tr>
<th>Description of Project Costs to be Incurred</th>
<th>Total Project Cost Estimate</th>
<th>Federal Participation</th>
<th>State Participation</th>
<th>Local Government Participation</th>
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<tr>
<td></td>
<td></td>
<td>%</td>
<td>Cost</td>
<td>%</td>
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<tr>
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<td>$0</td>
<td>0%</td>
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<tr>
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<td>Work by LG Subtotal</td>
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<th>Federal Participation</th>
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<th>Local Government Participation</th>
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<tr>
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<td>Utilities ^1</td>
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<td>TOTAL PARTICIPATION</td>
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<td>$512,000</td>
<td>$55,647</td>
<td>$570,497.00</td>
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- The estimated total participation by Local Government is $570,497.00, plus 100% of overruns.
- Total estimated payment by Local Government to State is $38,463.00.
1. Local Government's first payment of $13,486.00 is due to State within 30 days from execution of this contract.
2. Local Government’s second payment of $24,977.00 is due to State within 60 days prior to the Construction contract being advertised for bids.
3. If ROW is to be acquired by State, Local Government’s share of property cost will be due prior to acquisition.
4. The local match must be 20% or greater and may include eligible in-kind contributions, EDC adjustments, or TDCs if authorized as part of project selection.
5. This is an estimate; the final amount of Local Government participation will be based on actual costs.
6. Maximum federal TASA funds available for Project are $512,000.00.
**TO:** Noel Bernal, City Manager  
**FROM:** Norma H. Zamora, Multimodal Transportation Director  
**SUBJECT:** Letter of Support for HOPE Grant 2020  
**DATE:** 5/28/2020  
**THROUGH:**

**AGENDA ITEM**  
**COMMISSION MEETING DATE 06/02/20**

<table>
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<tr>
<td></td>
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**Information:** Please include additional information/request.

Consideration and ACTION on letter of support for Brownsville Metro's HOPE grant application. (Multimodal Transportation Department - Transit)

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**Reviewing Departments:** Please review and forward to the next reviewing department in a timely manner.

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<th>Department</th>
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<th>By:</th>
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<td>Finance Department</td>
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<td>By:</td>
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<td>Comments:</td>
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**City Commission**  
Approved:  
Date:  
Initials:  
Signature:  
Date:

**Assistant City Manager**  
Approved:  
Initials:  
Date:

**Deputy City Manager**  
Approved:  
Initials:  
Date:

**City Manager’s Approval**  
Signature:  
Date:
To: Mayor and City Commission

Through: Noel Bernal, City Manager

From: Norma Zamora, Director – Multimodal Transportation

Date: May 28, 2020

Agenda #: Consideration and ACTION on letter of support for Brownsville Metro's HOPE grant application. (Multimodal Transportation Department - Transit)

Summary:
The City of Brownsville’s Multimodal Transportation Department, Brownsville Metro is requesting a letter of support from our City of Brownsville City Commission to apply for the Helping Obtain Prosperity for Everyone (HOPE) program.

Project Scope and Analysis:
The FTA may award grants to eligible recipients for planning, engineering, or development of technical or financing plans for projects eligible under chapter 53 of Title 49 United Stated code. Brownsville Metro is planning to apply for this grant before the extended June 3, 2020 deadline. We are concentrating our efforts on promoting and enhancing the availability of service for the Route 30 Southmost areas. Our efforts will concentrate on a pilot program for a demand response system that will operate all day from 6 am to 8 pm from Monday thru Saturday to complement the current fixed route and paratransit fleet service.

Funding:
The minimum federal share for projects selected under the HOPE program is not less than 90 percent of the total project cost. The local share will be no more than 10 percent of the total project cost.

Recommendation:
Brownsville Metro recommends acceptance of the Letter of Support by the City of Brownsville City Commission.

Attachments
FTA Notice of Funding Opportunity (NOFO) for HOPE Grant
Letter of Support
May 28, 2020

RE: Letter of Support

We, the City Commission of Brownsville, fully support Brownsville Metro’s application for the HOPE Grant. We appreciate and encourage B-Metro’s intent to expand transit services for residents living along the outer edges of our city limits so that they may have better access to jobs and higher education.

B-Metro’s Route 30 serves a predominantly residential area in Brownsville’s outskirts that is characterized by trailer parks, low rent apartments, and affordable homes. Oftentimes, it is difficult to distinguish which properties have been annexed into the City and which properties belong to the County. Nevertheless, there are two great assets nearby — Lopez Early College High School (which is considered the fine arts magnet school for the local ISD) and Idea Frontier (a charter school known for its high performance in national high school rankings).

Route 30 has existed 13 years but because of limited resources only operates 3 hours in the morning and 3 hours in the evening, 6 days per week. A partnership between the City and the County has made this route possible. Pre-COVID tallies estimate that an average of 1500 riders use this route every month to get to work and school. If awarded the HOPE grant, B-Metro will implement a pilot project using a demand-response type system to offer riders extended service on Route 30 so that they may connect to the East Side Transfer Station.

As we recover from the coronavirus pandemic, it is imperative that we assist individuals living in persistent poverty. The opportunity to extend services along Route 30 will provide residents of the area better access to jobs in other parts of Brownsville and make it easier to seek higher education at the local university, junior college, or any of the city’s vocational schools.

Yours truly,

Mayor and City Commission
AGENDA ITEM

Executive Session (City Attorney Only)

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Select

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<th>Time Needed:</th>
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Agenda

- Public Hearing
- Contract
- Grant
- Action
- Consent

Ordinance

- First Reading
- Second Reading

Information: Please include additional information/request.

Consideration and ACTION for the City Commission to approve the Ride Systems Service Agreement Addendum No. 2, in the amount of $5,220 and allowing for a three-month extension of the current service agreement, from May 31, 2020 to August 31, 2020, for a total cost of the Ride System Service Agreement of $39,330.
To: Mayor and City Commission
Through: Noel Bernal, City Manager
From: Norma Zamora, Director – Multimodal Transportation
Date: May 22, 2020
Agenda #: Consideration and ACTION for the City Commission to approve the Ride Systems Service Agreement Addendum No. 2, in the amount of $5,220 and allowing for a three-month extension of the current service agreement, from May 31, 2020 to August 31, 2020, for a total cost of the Ride System Service Agreement of $39,330.

Summary:
The current one-year service agreement for Fixed Route Real-Time passenger & GPS Bus monitoring service in place, named Ride Systems, expired on March 31, 2020. The City Manager extended the $30,630 contract, as requested by Brownsville Metro, for two months extending to May 31, 2020, at a cost of $3,480 for a total of $34,110. After discussing with the procurement team, any further extensions surpassing the $34,999 threshold must go before the City Commission for approval.

Therefore, we are requesting approval from the City Commission for the approval of Addendum No. 2 to the Ride System Service Agreement, for an additional extension of three-months, in order to continue our efforts with procurement and the issuance of a request for proposal process to purchase a “Real-Time Passenger Information System with a base CAD/AVL System.” The service Addendum No. 2 is at a rate of $1,740 per month, and at a total cost of $5,220 for a three-month extension, ending on August 31, 2020 and bringing the total cost of the Ride System Service Agreement to $39,330.

1-Year Contract: $30,630 Ending 3/31/2020
Addendum # 1: $3,480 Ending 5/31/2020
Addendum # 2: $5,220 Ending 8/31/2020
Updated Total: $39,330
Project Scope and Analysis:
Fixed Route Service, in partnership with the Paratransit service, allows Brownsville Metro to support the movement of clients to medical appointments, grocery stores, employment offices, recreational and social activities on 13 fixed routes and 6 paratransit manifest schedules, 6 days a week.

Brownsville Metro is currently sourcing a fixed route software solution that enables one to view a live map of all buses on route with estimated arrival times at all its fixed route bus stops. A desktop application of the live map will allow staff to view location of buses, bus stops, assign buses to routes, reporting features, and send alert messages to customers. The mobile application will allow customers to view arrival and destination points on all routes via a live App and map.

Recommendation:
Brownsville Metro recommends the extension of the current Ride Systems contract in order to complete the procurement proposal process.

Financial Impact: The total cost of $5,220 can be found in B-Metro’s operating budget line item 65-562-752 Machinery & Equipment Maintenance for this fiscal year.

Attachments:
1. Pricing Exhibit dated 4.28.2020
2. Service Agreement Addendum 2 - extension until 8/31/2020
Service Agreement Addendum 2
Ride Systems, LLC and City of Brownsville
Technology License and Services Agreement

Purpose of amendment: To amend contract terms.

WHEREAS, City of Brownsville located at 755 International Blvd, Brownsville, TX 78520 and Ride Systems, LLC with offices at 209 N State St, Suite B, Morgan, UT 84050 previously entered into agreement on April 1, 2019 to support the above referenced activities;

WHEREAS, City of Brownsville and Ride Systems, LLC desire to amend the said agreement to be effective on May 1, 2020;

NOW, THEREFORE, the original agreement is modified as follows:

1. Term: This agreement will expire on August 31, 2020. Thereafter, this Agreement will change to a month-to-month contract for an additional one-year term unless either party notifies the other at least thirty (30) days prior to the end of the current subscription term that such party does not intend to renew the Agreement. Should the Customer add to the number of their fleet or add additional products/services, a new pricing exhibit will be issued and added to the terms of this Agreement.

2. Subscription fees payable in monthly recurring installments per the updated and attached Pricing Exhibit. All recurring fees are due within thirty (30) days of term renewal date.

End of Amendment 2. All other terms and conditions remain unchanged.

Attachment: Pricing Exhibit
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed.

**Ride Systems, LLC**

Signature:  
Title:  
Date:  

**City of Brownsville**

Signature:  
Title:  
Date:  

Noel Bernal

City Manager

"Approved as to Form and Legality
This 18th day of May 2020
Title City Mgr.
Office of the Brownsville City Attorney"
*Prices will remain firm for 60 days*

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<th>Qty</th>
<th>Price</th>
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**Realtime Passenger Information System (RTPI)**

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**Notes**

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**Quote Summary**

- **Capital Costs**: $20,880.00
- **Subscription Costs**: $20,880.00
- **Total for First Year**: $20,880.00
- **Total until 8/31/2020**: $5,220.00

*Standard processing terms - NET 30*

*All applicable sales/use tax are additional*
TO: Noel Bernal, City Manager
FROM: Felix Sauceda, Chief of Police
SUBJECT: Texas Joint Counterdrug Task Force - FY 2020
DATE: 5/20/2020
THROUGH:

AGENDA ITEM
COMMISSION MEETING DATE 06/02/20

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<td>Second Reading</td>
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Information: Please include additional information/request.

Consideration and action to authorize the Brownsville Police Department to enter into a Memorandum of Understanding with the Texas Joint Counterdrug Task Force for Fiscal Year 2020, ending on September 30, 2020.

This Memorandum of Understanding sets forth the agreed terms and conditions of support to a Law Enforcement Agency (LEA) or organization by the Joint Counterdrug Task Force (JCDTF) at the direction of the Counterdrug Coordinator (CDC). In general, the JCDTF will provide Counterdrug support to federal, state, local, and tribal law enforcement agencies when requested in writing, subject to funding, and when a drug nexus is apparent. This support will be in the form of a criminal analyst(s) assigned to the department.

Reviewing Departments: Please review and forward to the next reviewing department in a timely manner.

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City Commission

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Assistant City Manager

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Deputy City Manager

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City Manager’s Approval

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Date:</th>
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</table>

Page 73 of 214
To: Mayor and City Commission

Through: Noel Bernal, City Manager

From: Felix Saucedo, Chief of Police

Date: May 20, 2020

Agenda: MOU Texas Joint Counterdrug Task Force / Brownsville Police FY 2020

Summary:

The Brownsville Police Department is respectfully requesting city commission approval to enter into a MOU with the Texas Joint Counterdrug Task Force for the remainder of Fiscal Year 2020. The MOU would provide support in the form of a criminal analyst(s) to be stationed at the department and would work together with our own intelligence unit to enhance police operations. This is a cost-saving measure of adding personnel to the department at no cost to the city. The addition of this type of personnel would enhance police intelligence capabilities by adding state and federal resources on 24/7 basis. The goal of this addition is a pro-active collection of intelligence, which would contribute to crime prevention within our city.
MEMORANDUM OF UNDERSTANDING
BETWEEN
TEXAS JOINT COUNTERDRUG TASK FORCE
AND
BROWNSVILLE POLICE DEPARTMENT

SUBJECT: Memorandum of Understanding for Operational Support from Texas Joint Counterdrug Task Force for Fiscal Year 2020

1. REFERENCES:

   a. Title 32, United States Code §502(f), National Guard Training or Other Duty in Addition to Drill and Annual Training, 2006

   b. National Guard Regulation (NGR) 500-2/Air National Guard Instruction (ANGI) 10-801, National Guard Counterdrug Support, 29 August 2008

   c. Title 32, United States Code §112, National Guard Drug Interdiction and Counter-Drug Activities, 3 January 2012

   d. Memorandum, National Guard Bureau, Subject: FY 2018 Counterdrug Criminal Analyst Guidance, 2 August 2017

   e. DASD CN&GT Memorandum for Chief, National Guard Bureau,"Fiscal Year 2020 Guidance for the National Guard Counterdrug Program," 18 September 2019

   f. Chief National Guard Bureau Instruction (CNGBI) 3100.01B, National Guard Counterdrug Support, 06 March 2020

2. PURPOSE: This Memorandum of Understanding (MOU) sets forth the agreed terms and conditions of support to a Law Enforcement Agency (LEA) or organization by the Joint Counterdrug Task Force (JCDTF) at the direction of the Counterdrug Coordinator (CDC). In general, the JCDTF will provide Counterdrug support to federal, state, local, and tribal law enforcement agencies when requested in writing, subject to funding, and when a drug nexus is apparent. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable by law or otherwise by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof. It is understood among the parties to this agreement that requests for Counterdrug support may include multi-agency, federal, state, local, and tribal cooperative law enforcement efforts.
3. **AUTHORITY:** This MOU is entered into by the Texas Joint Counterdrug Task Force pursuant to the authority contained in Title 32, United States Code §112 and Title 32 United States Code §502(f) and using guidance contained in NGR 500-2/ ANGI 10-801.

4. **PERIOD OF MOU:** This MOU is effective for the following period:

Start Date: 2 June 2020   End Date: 30 September 2020

5. **DRUG NEXUS:** By executing this MOU, the supported LEA certifies that JCDTF personnel will only engage in projects or operations that have a drug nexus.

6. **PLANNED DEPLOYMENT OF PERSONNEL AND EQUIPMENT:**

   a. Personnel: The Joint Counterdrug Task Force is not a LEA and JCDTF personnel are not law enforcement officers.

      (1) Request for Support: As the JCDTF is not a LEA; any involvement of the JCDTF in support of a LEA must be in response to a request for support.

      (2) Support Role: It is clearly understood by both parties to this agreement that JCDTF personnel are not sworn police officers and those personnel who are assigned to work with the LEA are assigned in a support role.

      (3) Transfers of JCDTF Personnel: While the JCDTF will attempt to provide continuity by leaving JCDTF personnel in place, movement of JCDTF personnel is at the sole discretion of the CDC.

   b. Equipment:

      (1) The loaning of JCDTF equipment to the LEA will be in accordance with applicable laws and regulations and is at the discretion of the CDC. Likewise, LEA equipment loaned to the JCDTF is at the discretion of the LEA.

      (2) All loans of equipment will be documented in writing with at least the following information: full description of the item(s); condition at the time of the loan; length of time of the loan; location to which the item is to be returned.

      (3) Both parties to this agreement will contact the other party as soon as possible to report any damage caused or loss to loaned equipment.

      (4) Unless contrary to law or regulation, each party agrees to be financially responsible for any damage to, or loss of equipment by the other party, caused by the borrowing party's personnel through negligent conduct or willful misconduct.
7. REPORTING PROCEDURES:

   a. Joint Counterdrug Task Force personnel will input statistical results into the Full Time Support Management Control System (FTSMCS) for inclusion in required reports and records.

   b. The JCDTF will maintain compliance with Intelligence Oversight and Operations Security on all reporting in accordance with NGR 500-2/ANGI 10-801.

   c. Information provided to the JCDTF by the LEA will not be released to non-DoD sources unless in accordance with supported duties in the taskforce and approved by the custodian of the information.

8. COMMAND AND CONTROL:

   a. Joint Counterdrug Task Force personnel will be under the command and control of the CDC at all times. The supported LEA will notify the CDC immediately in the event that any JCDTF personnel are injured or suspected of misconduct. Personnel may be recalled at any time due to emergencies or other operational necessities. The CDC has the sole discretion to approve or deny modifications to a LEA support request.

   b. Joint Counterdrug Task Force personnel will be under the direct supervision of the supported agency for all assigned duties. Joint Counterdrug Task Force personnel will also maintain a military chain of command. The military chain of command will take precedence at all times.

   c. The JCDTF will handle all personnel management processes.

9. SCOPE OF OPERATIONS:

   a. Joint Counterdrug Task Force personnel will operate in accordance with a LEA support request as approved by the CDC.

   b. Requests for information (RFI) received from external entities.

      (1) Joint Counterdrug Task Force personnel may be asked to review RFIs from geographic Combatant Commands and subordinate commands. We request that your agency support these requests as necessary. Your agency’s rules for dissemination will be implemented at all times. This supports a whole of government approach to counter threats to U.S. national security posed by drug smuggling and other illicit activities while balancing limited DoD resources.

      (2) Joint Counterdrug Task Force personnel assigned to the agency under the authority of this MOU may be asked to support an RFI formally submitted by an authorized
component of a Combatant Command or subordinate entity. Information maintained, entrusted to, stored, collated, or collected by the agency and/or its law enforcement partners shall, at all times, be controlled and protected from improper disclosure or dissemination.

(3) When a RFI is received by the National Guard or its members and before any information is gathered, reviewed, aggregated and/or disclosed, the National Guard will receive approval from a responsible agency official (or their designee) that the information can be collected or provided. The agency official (or their designee) may also require that any final product prepared by National Guard personnel be submitted for review by the agency before it is disclosed or disseminated.

(4) Information provided in response to an RFI shall be limited to statistical or numeric data collection or general compilations or generic aggregations of information. Any information provided shall be devoid of personally identifiable data, case-sensitive or classified information, investigative techniques or methods, and/or any identifiable information concerning or arising from an open case or pending prosecution (including matters which may be on appeal).

10. FORCE PROTECTION AND USE OF FORCE:

a. Prior to beginning the mission, the supported LEA will provide the JCDTF with all known information regarding potential or actual threats and hazards to personnel and equipment. Joint Counterdrug Task Force personnel will operate under and comply with the Rules for the Use of Force (RUF) orders established by The Adjutant General for the State of Texas. Only specifically authorized JCDTF personnel shall carry issued weapons. Each LEA will follow their own policy concerning firearms discharge and use of deadly force. Joint Counterdrug Task Force personnel should not be placed into situations that could be life threatening since they have not received the appropriate law enforcement training for this type of situation.

b. Joint Counterdrug Task Force personnel have the right to use force only, if necessary, to defend themselves or in the defense of others. The member can only use the amount of force necessary to achieve self-protection or preservation. Members are only to use deadly force if all lesser means of force have been exhausted or are unavailable, will only use the minimum force immediately necessary to defend against the unlawful use of deadly force and only if the risk of injury to innocent persons or bystanders are not increased by the use of deadly force.

11. PUBLIC AFFAIRS:

a. Information released to the media concerning JCDTF support to LEAs will be coordinated between the LEA and JCDTF public affairs/information officers. Participating JCDTF personnel or specific units will not be identified by name, address
or photograph unless cleared through the CDC who will be responsible for obtaining a release through applicable National Guard channels.

b. The lead party for the dissemination of information will be the LEA and therefore members of the JCDTF will refer all questions from the media to the LEA for reply. The JCDTF public affairs office may provide guidance on issues specific to the National Guard as appropriate.

12. SAFETY: The safety of JCDTF personnel is the primary concern of the CDC and will be emphasized in planning and execution of operations. The successful accomplishment of all JCDTF missions with minimum risk is paramount. Joint Counterdrug Task Force personnel will adhere to CDC’s safety policy at all times. Joint Counterdrug Task Force personnel should not knowingly be sent to, or directed to enter a hostile environment where there is a high probability of encountering life threatening situations or direct contact with suspects.

13. WARRANTS/LEGAL REQUIREMENTS: The supported LEA shall ensure that all legal requirements, including obtaining warrants, are fulfilled. The supported LEA recognizes that JCDTF personnel may not engage in any activity that law enforcement officers are prohibited from conducting. Joint Counterdrug Task Force personnel will not be utilized for, or participate in unauthorized surveillance activities. Information or data obtained by the JCDTF, as a result of work done in support of the LEA, will be passed on immediately, as obtained, to the LEA, and will not be stored or maintained by JCDTF personnel or in National Guard facilities. Procedures to be utilized for reporting such information will be established by the LEA in accordance with internal practices and procedures. The LEA will be responsible for follow-up on any such information. Information gathered by members of the JCDTF will be given adequate classification consideration.

14. ARREST, SEARCHES, SEIZURES AND EVIDENCE:

a. Joint Counterdrug Task Force personnel will not, except in exigent circumstance, directly participate in law enforcement activities such as arresting or conducting searches of individuals or private property. Additionally, JCDTF personnel do not enter into the chain of custody of evidence, but may provide LEA officials with technical support for digital evidence extraction, preservation, and analysis.

b. All activities performed by JCDTF personnel shall be strictly limited to support of LEA counter-drug operations. Joint Counterdrug Task Force personnel shall not collect, retain, or disseminate information on United States persons or store LEA sensitive products on JCDTF databases. Absent exigent circumstances, JCDTF personnel shall not participate in the apprehension of suspects, or search and seizure of any property. Joint Counterdrug Task Force personnel may support digital forensic efforts after the fourth amendment search and seizure has been executed by the LEA.
c. JCDTF personnel will not be deputized or cross designated with Title 21 investigative authority.

15. SUBPOENAS OR OTHER ORDERS TO APPEAR: The supported LEA will immediately notify JCDTF personnel in the event they are subpoenaed, or otherwise ordered to appear in any court. Joint Counterdrug Task Force personnel will report such order to appear in court to their respective military command and Judge Advocate. If JCDTF personnel are ordered to appear in court, the supported LEA will assist the JCDTF personnel to obtain pre-trial counsel and preparation from the prosecuting attorney responsible for the case.

16. DUTY HOURS, UNIFORM WEAR & WORK SCHEDULES: Duty hours and work schedules shall be in accordance with the LEA support request. All JCDTF personnel maintain additional military duties as part of their regular National Guard unit. As such, JCDTF personnel will be required to attend Inactive Duty Training (monthly drills as required) and Annual Training (not to exceed 30 days). In addition, all JCDTF personnel are authorized 30 days of leave per year, as approved by the CDC. Personnel will wear appropriate military uniforms on duty unless this requirement has been explicitly waived by the CDC or their designated representative.

17. WORK SPACE REQUIREMENTS: The supported LEA will provide parking, appropriate work space and use of communication equipment (including phone, personal computer and internet/email capabilities) for JCDTF personnel.

18. LEA FUNDING: This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Even where one party has agreed (or later does agree) to assume a particular financial responsibility, written agreement must be obtained before incurring an expense expected to be assumed by another party. All obligations of, and expenditures by the parties are subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

19. SALARIES & BENEFITS: All JCDTF personnel serve in military status on full time National Guard duty. As such, the JCDTF will pay all related salaries, allowances and benefits for JCDTF personnel. The supported LEA shall not pay any monetary bonus or other monetary award to any JCDTF personnel without the advanced approval of the CDC.

20. EQUITABLE SHARING PROGRAM: The supported LEA agrees that the JCDTF may participate in equitable sharing (asset forfeiture). The JCDTF will submit an application for a respective share, based upon the level of participation, in an investigation resulting in the seizure and subsequent forfeiture of assets. All forfeiture
sharing shall be in accordance with applicable laws governing the disposition of forfeited assets.

21. LIABILITIES:

   a. The Agency acknowledges that the United States of America is liable for the negligent, wrongful acts or omissions of its agents and employees while acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act, 28 USC 1346.

   b. No hold harmless agreements are required in agreement between JCDTF and other federal agencies. The Federal Government may not hold harmless a state or other jurisdiction. The CDC will contact the NG Chief Counsel (NGB-JA), though NGB-J32, if incidents arise with the possibility of civil liability on the part of JCDTF personnel, the JCDTF, or volunteers or when occurrence of negative judicial ruling based wholly or in part upon the conduct of JCDTF personnel, or volunteers, including the suppression of evidence.

22. RENEGOTIATION/MODIFICATION: This MOU may be altered or otherwise modified, if done in writing. Changes to the scope of work or functions of JCDTF must be approved by the CDC. Agreements must be renegotiated when laws, regulations, and/or support requirements change in such a manner that the agreement cannot be executed.

23. TERMINATION: Either party may terminate this MOU at any time by written or verbal notification to the other party. If notification of termination is delivered verbally, written confirmation shall follow within five business days. The supported LEA recognizes that JCDTF personnel may be mobilized and called to active federal military duty as part of their normal military unit. In addition, the supported LEA understands that JCDTF operations are subject to and dependent upon annual appropriated funding.

   By affixing their signature to this MOU, each party affirmatively represents that they are authorized to enter into this MOU on behalf of their respective agency.

_______________________     _______________________
ERIKA A. BESSER       FELIX SAUCEDA
COORDINATOR        CHIEF OF POLICE
LTC, AV, TXARNG                 BROWNSVILLE POLICE DEPT.

_______________________    _______________________
(Date)            (Date)
Consideration and action to authorize the Brownsville Police Department to enter into a Memorandum of Understanding with the Texas Joint Counterdrug Task Force for Fiscal Year 2021, ending on September 30, 2021.

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MEMORANDUM OF UNDERSTANDING
BETWEEN
TEXAS JOINT COUNTERDRUG TASK FORCE
AND
BROWNSVILLE POLICE DEPARTMENT

SUBJECT: Memorandum of Understanding for Operational Support from Texas Joint Counterdrug Task Force for Fiscal Year 2021

1. REFERENCES:

   a. Title 32, United States Code §502(f), National Guard Training or Other Duty in Addition to Drill and Annual Training, 2006
   
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3. AUTHORITY: This MOU is entered into by the Texas Joint Counterdrug Task Force pursuant to the authority contained in Title 32, United States Code §112 and Title 32 United States Code §502(f) and using guidance contained in NGR 500-2/ ANGI 10-801.

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   Start Date: 1 October 2020   End Date: 30 September 2021

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      (1) Request for Support: As the JCDTF is not a LEA; any involvement of the JCDTF in support of a LEA must be in response to a request for support.

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or photograph unless cleared through the CDC who will be responsible for obtaining a release through applicable National Guard channels.

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b. All activities performed by JCDTF personnel shall be strictly limited to support of LEA counter-drug operations. Joint Counterdrug Task Force personnel shall not collect, retain, or disseminate information on United States persons or store LEA sensitive products on JCDTF databases. Absent exigent circumstances, JCDTF personnel shall not participate in the apprehension of suspects, or search and seizure of any property. Joint Counterdrug Task Force personnel may support digital forensic efforts after the fourth amendment search and seizure has been executed by the LEA.
c. JCDTF personnel will not be deputized or cross designated with Title 21 investigative authority.

15. SUBPOENAS OR OTHER ORDERS TO APPEAR: The supported LEA will immediately notify JCDTF personnel in the event they are subpoenaed, or otherwise ordered to appear in any court. Joint Counterdrug Task Force personnel will report such order to appear in court to their respective military command and Judge Advocate. If JCDTF personnel are ordered to appear in court, the supported LEA will assist the JCDTF personnel to obtain pre-trial counsel and preparation from the prosecuting attorney responsible for the case.

16. DUTY HOURS, UNIFORM WEAR & WORK SCHEDULES: Duty hours and work schedules shall be in accordance with the LEA support request. All JCDTF personnel maintain additional military duties as part of their regular National Guard unit. As such, JCDTF personnel will be required to attend Inactive Duty Training (monthly drills as required) and Annual Training (not to exceed 30 days). In addition, all JCDTF personnel are authorized 30 days of leave per year, as approved by the CDC. Personnel will wear appropriate military uniforms on duty unless this requirement has been explicitly waived by the CDC or their designated representative.

17. WORK SPACE REQUIREMENTS: The supported LEA will provide parking, appropriate work space and use of communication equipment (including phone, personal computer and internet/email capabilities) for JCDTF personnel.

18. LEA FUNDING: This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Even where one party has agreed (or later does agree) to assume a particular financial responsibility, written agreement must be obtained before incurring an expense expected to be assumed by another party. All obligations of, and expenditures by the parties are subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

19. SALARIES & BENEFITS: All JCDTF personnel serve in military status on full time National Guard duty. As such, the JCDTF will pay all related salaries, allowances and benefits for JCDTF personnel. The supported LEA shall not pay any monetary bonus or other monetary award to any JCDTF personnel without the advanced approval of the CDC.

20. EQUITABLE SHARING PROGRAM: The supported LEA agrees that the JCDTF may participate in equitable sharing (asset forfeiture). The JCDTF will submit an application for a respective share, based upon the level of participation, in an investigation resulting in the seizure and subsequent forfeiture of assets. All forfeiture
sharing shall be in accordance with applicable laws governing the disposition of forfeited assets.

21. LIABILITIES:

   a. The Agency acknowledges that the United States of America is liable for the negligent, wrongful acts or omissions of its agents and employees while acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act, 28 USC 1346.

   b. No hold harmless agreements are required in agreement between JCDTF and other federal agencies. The Federal Government may not hold harmless a state or other jurisdiction. The CDC will contact the NG Chief Counsel (NGB-JA), though NGB-J32, if incidents arise with the possibility of civil liability on the part of JCDTF personnel, the JCDTF, or volunteers or when occurrence of negative judicial ruling based wholly or in part upon the conduct of JCDTF personnel, or volunteers, including the suppression of evidence.

22. RENEGOTIATION/MODIFICATION: This MOU may be altered or otherwise modified, if done in writing. Changes to the scope of work or functions of JCDTF must be approved by the CDC. Agreements must be renegotiated when laws, regulations, and/or support requirements change in such a manner that the agreement cannot be executed.

23. TERMINATION: Either party may terminate this MOU at any time by written or verbal notification to the other party. If notification of termination is delivered verbally, written confirmation shall follow within five business days. The supported LEA recognizes that JCDTF personnel may be mobilized and called to active federal military duty as part of their normal military unit. In addition, the supported LEA understands that JCDTF operations are subject to and dependent upon annual appropriated funding.

   By affixing their signature to this MOU, each party affirmatively represents that they are authorized to enter into this MOU on behalf of their respective agency.

_______________________     _______________________
ERIKA A. BESSER       FELIX SAUCEDA
COORDINATOR        CHIEF OF POLICE
LTC, AV, TXARNG       BROWNSVILLE POLICE DEPT.

_______________________    _______________________
(Date)            (Date)
To: Mayor and City Commission
Through: Noel Bernal, City Manager
From: Felix Sauceda, Chief of Police
Date: May 20, 2020

Agenda: MOU Texas Joint Counterdrug Task Force / Brownsville Police FY 2021

Summary:

The Brownsville Police Department is respectfully requesting city commission approval to enter into a MOU with the Texas Joint Counterdrug Task Force for Fiscal Year 2021. The MOU would provide support in the form a criminal analyst(s) to be stationed at the department and would work together with our own intelligence unit to enhance police operations. This is a cost-saving measure of adding personnel to the department at no cost to the city. The addition of this type of personnel would enhance police intelligence capabilities by adding state and federal resources on 24/7 basis. The goal of this addition is a proactive collection of intelligence, which would contribute to crime prevention within our city.

Please note that the Texas Joint Counterdrug Task Force requested a MOU for FY 2021 in order to facilitate their budgeting requests at the state and federal level. As previously stated, the task force is covering all costs associated with personnel assigned to the Brownsville Police Department.
TO: Noel Bernal, City Manager  
FROM: Felix Saucedo, Chief of Police  
SUBJECT: Texas Joint Counterdrug Task Force - FY 2021  
DATE: 5/20/2020  
THROUGH:  

AGENDA ITEM  
COMMISSION MEETING DATE 06/02/20  

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Information: Please include additional information/request.

Consideration and action to authorize the Brownsville Police Department to enter into a Memorandum of Understanding with the Texas Joint Counterdrug Task Force for Fiscal Year 2021, ending on September 30, 2021.

This Memorandum of Understanding sets forth the agreed terms and conditions of support to a Law Enforcement Agency (LEA) or organization by the Joint Counterdrug Task Force (JCDTF) at the direction of the Counterdru Task Coordinator (CDC). In general, the JCDTF will provide Counterdru support to federal, state, local, and tribal law enforcement agencies when requested in writing, subject to funding, and when a drug nexus is apparent. This support will be in the form of a criminal analyst(s) assigned to the department.

Reviewing Departments: Please review and forward to the next reviewing department in a timely manner.

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City Manager's Approval

Signature: Date:
AGENDA ITEM

COMMISSION MEETING DATE 06/02/20

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**Information:** Please include additional information/request.

Consideration and Action to Award a Term Contract for Uniform Cleaning for the City of Brownsville Police Department to Rex Cleaners of Brownsville, Texas, as per articles of agreement between the City of Brownsville and the Brownsville Police Officers' association.

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**City Manager's Approval**

**Signature:**

**Date:**
To: Mayor and City Commission

Through: Noel Bernal, City Manager

From: Felix Saucedo, Chief of Police

Date: May 22, 2020

Agenda: Police Uniform Cleaning Contract

Summary:

Pursuant to Article 35 of the collective bargaining agreement between the City of Brownsville and the Brownsville Police Officers Association, the city will provide cleaning of uniforms for officers assigned to the patrol division. The agreement was negotiated during the newly ratified FY 2020 through FY 2022 contract. Previously, uniformed police officers were issued a quarterly stipend to cover the cost of cleaning.

The Procurement and Contracting unit solicited sealed bids and received three (3) quotes, with Rex Cleaners of Brownsville being the lowest bidder. The contract is for one (1) year with the option to renew two (2) additional one-year terms. Please see the procurement analysis and bid tabulation for details.
Date: May 22, 2020  
To: Mr. Noel Bernal City Manager  
From: Mr. Lupe Granado III, Finance Director  
CC: Jose F. Perez, Procurement and Contracting Assistant Director  
Subject: Agenda Item for the City Commission meeting of June 2, 2020: “Consideration and Action to Award a Term Contract for Uniform Cleaning Pressing for the City of Brownsville Police Department.” BID #UCP-33-4020

At the request of the Police Chief, Felix Sauceda Jr., the Finance Department/Procurement Services solicited formal sealed bids for the aforementioned project.

Project milestones were accomplished as follows:

1. The legal advertisement appeared two times in *The Brownsville Herald* on March 29th, and April 5th, 2020 and was posted on the City of Brownsville Purchasing and BidNet Direct websites.

2. One (1) “Pre-Bid” meeting was conducted on April 7th, 2020 at 11:00 A.M. at the Finance Department/Procurement Services bid room. There were no attendees at the pre-bid meeting. Two (2) addendums were released during the bid process to extend the due date and to answer questions to allow for more competitive participation.

3. Sealed formal bids were opened for the subject project on April 23rd, 2020 at 4:00 P.M. A total of three (3) bids were received and publicly opened. The Finance Department/Procurement Services tabulated the bids received for review and approval by City Commission. [*Bookmark “A” Tabulation Sheet*]

**Procurement Summary**

1. Consideration and Action to Award a Term Contract for Uniform Cleaning Pressing for the City of Brownsville Police Department to the lowest bid:
   - **Rex Cleaners** of Brownsville, TX, the low responsive and responsible bidder at the stipulated prices.

2. This contract shall commence upon award by the City Commission and shall expire June 2nd, 2021 (primary term). The City of Brownsville reserves the option to renew the term of this contract annually for two (2) one-year terms each, subject to vendor acceptance, satisfactory performance and determination that renewal will be in the best interest of the City. All costs, terms and conditions shall remain firm for the primary term of the contract.
BID TABULATION

Invitation for Bids for Uniform Cleaning & Pressing for the City of Brownville Police Department

BID # UCP-33-0420

April 23, 2020

<table>
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<tr>
<th>Vendors:</th>
<th>Lapels Dry Cleaning 1655 E Ruben M Torres Blvd Ste. 301 Brownsville TX 78521 Phone #: (956) 621-4389 Attn: Jose Kauachi <a href="mailto:claudianasrallah@yahoo.com.mx">claudianasrallah@yahoo.com.mx</a></th>
<th>Rex Cleaners 917 E. Harrison Ave. Harlingen, TX. 78550 (956) 425-5556 <a href="mailto:zzztexas@yahoo.com">zzztexas@yahoo.com</a></th>
<th>Empresas Adame INC 205 Calle Jacaranda Brownsville, TX 78520 Luis Martinez 281-948-2185 <a href="mailto:Jam0982@aol.com">Jam0982@aol.com</a></th>
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<td>750 qty Uniform Pants: wool Dry clean, press and place on hanger</td>
<td>$3.00 each</td>
<td>$1.50 each</td>
<td>$1.60 each</td>
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<tr>
<td>750 qty Uniform Shirts: Long sleeve or short sleeve, poly lycra, Battle Dress Uniform or polo. Launder, press and place on hanger.</td>
<td>$2.50 each</td>
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CITY OF BROWNSVILLE CONTRACT AGREEMENT FOR UNIFORM CLEANING AND PRESSING

FOR THE POLICE DEPARTMENT

# UCP-33-0420

This Agreement is entered into as of May 26, 2020 between The City of Brownsville, Texas, collectively hereinafter referred to as ("CITY") and REX CLEANERS hereinafter referred to as ("CONTRACTOR").

1. Documents
   a. The following documents (collectively, "Contract Documents") are hereby incorporated into and made part of this Agreement.
      i. Scope of Services, Conditions and Additional Services (Exhibit A)
      ii. Term of Agreement (Exhibit B)
      iii. Compensation, Fees and Commissions (Exhibit C)
      iv. Insurance (Exhibit D)

2. Scope of Services
   a. Contractor shall perform the Services under this agreement upon written request orders by CITY. Unless otherwise specified in a project request, Contractor and CITY agree that the scope of work is deemed to include preliminary considerations and prerequisites, and all tasks which are an integral and inseparable part of the work described in the Contract Documents or by separate written request.
   b. Contractor will perform such Services in a diligent and workmanlike manner consistent with industry standards.
   c. By signing this Agreement, Contractor represents that it has thoroughly reviewed the Contract Documents incorporated into this Agreement, including but not limited to "Exhibit A" Scope of services and that it accepts the description of the Work and the conditions under which the Work is to be performed and completed.

3. Independent Contractor; Personnel
   a. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All Services shall be performed only by Contractor and Contractor's employees. Under no circumstances shall Contractor, or any of Contractor's employees, look to CITY as his/her employer, or as a partner, agent or principal. Neither Contractor, nor any of Contractor's employees, shall be entitled to any benefits accorded to CITY's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation and other insurance, as well as any and all licenses and permits usual or necessary for conducting the Services. Contractor shall be responsible for paying all applicable local, state and federal taxes.
   b. Contractor represents and warrants to CITY that its employees performing Work hereunder will have sufficient expertise, training, licensure (if applicable) and experience to accomplish the Services.

4. Term of Agreement.
   a. The initial contract period shall commence on the date of approval of this agreement by the Brownsville City Commission and shall end or be extended upon the terms specified in Contract
Documents “Exhibit B”. The term or any continuation of this Agreement shall be subject to both the appropriation and the availability of funds by CITY.

5. Compensation

a. Contractor agrees that compensation for services shall be as specified in the Contract Documents “Exhibit C”. It is acknowledged and agreed by Contractor that compensation as enumerated in Exhibit C constitutes a limitation upon CITY’s obligation to compensate Contractor for Contractor’s services pursuant and related to this Agreement but it does not constitute a limitation of any sort upon Contractor’s obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

b. Contractor may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided. Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the CITY's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by CITY.

6. Insurance

a. The Contractor shall furnish proof of insurance requirements as specified in Contract Documents “Exhibit D”. The coverage is to remain in force at all times during the contract period and the minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Brownsville, Texas, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at the Contractor’s expense.

b. The CITY shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

c. The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Texas, subject to approval by the City of Brownsville Department of Safety and Risk Management. Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

7. Termination

a. Termination for Cause. The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. CITY may also terminate this Agreement upon such notice as the City of Brownsville’s City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor’s repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to CITY’s satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.
b. *Termination for Convenience.* CITY reserves the right, in its best interest as determined by the City of Brownsville’s City Manager, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to CITY’s satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are hereby acknowledged by Contractor, for CITY’s right to terminate this Agreement for convenience.

c. *Cancellation for Non-appropriated Funds.* CITY reserves the right, in its best interest as determined by the City of Brownsville’s City Manager, to cancel this contract for non-appropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of CITY for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

d. *Force Majeure.* CITY and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

i. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

ii. The excuse of performance is of no greater scope and of no longer duration than is reasonably necessary when considered in light of the Force Majeure;

iii. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

iv. The non-performing party uses its best efforts to remedy its inability to perform.

v. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of sixty (60) days, provided that in extenuating circumstances, CITY may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party’s performance is suspended under this Section.

8. *Materiality and Waiver of Breach.*

a. CITY and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof. CITY’s failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.


a. *Successors and Assigns.* All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.

b. *Choice of Law.* The laws of the state of Texas shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

c. *No Waiver of Governmental Immunity.* NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO WAIVE CITY’S GOVERNMENTAL IMMUNITY FROM LAWSUIT,

Page 3 of 7
WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY
AND UNAMBIGUOUSLY WAIVED BY STATE LAW.

d. Assignment. Contractor shall not assign any of Contractor’s rights under this Agreement, or delegate the performance of any of Contractor’s duties hereunder, without the prior consent of CITY.

e. Modification or Amendment. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

f. Venue. This Agreement and any and all matters arising directly or indirectly herefrom shall be governed by and construed and enforced in accordance with the Laws of the State of Texas, in the Federal and State Courts of Cameron County, Texas having jurisdiction. (b) If at any time there is a dispute between or among the Parties with respect to any matter arising directly or indirectly from this Agreement (an "Agreement Matter"), the Parties agree that, prior to seeking judicial remedy, they will engage in face-to-face negotiations in an attempt to resolve such dispute and shall, upon failing to negotiate a mutually-satisfactory resolution, choose a mutually agreeable neutral third party to mediate such dispute. Mediation shall be non-binding and shall be confidential.

g. Notices. Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

If to Contractor: Rex Cleaners
1267 E Jackson
Brownsville, Texas, 78520

If to CITY: City of Brownsville
1001 E. Elizabeth St.
Brownsville, Texas, 78521

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

h. Entire Understanding. This document and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

i. Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

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

CITY OF BROWNSVILLE

Signature: ____________________________
Print Name: ____________________________
Title: ____________________________
Date: ____________________________

CONTRACTOR

Signature: ____________________________
Print Name: ____________________________
Title: Owner-GM
Date: 05/26/2020

[Stamp: Approved by Form and Legality]
[Stamp: Made of the Brownsville City Attorney]
EXHIBIT “A”

WASHING AND PRESSING OF POLICE OFFICER UNIFORMS:

Police Officer Shirts, Polo Shirts, Shorts, Pants, and Battle Dress Uniforms (BDU’s) Shirts and Pants must be washed and clean of any and all substances (stains) and manually pressed per manufacturer’s recommendation. They are to be clean of any and all substances (stains).

All shirts shall be pressed with military creases front and back. All shirt sleeves shall be pressed with creases and all pants and shorts shall be pressed with pant leg creases so that a neat and orderly appearance is presented.

Uniform Pants: wool Dry clean, press and place on hanger

Uniform Shirts: Long sleeve or short sleeve, poly lycra, Battle Dress Uniform or polo. Launder, press and place on hanger.

A minimum of 8 sets per month and up to a maximum of 16 sets per month per officer.

Successful vendor shall provide the person designated by the Chief of Police with individual tickets manually signed by the department employee requesting the service. Same ticket shall show employee identification number, date, quantity of garments, type of garment, cost per garment and total cost. These tickets must accompany each monthly invoice.

All uniforms must be completely serviced and stored in an enclosed area away from exposure to weather elements i.e., dust, rain, etc., and protected against theft.

Uniforms that are damaged by the successful vendor to the extent that they are unserviceable or do not present a neat and well-ordered appearance, the successful vendor will either repair said clothing or reimburse the City of Brownsville for the said garments at the current replacement cost. The City shall have the right to make the decision whether said damaged garments should be repaired or replaced. Any repairs occasioned by damage done by the successful vendor shall be without charge to the City. Usual and normal wear and tear shall not be considered damage done to said garments by the successful vendor.
EXHIBIT “B”

This contract shall expire one year from date of award. The City of Brownsville reserves the right to extend the contract(s) for a period of two (2) years in one (1) year increments if the performance of the successful contractor is satisfactory and unit prices remain firm.

EXHIBIT “C”

A minimum of 8 sets per month and up to a maximum of 16 sets per month per officer.

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<th>750 qty Uniform Shirts: Long sleeve or short sleeve, poly lycra, Battle Dress Uniform or polo. Launder, press and place on hanger.</th>
<th>$ 1.50</th>
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EXHIBIT “D”

INSURANCE

Contractor shall obtain and maintain insurance coverage as agreed in paragraph 7 of the City of Brownsville Contract Agreement and ensure that coverage with the parameters contained herein remains in full force at all times during the contract period as follows:

1. **Commercial General Liability Insurance**
   Covering premises-operations, products-completed operations, independent contractors and contractual liability, with a combined single limit bodily injury/property damage of $1,000,000.
   This coverage must include, but not be limited to:
   
   1. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
   2. Coverage for Premises/Operations
   3. Products/Completed Operations
   4. Broad Form Contractual Liability
   5. Independent Contractors
### Agenda Item / Amendment Taxi Ordinance

**5/14/2020**

**Public Hearing and Action on First Reading** on Ordinance Number 2020-318-LL, to amend Chapter 106-Vehicles for Hire, Article II, Section 106-38-Soliciting Business; removal of Section 106-107-Restriction on number of permits; removal of Section 106-108-Number of taxicab companies, and dealing with related matters.

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**Information:** Please include additional information/request.

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**TO:** Noel Bernal, City Manager  
**FROM:** Felix Sauceda, Chief of Police  
**SUBJECT:** Agenda Item / Amendment Taxi Ordinance  
**DATE:** 5/14/2020  
**THROUGH:**

---

**AGENDA ITEM**

**COMMISSION MEETING DATE 06/02/20**

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**Reviewing Departments:** Please review and forward to the next reviewing department in a timely manner.

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Revised 3/2019
ORDINANCE NUMBER 2020-______


WHEREAS, standards and regulations for taxicabs are necessary for consumer protection, public safety and welfare of the public; and

WHEREAS, such regulations will assure a fair environment of operation for the taxicab industry within our municipality; and

WHEREAS, the City Commission has determined that city officials have a responsibility to the citizens to administer and enforce the City Code of Ordinances in an ethical and efficient manner.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BROWNSVILLE THAT THE CODE OF ORDINANCES IS HEREBY AMENDED, REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 106 ARTICLE II SECTIONS 106-107, 106-108 and 106-38 WITH THE FOLLOWING:

Sec. 106-107. - Reserved.

Sec. 106-108. - Reserved.

Sec. 106-38. - Soliciting business.

Solicitation of business will only be allowed in areas not served by a designated taxicab stand and the solicitation of potential passengers can only be conducted within 10 feet of the taxicab and only with the words “taxi”, “cab” or “taxicab”. Violators of this section, upon conviction, shall be fined at least $50.00 but not more than $200.00, and in case of violators of this section, the chief of police may suspend, for a period not exceeding 15 days, the taxicab permit for the taxicab for which such solicitation was made and the city chauffeur's license of the driver of such taxicab.

READ and ACKNOWLEDGED on First Reading on the ______ day _______, 2020.
READ and APPROVED on the Second reading on the _______ day of ______________, 2020.

__________________________________  ______________________ ____________
Juan “Trey” Mendez III                                           Rene E. De Coss, City Attorney
Mayor

ATTEST:        APPROVED AS TO FORM

__________________________________  ________________________
Griselda Rosas, City Secretary                                           Rene E. De Coss, City Attorney
TO: Noel Bernal, City Manager
FROM: Felix Sauceda, Chief of Police
SUBJECT: Agenda Item / Amendment Taxi Ordinance
DATE: 5/8/2020
THROUGH:

AGENDA ITEM COMMISSION MEETING DATE 05/19/20

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Information: Please include additional information/request.

Consideration and action to amend the vehicle for hire ordinance section 106-38, soliciting business, removal of section 106-107, restriction on number of permits, removal of section 106-108, number of taxicab companies.

The amendment of section 106-38, Soliciting business, is to provide the citizens of Brownsville the opportunity to employ a vehicle for hire at locations previously restricted such as local eateries and licensed establishments. The removal of section 106-107 will remove the cap on the number of taxicab permits that can be issued, thus allowing taxicab companies the opportunity to put into service as many taxicabs as it seems necessary to better serve the citizens of Brownsville.

The removal of section 106-108 will remove the cap on the number of taxicab companies allowed to operate in Brownsville which will give other taxicab companies the opportunity to open a business in Brownsville to better serve its citizens.

*****Consideration and Action, amending the City of Brownsville Code of Ordinances, repealing and replacing in their entirety Chapter 106 Article II Sections 106-107, 106-108 and 106-38.*****

Reviewing Departments: Please review and forward to the next reviewing department in a timely manner.

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City Manager's Approval

Signature: Date:

Revised 3/2019
ORDINANCE NUMBER 2020-_____


WHEREAS, standards and regulations for taxicabs are necessary for consumer protection, public safety and welfare of the public; and

WHEREAS, such regulations will assure a fair environment of operation for the taxicab industry within our municipality; and

WHEREAS, the City Commission has determined that city officials have a responsibility to the citizens to administer and enforce the City Code of Ordinances in an ethical and efficient manner.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BROWNSVILLE THAT THE CODE OF ORDINANCES IS HEREBY AMENDED, REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 106 ARTICLE II SECTIONS 106-107, 106-108 and 106-38 WITH THE FOLLOWING:

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READ and ACKNOWLEDGED on First Reading on the _____ day _____, 2020.
READ and APPROVED on the Second reading on the _____ day of ________, 2020.

Juan "Trey" Mendez III
Mayor

ATTEST: 

APPROVED AS TO FORM

Griselda Rosas, City Secretary 

Rene E. De Coss, City Attorney
AGENDA ITEM  
COMMISSION MEETING DATE 06/02/20

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**Information:** Please include additional information/request.

PUBLIC HEARING and ACTION on FIRST READING on ORDINANCE NUMBER 235-2019-068: To rezone from Dwelling “G” (DG) to Apartment "G" (AG) for Lot 26, Block 1, St. Tropez Subdivision, Cameron County, Texas, located at 2521 Old Port Isabel Road, Brownsville, Texas 78526, as shown in Exhibit "A", (District 2).

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**Assistant City Manager**  
**Deputy City Manager**

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**City Manager’s Approval**

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To: Mayor and City Commission  
Through: Noel Bernal, City Manager  
From: Rick Vasquez, Planning & Redevelopment Department Director  
Date: June 2, 2020

RE: Public Hearing and Action on Ordinance No. 235-2019-068

Purpose
Property owner, Gilberto de Leon, began by proposing a Specific Use Permit to allow Apartments, an Apartment (A) use, in Dwelling “G” (DG) on Lot 26, Block 1, St. Tropez Subdivision, Cameron County, Texas, located at 2521 Old Port Isabel Road, Brownsville, Texas 78526. Based on the surrounding similar uses and the mixed zoning nature of the area, staff recommended the applicant to rezone the property’s Use District rather than go through a Specific Use Permit. The applicant agreed to follow staff’s recommendation to rezone from Dwelling “G” (DG) to Apartment “G” (AG).

Property Analysis
The predominant land use in the surrounding area is single family dwelling. Additional uses, such as undeveloped land, multifamily developments, and commercial business (professional services, repair shops, restaurants, etc.) are also present within proximity of the subject property.

The property is located within the Town Corridor and Sub Regional Node. The request is consistent with the Future Land Use Map.

Background
The subject property on which the applicant is looking to construct an apartment complex is currently vacant. A zoning change is necessary since an apartment use is not permitted in a Dwelling use district. Rezoning to an apartment use district would permit the proposed use and would generally complement the surrounding zoning designations and uses of neighboring properties. As previously mentioned, staff recommended the route of a zoning change due to the latter. Additionally, it is in the opinion of staff that the rezoning of the subject property to an Apartment use district will serve as a transition buffer between Dwelling to the North and Commercial use districts to the South.

Given the size of the subject property (0.72 acre) and the Area District that is to remain the same (“G” – allows 12.5 units per acre), the applicant would potentially be able to construct a maximum of 9 units. Nevertheless, the applicant is only proposing 6 units.

Recommendation
There was no written or verbal opposition at the Planning and Zoning Commission meeting on January 9, 2020. Planning and Zoning Commission supports this rezoning from Dwelling “G” (DG) to Apartment “G” (AG).

This item was presented for 1st Reading at City Commission on January 21, 2020 where it was tabled. There was no verbal or written opposition.
Zoning Application

Multi-Family/Office/Commercial/Retail/Industrial
☐ 0-1 Acres .....$500.00
☐ 1.0-5. Acres .....$750.00
☐ 5.0-10. Acres ...$1,000.00
☐ 10. and Up .....$1,500.00

☐ Planning and Zoning Commission
☐ City Commission

Tentative Date:

* For submittal requirements, see Appendix A. Zoning Processing Fees

Geographic ID #:

74-7944-0010-0260-00

Project Address:

2521 Old Port Isabel Rd.

Subdivision:

St. Tropez

Lot(s)/Block:

Lot 26, Block 7

Current Area Classification: "G" Proposed Area Classification: "G" Gross Acreage: .72 Acres

Current Zoning: Dwelling Proposed Zoning: Apartment

Proposed Used: Apartments Overlay Districts: NA

* If property is not subdivided you will need to provide survey map and/or metes and bounds

* If the application is signed by the representative we need a notarized authorization letter from the owner.

Owner Information

Name: Gilberto De Leon
Address: 148 Village East Drive
City: Los Fresnos
State: TX Zip Code: 78566
Telephone: (956) 592-0440
Fax:
Email:
Signature: [Signature]

Special Note: INCOMPLETE APPLICATION WILL NOT BE ACCEPTED

Representative/Agent Information

Name: David Campil
Address: 5258 Ridgeline Dr.
City: Brownsville TX
State: TX Zip Code: 78526
Telephone: (956) 455-1582
Fax:
Email: camposdsgn@gmail.com
Signature: [Signature]

Office Use Only

Date Submitted: 12/26/19 Code: 2N31 Application Fee: $500.00
Accredited By: [Signature]

Funds from SUP 235-2019-068-5 will be used to cover zoning app fee

Case Number 235-2019-068

Staff Recommends rezoning rather than SUP 12/17/19
AN ORDINANCE AMENDING THE “CITY ZONING ORDINANCE” BY AMENDING THE OFFICIAL ZONING ATLAS; AND DEALING WITH RELATED MATTERS INCLUDING $2000 PENALTIES.

WHEREAS, this ordinance is in accordance with the City’s comprehensive plan; is consistent with the existing zoning surrounding the area to be rezoned; and bears a substantial relationship to the public health, safety, morals or general welfare; and all procedural requirements for the passage hereof have been met;

Be It Ordained by the City of Brownsville:

Section 1. That the City Commission of the City of Brownsville, Texas, hereby amends the “City Zoning Ordinance” by amending the Official Zoning Atlas so to rezone from Dwelling “G” (DG) to Apartment “G” (AG) for Lot 26, Block 1, St. Tropez Subdivision, Cameron County, Texas, located at 2521 Old Port Isabel Road, Brownsville, Texas 78526, as shown in Exhibit “A”; the area rezoned by this amendment being situated entirely within the corporate limits of Brownsville, Cameron County, Texas.

Section 2. That all provisions of Sections 180 through 221 of the City Zoning Ordinance are incorporated herein by reference and declared to be a part hereof; and that this ordinance shall become effective on the earliest date allowed by law.


(SEAL)

BY: ______________________________
Juan “Trey” Mendez
Mayor

ATTEST: _________________________
Griselda Rosas
Interim City Secretary
EXHIBIT “A”
Specific Use Permit Request:

Case # 235-2019-068-S
Gilberto de Leon

Current Zoning: Dwelling "G"

Proposed Use: Apartments Apartment "G"
City of Brownsville

FUTURE LAND USE PLAN

DISTRICTS NAME
- Core Central
- Core East
- Core West
- Downtown Enterprise
- Downtown Riverside
- Emerging City Central
- Emerging City East
- Emerging City West
- Employment Hub
- Reserve Employment Hub
- Reserve Future City
- Transition Central
- Transition East
- Transition West
- Water Management

CORRIDORS
- Gateway Corridor
- Linkage Corridor
- Loop Corridor
- Town Corridor

NODES NAME
- Downtown Node
- Primary Regional Node
- Secondary Regional Node
- Sub Regional Node

Zoning Case No. 235-2019-068-S

Brownsville's City Limits
Brownsville's ETJ Boundary
Case No. 235-2019-068-S
A. Application Information

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B. Application Type/Background

The applicant is requesting a Specific Use Permit to allow Apartments, an Apartment (A) use, in Dwelling “G” (DG).

C. Subject Property

The subject property is located on Lot 26, Block 1, St. Tropez Subdivision, Cameron County, Texas, located at 2521 Old Port Isabel Road, Brownsville, Texas 78526. The property is fronting Old Port Isabel Road, a Secondary Arterial Roadway. Single family dwelling is the predominant existing land use within the subject property’s immediate area. The subject property is located within Brownsville Public Utility Board’s (BPUB) water service area #2, which has several projects planned in 2020 including a new transmission main on FM 511 and improvements to 3 lift stations (LS 55, LS 86, and LS 120) within a 4 mile radius of the subject property.

Existing land uses abutting the subject property are identified below and illustrated in Figure 2.

- North: Undeveloped Land, Single Family Dwelling, and Commercial Business
- East: Undeveloped Land, Single Family Dwelling, and Apartment
- South: Commercial Business
- West: Single Family Dwelling

**Figure 1: Existing Zoning Map**

The following map illustrates existing zoning of the subject property and properties within the immediate area.

- North: Dwelling (D) and Medium Commercial (6C)
- South: Medium Retail (3C), General Retail (4C), and Light Commercial (5C)
- East: Apartment (A), Light Retail (2C), General Retail (4C), and Light Commercial (5C)
- West: Dwelling (D) and Apartment (A)
Figure 2: Existing Land Use
The following map illustrates the existing land uses surrounding the subject property.
A review of the adopted City of Brownsville Comprehensive Plan and its Future Land Use Plan indicates that the subject property is located within the Town Corridor and Sub Regional Node. According to this plan, the Town Corridor is primarily residential with small clusters of commercial land uses at regularly spaced intervals. Residential uses should have a density of 3 dwelling units per acre and should primarily consist of single family dwellings.

The Sub Regional Node is a balance of commercial and residential land uses so that neither use category takes prominence over the other. Residential uses should have an average density of 9 dwelling units per acre, and consist primarily of attached apartments and townhouses. It is the opinion of the staff that the request is consistent with the Comprehensive Plan and Future Land Use Plan.

**Figure 3: Future Land Use Map**

The following map illustrates the Future Land Use Map. The subject property is within the Town Corridor and Sub Regional Node.
E. Review Criteria

Is the proposed amendment consistent with all applicable provisions of the Comprehensive Plan and Future Land Use Plan?

It is the opinion of staff that the request is consistent with the goals, objectives, and policies of the Comprehensive Plan and Future Land Use Plan.

Will the proposed district amendment be compatible with the character of the existing land uses in the adjacent and surrounding area and the peculiar suitability of the property for the proposed zoning use?

The area surrounding the subject property is developed primarily of single family dwellings. It is the opinion of staff that the proposed zoning/use would generally be compatible.

Will the proposed amendment result in significant or burdensome demands on existing public facilities?

It is the opinion of staff that the proposed zoning/use would not create significant or burdensome demands on public facilities such as water, wastewater, or transportation.

Will the proposed amendment result in logical, timely and orderly development patterns that preserve the value of existing development?

It is the opinion of staff that the proposed zoning/use would generally complement existing development and would not have adverse impacts on the area.

F. Staff Recommendation

Based upon the analysis presented in this report and based on observations from the Planning and Redevelopment Services Department, staff recommends supporting a rezone from Dwelling “G” (DG) to Apartment “G” (AG).
AGENDA ITEM

TO:            Noel Bernal, City Manager
FROM:          Jose F. Perez, CTCD, CTCM, Financial Services - Procurement
SUBJECT:       Consideration and appropriate action to approve on 2nd Reading the City’s General Franchise Ordinance 2020-1667, as amended, to be added as Chapter 309 of the Brownsville Code of Ordinances. (Financial Services Department)

DATE:          5/23/2020

THROUGH:

AGENDA ITEM

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Information: Please include additional information/request.

Consideration and appropriate action to approve on 2nd Reading the City’s General Franchise Ordinance 2020-1667, as amended, to be added as Chapter 309 of the Brownsville Code of Ordinances. (Financial Services Department)

Summary:
The City of Brownsville continues to explore practices with future positive impacts to our community by taking action in the present. Today, to centralize and facilitate the applicability to all franchise fee related services, recommended efforts are to update our ordinance structure and incorporate a new general franchise ordinance. The existing franchise ordinance was adopted in 1971 with no substantial updates since its inception. By doing so, private-public partnerships can be achieved in various services provided to both residential and commercial customers and the community as a whole. This further provides the City with the capability to explore further services while being environmental stewards of our community resources.

Furthermore, the general franchise ordinance will help mitigate variances in ordinances and agreements that may have considerable impact in quality and efficacy to services. Our efforts will help explore adequate capacity, strategic services, public education and outreach to the community.

Reviewing Departments: Please review and forward to the next reviewing department in a timely manner.

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City Manager's Approval

Signature: Noel Bernal

Viewpoint:    Digitally signed by Noel Bernal
Date: 2020.05.22 17:20:11 -05'00'
To: Mayor and City Commission

Through: Noel Bernal, City Manager

From: Jose F. Perez, Financial Services- Procurement Services

Date: May 23, 2020

Agenda: Consideration and appropriate action to approve on 2nd Reading the City’s General Franchise Ordinance 2020-1667, as amended, to be added as Chapter 309 of the Brownsville Code of Ordinances. (Financial Services Department)

Summary:

The City of Brownsville continues to explore practices with future positive impacts to our community by taking action in the present. Today, to centralize and facilitate the applicability to all franchise fee related services, recommended efforts are to update our ordinance structure and incorporate a new general franchise ordinance. The existing franchise ordinance was adopted in 1971 with no substantial updates since its inception. By doing so, private-public partnerships can be achieved in various services provided to both residential and commercial customers and the community as a whole. This further provides the City with the capability to explore further services while being environmental stewards of our community resources.

Furthermore, the general franchise ordinance will help mitigate variances in ordinances and agreements that may have considerable impact in quality and efficacy to services. Our efforts will help explore adequate capacity, strategic services, public education and outreach to the community.
ORDINANCE NO. 2020-1667

=====================================================================

AN ORDINANCE BY THE CITY OF BROWNSVILLE CITY COMMISSION
ESTABLISHING BASIC RULES, REGULATIONS, GUIDELINES AND
OTHER RELEVANT CRITERIA FOR THE ISSUANCE OF FRANCHISE
ORDINANCE, LICENSES, PERMITS, AND AGREEMENTS TO PRIVATE
PERSONS FOR THE FULFILLMENT OF CERTAIN LOCAL GOVERNMENT
FUNCTIONS PERTAINING TO THE EXERCISE OF THE CITY’S
GOVERNMENT AUTHORITY AND POLICE POWERS TO PRESERVE AND
PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE CITY
OF BROWNSVILLE’S INHABITANTS AS AUTHORIZED UNDER THE
TEXAS CONSTITUTION, THE LAWS OF THE STATE OF TEXAS, AND THE
CITY’S HOME RULE CHARTER.

=====================================================================

WHEREAS, the CITY OF BROWNSVILLE, TEXAS is a home-rule municipality organized
under the laws of the State of Texas; and,

WHEREAS, the CITY CHARTER for the CITY OF BROWNSVILLE under Article II, Section 1
– Corporate Powers, establishes the authority of the CITY with respect to all municipal
powers, functions, rights, privileges, immunities, and franchises of every name and nature,
subject to all powers, duties, privileges, and obligations pertaining to or incumbent upon
the CITY as a corporate body; and

WHEREAS, the CITY CHARTER for the CITY OF BROWNSVILLE under Article II, Section
14 – Right to Regulate Charges, the CITY has the power to determine, fix and regulate the
charges, fares and rates of any person, firm or corporation exercising, or that may hereafter
exercise, any right of franchise or public privilege in said city, and to prescribe the kind of
service to be furnished, the equipment to be used, the manner in which service shall be
rendered, and to change such regulations from time to time; and,

WHEREAS, the CITY CHARTER for the CITY OF BROWNSVILLE under Article II, Section
15 – Street Powers, the CITY has dominion, control and jurisdiction in, upon, over and
under its public streets, squares, avenues, alleys and highways, and to provide for the
improvement thereof, including the control and regulation of franchises; and,

WHEREAS, the CITY CHARTER for the CITY OF BROWNSVILLE under Article II, Section
18 – Franchises for Use of Street, the CITY has the power and authority to grant franchises
for the use and occupancy of streets, avenues, alleys and any and all public grounds
belonging to or under the control of the city; and,

WHEREAS, the CITY CHARTER for the CITY OF BROWNSVILLE under Article II, Section
22 the CITY has various and sundry enumerated powers that relate or pertain to the CITY’s
authority to issue franchises, licenses, permits, and agreements to private persons,
including but not necessarily limited to the following particulars:

[1] To define all nuisances, prohibit the same within the city and outside the city limits
for a distance of five thousand (5000) feet; to police all parks, grounds, speedways, streets,

-1-
avenues and alleys owned by said city, within or without the city limits; to prohibit the pollution of all sources of water supply of said city, and to provide for the protection of watersheds.

[3] To provide for the inspection and regulation of the sanitary conditions of all premises and vacant lots within the city limits; for the removal of garbage, night soil, refuse and unsanitary vegetation; to provide for establishing a lien against the property for any expenses incurred by the city in enforcing this provision, and further to provide for the making and enforcing of all proper and reasonable regulations for the health and sanitation of said city and its inhabitants.

[5] To provide for a sanitary sewer system and for the maintenance thereof; to require property owners to make connections to such sewers with their premises, and to provide for fixing a lien against any property owner's premises who fails or refuses to make sanitary sewer connections, and to charge the cost against the said owner and make it a personal liability, and to fix penalties for failure to make sanitary sewer connections.

[11] To license any lawful business, occupation or calling that is susceptible to the control of the police power, and to license, regulate, control, or prohibit the erection of signs, or billboards.

[26] the CITY has the power and authority to require waterworks corporations, gas companies, street car companies, telephone companies, electric light and power companies or other companies or individuals, exercising franchises, now or hereafter, from the city, to make and furnish extensions of their service to such territory as may be required by ordinance; and,

WHEREAS, pursuant to certain state laws the State of Texas acknowledges that the CITY has certain powers, privileges, and authority to grant to private persons certain franchises, licenses, and agreements, of various natures, to enhance the ability of the CITY to provide these local government services for the local government in exchange for certain fees; and,

WHEREAS, under the powers, privileges, and authority vested in the CITY, the CITY may self-determine the manner and method in which is solid waste management function shall be carried out; and

WHEREAS, the CITY has determined that the collection, processing, management and disposition of residential solid waste is best and most efficiently carried out by providing an exclusive license and franchise to a private entity with demonstrated expertise in carrying out this function under agreed upon terms and conditions; and,

WHEREAS, the CITY has adopted a Code of Ordinances which serves as the general repository for all Ordinances and lawmaking actions of the CITY OF BROWNSVILLE; and,

WHEREAS Chapter 1 – General Provisions of the Code of Ordinances specifies the manner and method in which the Code of Ordinances may be modified and amended; and,

WHEREAS the CITY COMMISSION for the CITY OF BROWNSVILLE, pursuant to this Franchise Ordinance will provide updated guidance for the exercise of the CITY’s franchising authority for the benefit of future administration; and,

WHEREAS certain existing Ordinances pertaining to the franchising of activities need updating and modernization;
NOW THEREFORE, BE IT ORDAINED THAT THE CITY OF BROWNSVILLE, TEXAS hereby adopts this Franchise Ordinance to be codified in the City’s Code of Ordinances as follows:

SECTION ONE. The following Chapter 309 – Franchises, Licenses, and Permits is hereby added to the Brownsville Code of Ordinances as a new chapter as follows:

CHAPTER 309 – FRANCHISES, LICENSES, AND PERMITS (NEW CHAPTER)

Section 309 -1. Definitions. ........................................................................................................3
Section 309 -2. Franchises in General and Police Powers.........................................................4
Section 309 -3. Exercise of Franchising Authority .................................................................4
Section 309 -4. Reservation of Government Immunity and Police Power Rights....................4
Section 309 -5. Application Required; Necessary Contents....................................................5
Section 309 -6. Compensation.................................................................................................6
Section 309 -7. Award of the Franchise ..................................................................................7
Section 309 -8. Protection of the Franchisee; Penalty...............................................................7
Section 309 -9. Performance Standards and Franchise Oversight...........................................7
Section 309 -10. Disputes Between the City and the Franchisee................................................7

Section 309 -1. Definitions.

a) The following definitions shall apply in the interpretation and application of this Chapter:

Administration – refers to the executive officers for the City, beginning with the City Manager, and including the department heads and other officials and employees with the City charged with administration of the City’s day to day regulatory, maintenance, and service functions.

Applicant – refers to a person who applies requesting issuance of a franchise from the City but who is not yet a franchisee. An existing franchisee who is up for a renewal of a franchise shall be considered an Applicant under those circumstances.

City – refers to the City of Brownsville, acting through its authorized elected and appointed officials, officers, employees, and authorized agents;

Complaint – refers to a consumer complaint about services rendered by the franchisee.

Consumers – refers to persons within the City who are required to pay a fee or assessment to receive the benefit of the service being provided by the franchise holder.

Franchise – refers to a grant or delegation of authority by the City to a private person for the exercise of the certain regulatory and police functions of the City pertaining to the public health and welfare of its citizens within the corporate and jurisdictional limits of
the City and authorizing the use of public rights of way by authorized private persons. In this Chapter, the term franchise includes licenses, permits, and agreements.

Franchisee – refers to the person who is awarded a franchise by the City, whether in the form of a license, permit, or agreement.

Person – refers to both natural person as well as private business entity regardless of the entity’s legal form.

Section 309 -2. Franchises in General and Police Powers

a) The City reserves its governmental rights to require the issuance of a franchise ordinance in connection with the exercise of the City’s regulatory and police powers by a private person or a franchise.

b) The City’s franchising authority encompasses any subject matter area allowed by law, including but not limited to:
   1) public utilities;
   2) telecommunications;
   3) solid waste;
   4) spur tracks
   5) encroachment permits and licenses
   6) public safety services;
   7) any other subject matter area allowed by Texas law and within the scope of the City Charter.

Section 309 -3. Exercise of Franchising Authority

a) The City Commission for the City of Brownsville has the authority granted by the Texas Constitution, the State of Texas, and its City Charter to issue franchises, licenses, permits, and agreements to private persons.

b) The grant of franchise privileges shall generally be exercised by the adoption of a City Ordinance addressing the minimally required components of the franchise privilege specified by law and as determined to be in the best interest of the City and its citizens.

c) Regulatory functions requiring a permit, a license, or an agreement may be exercised in accordance standards and criteria set forth in an ordinance and as to which a delegation of authority has been made to the City administration.

d) Under no condition shall a franchise term exceed the more than ten (10) years without a review, reevaluation, and renegotiation, unless otherwise mandated by state law.


a) The City reserves its powers, privileges, and authority to retain, define, and control its government authority, subject only to restrictions imposed by law and subject to applicable the terms and conditions specified in the franchise ordinance, license, permit, or agreement.
b) The City reserves its government immunity from suit and from liability to the fullest extent allowed by law in the grant of a franchise.

c) The grant of a franchise shall not constitute a contract Chapter 252, Texas Local Gov’t Code, nor is there a waiver of immunity for damages, for attorney’s fees, or court costs except as may otherwise independently provided by law.

Section 309 -5. Application Required; Necessary Contents

a) Any request for the exercise of a franchise privilege must be submitted for review and approval of the City Commission or to the City’s Administration as authorized by local ordinance.

b) The City’s Administration is authorized to design an application for use by any person requesting a franchise privilege responsive to the nature of the franchise being sought.

c) The application, must address, to the extent applicable, the following information as a component of the application process:

1) Name and official contact information of the person seeking a franchise, including the identity of the person who shall serve as the primary spokesperson for the Applicant;

2) The franchise function or activity that the Applicant seeks to be granted;

3) Scope of the franchise request in terms of the activity, the term requested, the geographic area, and any other attribute pertaining to the franchise;

4) Submission of the relevant financial data by the Applicant, as required by Administration, demonstrating the Applicant’s financial viability to successfully fulfill the franchising activity.

5) Submission of relevant data pertaining to the quantity and qualifications of the personnel who would be charged with responsibility to carry out the franchised activity;

6) Submission of the Applicant’s personnel policies, pay and benefits package pertaining to the franchised activity, and proof of compliance with applicable Equal Employment Opportunity and small/or minority business enterprise requirements;

7) Submission of an emergency management and continuity of operations plan to be deployed in the event of a disaster declaration by local or state officials that could impact the franchise operations;

8) An inventory of the equipment that would be used to carry out the franchised activity and the maintenance schedules for such equipment, including applicable licenses and permits;

9) A description of fees, charges, and assessments to be charged to consumers who receive the benefits of the franchise service;

10) A description or calculation of the revenues to be paid to the City as a condition of the franchise allowance;
11) A proposed grievance and complaint process and procedure that may be used by consumers to raise questions, concerns, grievances, and complaints about performance and which resolves the grievance or complaint. Also, a reporting procedure to the City Administration for accountability purposes.

12) A conflict of interest disclosure statement with sufficient detailed information to allow the individual elected and appointed officials of the City to determine a potential conflict of interest as such is defined in Chapter 171, Texas Local Gov’t Code;

13) Proof of performance, payment, and restoration bonds pertinent to the franchise in question;

14) A sworn certification by the Applicant that the Applicant has not, either directly or indirectly, engaged in any communications with an elected official to lobby for approval of an application. Breach of this certification is grounds to deny the application or forfeiture of an existing franchise.

d) The City reserves its authority to pursue further negotiations pertaining to a franchise application, to seek clarification from an applicant, and to reject an application at any time.

e) Confidential Information. If an applicant wishes to submit information that the applicant considers to be protected by trade-mark and copyright laws, as a component of the application, the applicant must alert the City’s Administration to this fact and describe the nature of the confidential information so that appropriate measure can be taken to protect such information.

1) Notwithstanding whatever good faith efforts the applicant and the Administration may undertake to protect information claimed to be confidential, Applicant understands that given the existence of public information and public disclosure obligations, the City cannot guarantee that any information submitted as a component of an application can in fact be withheld from disclosure.

2) Applicant assumes the risk that any of the contents of an application are subject to a request for disclosure and that even though the City may undertake reasonable efforts to withhold such information, the final decision on such matters rests with the Office of the Attorney General.

3) The City shall have no obligation to seek a ruling from the Office of the Attorney General if the City does not have a reasonable basis, in fact or in law, to pursue such a request in response to a request for disclosure from a third party.

Section 309-6. Compensation

a) No franchise, grant, right or easement ever be made to any private individual, corporation, or association, unless it provides for adequate compensation or consideration therefor, to be paid to the City of Brownsville.

b) The terms and condition for fees and assessments to be charged, the compensation owed to the franchisee, and the fees owed to the City shall be designed and delineated in the body of the Ordinance that grants the franchise.
Section 309-7. Award of the Franchise

a) Intake, evaluation, and vetting of the franchise application shall be handled by City Administration using guidelines and procedures recommended by City Administration.

b) It shall be the City Manager’s responsibility to oversee, directly or indirectly, the evaluation, negotiation, and recommendations for approval of a franchise ordinance in response to an application.

c) The Applicant is prohibited from lobbying, soliciting, or communicating with any member of the City Commission, either directly or indirectly, with respect to the review, evaluation, and submission of a proposed franchise ordinance to the City Commission.

1) Violation of this provision may subject the Applicant to civil or criminal penalties for obstruction of or undue influence on the award of a government privilege.

Section 309-8. Protection of the Franchisee; Penalty

a) It shall be a violation of this Ordinance if any third person encroaches upon, obstructs, impedes, or otherwise takes actions that undermine the performance of the franchise functions authorized to a private person by the City via a franchise ordinance.

b) Any intentional obstruction of the activities of a franchisee is subject to Citation by the City’s law enforcement and Code enforcement personnel as a Class C Misdemeanor filed in the City’s Municipal Court.

1) A fine of up to $500.00 for each violation may be imposed on any person who violates this provision.

c) Nothing in this Section precludes the franchisee from pursuing independently any civil or criminal process to stop an infringement of the franchise by a third party.

d) This provision shall not apply to any official, officer, agent, or employee of City in furtherance of official duties pertaining to supervision and maintenance of the franchisee.

Section 309-9. Performance Standards and Franchise Oversight

a) Every franchise ordinance must include a specific performance criteria and evaluation method suitable to the franchise.

b) The performance and evaluation criteria shall be developed under the authority of the City’s Administration and shall be specified in the specific Ordinance granting a franchise. The criteria should rely on documented service parameters such as service calls, work orders, performance metrics, and resolved grievances and complaints and any other best practices performance metric pertinent to the franchise in issue.

c) The City shall have the continuing right and authority to request an inspection of the franchisee’s books and records pertaining to the franchise activity to determine performance and compliance with the terms of the franchise.

Section 309-10. Disputes Between the City and the Franchisee

a) Disputes between the City and the Franchisee shall be resolved between the City Administration and the Franchisee as expeditiously as possible. Outcomes shall be
documented in writing with a Memorandum of Understanding signed by both parties so as to create a record of issues resolved. Any such MOU’s shall not modify the terms of the franchise but may serve as an interpretive guide reflecting the day to day operations under the franchise. The City and the franchisee may request an amendment or clarification of an existing franchise ordinance to address unforeseen circumstances or to clarify the terms of the underlying franchise ordinance.

b) Cancellation or forfeiture of the franchise may only be effectuated at the level of the City at which the franchise was granted. If by Ordinance, then by Ordinance. If by Administrative fiat, then by Administrative fiat.

1) Forfeiture of a franchise by Administration may be appealed to the City Commission for review.

2) Any such appeals must be requested in writing by the submission of a request for an agenda item to the City Secretary within thirty (30) days after the adverse action is taken by the City Administration.

c) In all instances, actions taken by the City Commission shall be final and not appealable. Final decisions of the City Commission are subject to judicial review only to the extent otherwise allowed by law. Nothing in this Ordinance shall be construed as otherwise consenting to judicial review beyond what is otherwise authorized under Texas law, and the City intends to preserve its sovereign and government authority in this regard to the fullest extent recognized at law.

SECTION TWO. Appendix A contained in the Brownsville Code of Ordinances is hereby repealed as being obsolete.

SECTION THREE. The provisions of this Ordinance are prospective only. Nothing in this Ordinance shall be construed as impairing any existing franchise, license, permit, or agreement; provided, however, that nothing in this Ordinance should be construed as improving, enhancing, or extending any franchise, license, permit, or agreement beyond the terms in effect at the time of passage of this Ordinance.

SECTION FOUR. Severability. If any section or provision of this Ordinance should be invalidated by a final judgment of a Court of Law, the remaining section or provisions shall continue to have the force and effect of law unless modified by subsequent actions of the City Commission.

INTRODUCED AND PASSED ON FIRST READING ON THE 19TH DAY OF MAY 2020.

INTRODUCED AND PASSED ON SECOND READING ON THE ___ DAY OF JUNE 2020.
JUAN “TREY” MARTINEZ
MAYOR

ATTESTED:

_______________________________
GRISELDA ROSAS
INTERIM CITY SECRETARY
TO: Noel Bernal, City Manager
FROM: Ramiro Gonzalez, Dir. of Government and Community Affairs
SUBJECT: TX FLAP Grant
DATE: 5/18/2020
THROUGH:

AGENDA ITEM COMMISSION MEETING DATE 05/26/20

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Information: Please include additional information/request.

Consideration and Action to acknowledge receipt of Texas FLAP Grant and providing necessary match. (City Managers Office)

Reviewing Departments: Please review and forward to the next reviewing department in a timely manner.

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Revised 3/2019
To: Mayor and City Commission
Though: Noel Bernal, City Manager
From: Joel Garza, Mobility Director – Multimodal Transportation
Date: May 29, 2020
Agenda: Consideration and ACTION to acknowledge receipt of Texas Federal Lands Access Program (FLAP) Grant of $500,000 and authorizing local match requirements for Bahia Grande Trail Feasibility Study (Multimodal Transportation – Mobility)

Summary:

The City of Brownsville applied to the Texas Federal Lands Access Program Grant on April 2019 to complete a feasibility study on the Bahia Grande Trail. On November 2019, FHWA visited the site for technical review. And on May 15, 2020, the City was notified that the Texas Program Decisions Committee accepted our application.

The purpose of this project is to increase non-vehicular access to the U.S. Fish and Wildlife Service Bahia Grande Unit of the Laguna Atascosa National Wildlife Refuge, and the National Park Service Palo Alto Battlefield National Historical Park. The feasibility study will include analysis of potential routes for future construction of 21.5 miles of a multi-use trail.

The grant is for $500,000 and requires a 20% match of $100,000. The City plans to cover the match using the Historic Battlefield Extension Project Funding. The feasibility study is anticipated to begin this year and be completed in 2021.

The Multi-modal Transportation department recommends approval of this agreement.
Dear Mr. Gonzalez:

Congratulations. The Texas Program Decisions Committee (PDC) has accepted your application for the above referenced project into the final program of projects for the Texas Federal Lands Access Program. The scope, funding, and preliminary schedule are proposed as follows:

**Purpose:** The purpose of this project is to increase non-vehicular access to the U.S. Fish and Wildlife Service Bahia Grande Unit of the Laguna Atascosa National Wildlife Refuge, and the National Park Service Palo Alto Battlefield National Historical Park.

**Scope:** The scope of this project includes analysis of potential routes for future construction of 21.5 miles of a multi-use trail, and development of a Feasibility Study Report. Specifically, this project includes:

- Evaluate best alignment options in sections where trail is not formalized/does not exist.
- Evaluate improvements/upgrades to existing trail sections.
- Consider ownership and maintenance of trail in all sections.
- Identify funding strategy for completion of design and construction for the Bahia Grande Regional Trail
- For Sections B & D (See Attachment A):
  - Determine alignment, conduct environmental screening, survey and right-of-way, and trail design considerations
  - Design these sections to 15%

**Preliminary Schedule:** Work under this project is anticipated to be begin this year and be completed in 2021.

This is contingent on if Program funding is available. The Federal Lands Access Program is currently authorized under the FAST Act, which is set to expire on September 30, 2020. The
FLAP Program, or a similar program where this project can be grandfathered into, would need to be extended, renewed, or created through additional federal legislation. We are optimistic this will occur.

**Funding:** The total project cost, including preliminary studies and preliminary engineering is estimated to be $500,000. The current cost estimate makes assumptions for the study, 15% design, oversight and administration. The City of Brownsville would need to provide non-Federal funds, through electronic funds transfer to FHWA, to meet the 20.00% minimum match requirement, estimated to be $100,000.

**Right of Way and Utilities:** It is anticipated that no ROW acquisition and utility relocation for the proposed work will be required in this phase. The feasibility study will help determine what future ROW acquisition and utility relocation may be necessary.

**PDC Considerations:** The PDC would like the project to focus on sections B and D of the proposed regional trail. See Appendix A of this notification. While the feasibility study will look at all 21.5 miles to identify future alignments, design considerations, and construction estimates, sections B and D have the most significant connections to federal land access and should be the priority focus of study and design efforts.

**Project Delivery:** The Federal Highway Administration (FHWA), Central Federal Lands Highway Division (CFLHD) will lead the development of a Feasibility Study Report.

Laurie Miskimins will be the FHWA-CFLHD Project Manager. As specified under the conditions of the NV FLAP Project Application, a Funds Transfer Agreement (FTA) will be required between your agency and CFLHD, along with a Memorandum of Agreement (MOA) establishing the project scope, roles, and responsibilities. The drafts of these agreements are attached to this letter. Please fill in the appropriate information for your agency and email a scanned PDF of the executed versions to Ms. Miskimins and me no later than 60 days from the date of this notification letter.

We appreciate your interest in the Texas Federal Lands Access Program and look forward to working with you on this project.

Sincerely,

JAMES A HERLYCK
Federal Lands Access Program Manager &
Federal PDC Representative
FHWA-CFLHD

Attachments: Draft Funds Transfer Agreement and Memorandum of Agreement
cc: Noel Bernal, City of Brownsville, City Manager, noel.bernal@cob.us
Boyd Blihovde, Refuge Manager, USFWS, boyd_blihovde@fws.gov
Bruce Hickson, Regional Transportation Manager, USFWS, bruce_hickson@fws.gov
Rolando Garza, Chief of Resource Management, National Park Service, rolando_garza@nps.gov
Sena Wiley, Regional FLTP Manager, National Park Service, sena_wiley@nps.gov
Erica Cole, Transportation Planner, National Park Service, Erica_cole@nps.gov
Peter Smith, State PDC Representative, Director of Transportation Planning and Programming, TXDOT, Peter.Smith@txdot.gov
Judge Sydney Murphy, Local PDC Representative, County Judge, Polk County, county.judge@co.polk.tx.us
Genevieve Bales, Transportation Planner, FHWA TX Division, Genevieve.Bales@dot.gov
Valeria Arocho, FHWA TX Div, valeria.arocho@dot.gov
Samantha Pratt, FHWA TX Div, samantha.pratt@dot.gov
Chris Longley, FHWA-CFLHD, Christopher.longley@dot.gov
Melissa Jucha, FHWA-CFLHD, melissa.jucha@dot.gov
Laurie Miskimins, FHWA-CFLHD, laurie.miskimins@dot.gov
Elijah Henley, FHWA-CFLHD, elijah.henley@dot.gov
Emilio Burgos, FHWA-CFLHD, Emilio.burgos@dot.gov
Appendix A. Map of Study Area
Agency providing funding: City of Brownsville, Texas

Agreement amount: $100,000

Period of Performance: From date of signature below to July 1, 2022

Agency receiving funding: Central Federal Lands Highway Division (CFLHD)

This Funds Transfer Agreement (FTA) is to confirm that the City of Brownsville has committed to provide, through electronic funds transfer, $100,000 to CFLHD for TX FLAP BAHIA TR(1) Bahia Grande Trail Feasibility Study to meet the matching requirements and all conditions set forth in the Memorandum of Agreement (MOA) dated 5/15/2020 and any future modifications to the MOA.

### FUNDS TRANSFER SUMMARY

<table>
<thead>
<tr>
<th>Phase</th>
<th>Amount</th>
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<tr>
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### AGENCY FINANCIAL AND CONTACT INFORMATION

<table>
<thead>
<tr>
<th>The City of Brownsville</th>
<th>Central Federal Lands Highway Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>DUNS #</td>
<td>xx-xxx-xxx</td>
</tr>
<tr>
<td>Name</td>
<td>John Doe</td>
</tr>
<tr>
<td>Phone</td>
<td>(303) 555-5555</td>
</tr>
<tr>
<td>E-mail</td>
<td><a href="mailto:john.doe@mesacounty.gov">john.doe@mesacounty.gov</a></td>
</tr>
<tr>
<td>Address</td>
<td>1234 Main St. Grand Junction, CO 12345</td>
</tr>
<tr>
<td>Suzanne Schmidt</td>
<td></td>
</tr>
<tr>
<td>(720) 963-3356</td>
<td></td>
</tr>
<tr>
<td><a href="mailto:Suzanne.schmidt@dot.gov">Suzanne.schmidt@dot.gov</a></td>
<td></td>
</tr>
<tr>
<td>12300 W. Dakota Ave.</td>
<td></td>
</tr>
<tr>
<td>Lakewood, CO 80228</td>
<td></td>
</tr>
</tbody>
</table>

### Project Contact Information

| Jane Doe               | Laurie Miskimins                         |
| (303) 555-5556         | (720) 963-3455                           |
| jane.doe@mesacounty.gov| laurie.miskimins@dot.gov                 |
| 1234 Main St.          |                                        |
| Grand Junction, CO 12345|
|                         |                                        |

Regardless of the estimated costs stated in the MOA, the City of Brownsville will provide 20.00% of the total Federal Lands Access Program cost required for the TX FLAP BAHIA TR(1) Bahia Grande Trail Feasibility Study, or $100,000 whichever is greater, through the project.

CFLHD shall not incur costs which result in matching funds exceeding the maximum cost stated in this Agreement without authorization by the Requesting Agency in the form of written modification to this Agreement.
CFLHD requests that these payments be made through the US Treasury's website https://pay.gov. Pay.gov can be used to make secure electronic payments to any Federal Government Agencies via credit card or direct debit. Payment shall be submitted referencing the FHWA Agreement Number.

**Option 1 (Preferred Method)**

Plastic card or Automatic Clearing House Payment (ACH Direct Debit)

- Go to Treasury’s website – [https://pay.gov](https://pay.gov)
- Search for Agency Name (Transportation Department)
- Select the appropriate Transportation Agency (Federal Highway Administration)
- Follow the form instructions to make your payment. Note, if making an ACH payment from your bank account, please select ACH Direct Debit as the payment type.

**Option 2**

Mail check payment to the following address for Paper Check Conversion (PCC) processing:

Make Check Payable To:
DOT FHWA

Mailing Address:
Enterprise Service Center
Federal Aviation Administration
ATTN: AMZ-324/HQ Room 181
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169

**Notice to customers making payment by check:**

- Please notify cfl.finance@dot.gov if mailing a check.
- When you provide a check as payment you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.
- When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment and you will not receive your check back from your financial institution.

Privacy Act- A Privacy Act Statement required by 5 U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at: [https://www.fiscal.treasury.gov/fsservices/gov/rvnColl/otcNet/rvnColl_otcnet.htm](https://www.fiscal.treasury.gov/fsservices/gov/rvnColl/otcNet/rvnColl_otcnet.htm)
or call toll free: at 1-866-945-7920 to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.
Project: TX FLAP BAHIA TR (1) Bahia Grande Trail Feasibility Study

Limits: 21 miles of the proposed Bahia Grande Regional Trail

State: Texas

County: Cameron

Owner of Federal Lands to which the Project Provides Access: U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS)

Entity with Title or Maintenance Responsibility for Facility: City of Brownsville

Type of Work:
- Feasibility Study
- Preliminary Engineering: 15% Design on Sections B & D (See Attachment A.)

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this Agreement sets forth the respective responsibilities as the project proceeds through the project development process.

Parties to this Agreement: Federal Highway Administration-Central Federal Lands Highway Division (FHWA-CFLHD); City of Brownsville; FWS, NPS

The Program Decision Committee approved this project for funding: 3/10/2020

AGREED:

[Signatures]

[Signature]
City of Brownsville

[Signature]
FWS

[Signature]
NPS

[Signature]
Chris Longley
Acting Chief of Business Operations
FHWA-CFLHD

Page 139 of 214
PURPOSE OF THIS AGREEMENT
This Agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the study, development, construction, and future maintenance of the subject project. The purpose of the Agreement is to identify and assign responsibilities for the environmental analysis, design, right-of-way, utilities, acquisition and construction as appropriate for this programmed project, and to ensure maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors, such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

A. AUTHORITY
This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204.

B. PROJECT BACKGROUND/SCOPE

Purpose: The purpose of this project is to increase non-vehicular access to the U.S. Fish and Wildlife Service Bahia Grande Unit of the Laguna Atascosa National Wildlife Refuge, and the National Park Service Palo Alto Battlefield National Historical Park.

Scope: The scope of this project includes analysis of potential routes for future construction of 21.5 miles of a multi-use trail, and development of a Feasibility Study Report. Specifically, this project includes:

- Evaluate best alignment options in sections where trail is not formalized/does not exist.
- Evaluate improvements/upgrades to existing trail sections.
- Consider ownership and maintenance of trail in all sections.
- Identify funding strategy for completion of design and construction for the Bahia Grande Regional Trail
- For Sections B & D (See Attachment A):
  - Determine alignment, conduct environmental screening, survey and right-of-way, and trail design considerations
  - Design these sections to 15%

C. PROJECT BUDGET

<table>
<thead>
<tr>
<th>Item</th>
<th>Estimated Cost</th>
<th>Comments</th>
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</thead>
<tbody>
<tr>
<td>Feasibility Study and 15% Design</td>
<td>$500,000</td>
<td>Anticipate 15% design only on sections B &amp; D (See Attachment A)</td>
</tr>
<tr>
<td>Total</td>
<td>$500,000</td>
<td></td>
</tr>
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</table>
D. ROLES AND RESPONSIBILITIES

<table>
<thead>
<tr>
<th>Responsible Party</th>
<th>Product/Service/Role</th>
<th>Comments</th>
</tr>
</thead>
</table>
| FHWA-CFLHD        | • Collaborate with City of Brownsville, FWS, and NPS on stakeholder outreach and coordination  
                    • Lead feasibility study effort on Bahia Grande Regional Trail, and development of alignments and 15% design on sections B and D of the regional trail. | |
| City of Brownsville | • Collaborate with FHWA-CFLHD on stakeholder outreach and coordination  
                        • Attend reviews and meetings  
                        • Provide in a timely manner available data and documentation as requested by FHWA | |
| FWS               | • Collaborate with FHWA-CFLHD on stakeholder outreach and coordination  
                        • Attend reviews and meetings  
                        • Provide in a timely manner available data and documentation as requested by FHWA | |
| NPS               | • Collaborate with FHWA-CFLHD on stakeholder outreach and coordination  
                        • Attend reviews and meetings  
                        • Provide in a timely manner available data and documentation as requested by FHWA | |

E. ROLES AND RESPONSIBILITIES—SCHEDULE

<table>
<thead>
<tr>
<th>Responsible Lead</th>
<th>Product/Service/Role</th>
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</thead>
<tbody>
<tr>
<td>FHWA-CFLHD</td>
<td>Feasibility Study and 15% Design</td>
<td>2021</td>
<td>Feasibility Study; 15% Design for Sections B &amp; D</td>
</tr>
</tbody>
</table>

F. FUNDING

<table>
<thead>
<tr>
<th>Funding Source</th>
<th>Estimated Funding</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Lands Access Program</td>
<td>$400,000</td>
<td></td>
</tr>
<tr>
<td>City of Brownsville</td>
<td>$100,000</td>
<td>20.00% Cash Match</td>
</tr>
<tr>
<td>Total</td>
<td>$500,000</td>
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</tbody>
</table>
If during implementation of the project it is determined that the total project cost exceeds $500,000, the Central Federal Lands Highway Division, the City of Brownsville, FWS, and the NPS will either mutually agree to reduce the scope of the project, or execute a modification to this agreement to change funding amounts.

G. MATCHING SHARE REQUIREMENTS

The City of Brownsville will provide $100,000 to meet match requirements.

Matching or cost sharing requirements will be satisfied following the obligation of funds to the project as detailed above in Section G.

H. PROJECT TEAM MEMBERS—POINTS OF CONTACT

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party’s role and responsibility for this agreement.

<table>
<thead>
<tr>
<th>Name/Title</th>
<th>Organization</th>
<th>Phone Number/Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>xxxx</td>
<td>City of Brownsville</td>
<td>(xxx) xxx-xxx xxxxxxx@xxx</td>
</tr>
<tr>
<td>xxxx</td>
<td>FWS</td>
<td>(xxx) xxx-xxx xxxxxxx@xxx</td>
</tr>
<tr>
<td>xxxx</td>
<td>NPS</td>
<td>(xxx) xxx-xxx xxxxxxx@xxx</td>
</tr>
<tr>
<td>Laurie Miskimins</td>
<td>FHWA- CFLHD</td>
<td>(720) 963-3455 <a href="mailto:laurie.miskimins@dot.gov">laurie.miskimins@dot.gov</a></td>
</tr>
</tbody>
</table>

I. CHANGES/AMENDMENTS/ADDENDUMS

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; changes that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in the composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notification to their management in order to avoid project delivery delays.
J. ISSUE RESOLUTION PROCEDURES MATRIX

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

<table>
<thead>
<tr>
<th>FHWA</th>
<th>City of Brownsville, Texas</th>
<th>U.S. Fish &amp; Wildlife</th>
<th>National Park Service</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laurie Miskimins, Transportation Planner</td>
<td>XXXX</td>
<td>XXXX</td>
<td>XXXX</td>
<td>30 days</td>
</tr>
<tr>
<td>Elijah Henley, Planning Team Leader</td>
<td>XXXX</td>
<td>XXXX</td>
<td>XXXX</td>
<td>60 days</td>
</tr>
<tr>
<td>Chris Longley, Planning &amp; Programming Branch Chief</td>
<td>XXXX</td>
<td>XXXX</td>
<td>XXXX</td>
<td>90 days</td>
</tr>
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</table>

K. TERMINATION

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal Access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.
ATTACHMENT A. MAP OF STUDY AREA
AGENDA ITEM  COMMISSION MEETING DATE 06/02/20

Executive Session (City Attorney Only)  Select  Agenda  Ordinance

Time Needed:  Action Item:

Time Needed:  

☐ Public Hearing  ☑ First Reading

☐ Contract  

☐ Grant  ☐ Second Reading

☑ Action

Consent

Information: Please include additional information/request.

Consideration and ACTION to approve an Interlocal Agreement between the City of Brownsville and the Brownsville Independent School District (BISD) authorizing the construction, operation, and maintenance of a hike and bike trail on land adjacent to Garza Elementary School. (Multimodal Transportation)

Reviewing Departments: Please review and forward to the next reviewing department in a timely manner.

City Attorney  Date Reviewed:  By:

Comments:

Finance Department  Date Reviewed:  By:

Comments:


city commission  Assistant City Manager  Deputy City Manager

Approved:  Yes  No  Yes  No  Yes  No

Date:  Initials:  Date:  Initials:  5/18/2020  Date:

City Manager's Approval

Signature:  Date:
To: Mayor and City Commission  
Though: Noel Bernal, City Manager  
From: Joel Garza, Mobility Director – Multimodal Transportation  
Date: May 20, 2020  
Agenda: Consideration and ACTION to approve an Interlocal Agreement between the City of Brownsville and the Brownsville Independent School District (BISD) authorizing the construction, operation, and maintenance for Southmost Nature Trail Phase II on land adjacent to Garza Elementary School. (Multimodal Transportation)

Summary:

In 2013 the City completed “Connecting Brownsville: The 2013 Bicycle and Trail Master Plan.” This plan laid out a vision for a network of pedestrian and bicycle facilities that would connect all districts of Brownsville, thereby improving mobility, safety, connectivity, and health outcomes for residents of Brownsville. As part of implementing this vision, in 2017, the City opened the first 1.8 mile phase of what is now known as the Southmost Nature Trail.

As part of the continued implementation of the 2013 Master Plan, the City now seeks to develop the next phase of the Southmost Nature Trail. To accomplish this, an Interlocal Agreement between the City of Brownsville and the Brownsville Independent School District (BISD) is needed to allow for the construction, use, and maintenance of the Southmost Nature Trail along the western edge of the property on which R. Garza Elementary School sits. The construction of the trail project will be about $356,250, which 80% will be covered through the RGVMPD’s Category 7 funding. The 20% match will be covered using the City’s sidewalk/trail fund.

BISD Board of Trustees approved the Interlocal Agreement on March 10, 2020.

Multi-modal Transportation staff recommends approval of the Interlocal Agreement between the City and BISD for the Southmost Nature Trail Phase II.
INTERLOCAL EASEMENT AGREEMENT  
BETWEEN  
CITY OF BROWNSVILLE, TEXAS AND  
BROWNSVILLE INDEPENDENT SCHOOL DISTRICT 
AUTHORIZING CONSTRUCTION, OPERATION AND MAINTENANCE  
OF HIKE AND BIKE TRAIL ON LAND ADJACENT TO GARZA ELEMENTARY SCHOOL  

WHEREAS, the City of Brownsville (hereafter “City”) is in the process of developing hike and bike trails throughout and between the various public areas of the City in order to promote the public health and fitness of the community at large and promote alternate modes of transportation to reduce the carbon footprint, and  

WHEREAS, BROWNSVILLE INDEPENDENT SCHOOL DISTRICT is the owner, in fee simple, of certain fee simple property, certain rights-of-way and certain easements which extend along the west side of Garza Elementary school in the City of Brownsville, Cameron County, Texas; and  

WHEREAS, the City of Brownsville has determined that a system of hike and bike trails could be conveniently located, with minimal interference from automobile traffic, on land adjacent to the Garza Elementary school as attached in Exhibit A; and  

WHEREAS, BROWNSVILLE INDEPENDENT SCHOOL DISTRICT wishes to grant the license to the City to construct, use, and maintain these areas, solely for the purpose of the operating and maintenance of a hike and bike trail (the “City Improvements”) for recreational use within the meaning of the Texas Recreational Use Statute, Texas Civil Practice and Remedies Code, Title 4, Chapter 75.9 (but subject to the superior right of BROWNSVILLE INDEPENDENT SCHOOL DISTRICT to operate and maintain its property and other related facilities); and  

WHEREAS, the parties hereto have agreed that the City will use these areas solely for recreational use (operation and maintenance of a hike and bike trail) within the meaning of the Texas Recreational Use Statute, Texas Civil Practice and Remedies Code, Title 4, Chapter 75 and will comply with all legal requirements for the construction, operation, and maintenance of those areas; and  

WHEREAS, the City agrees to be solely responsible for the maintenance and operation of the hike and bike trails and the City Improvements on those adjacent areas.  

NOW, THEREFORE, in consideration of the promises, covenants and warranties hereafter made by the City, and BROWNSVILLE INDEPENDENT SCHOOL DISTRICT hereby agree to the following:  

1. **Granting of License.** BROWNSVILLE INDEPENDENT SCHOOL DISTRICT does hereby grant a license to the City to construct and maintain, at the City’s sole expense and liability, the City Improvements over and across the portions of the District Tracts in accordance with the plans and specifications to be provided when completed. In consideration of the foregoing license, the City agrees to construct and install, at its and sole expense, the City Improvements on or over the portion of the Fee Simple Tract and Easements Tracts as depicted in Exhibit B.  

2. **Term of License.** The License granted herein to the City shall be for a period of 25 years which may be automatically extended for two additional 25 year terms absent a written cancellation of this agreement which must be received by the City Manager no later than 90 days before the expiration of each contract term. In the case that the City of Brownsville opts to terminate the license agreement, a
written request will be made to BROWNSVILLE INDEPENDENT SCHOOL DISTRICT for their approval and consent.

3. The City warrants that all construction and similar work performed in connection with the City Improvements shall be confined strictly to the areas depicted in Exhibit B.

4. Any failure or refusal by the City, its heirs or assigns, to keep the City Improvements maintained and in good condition may result in termination of this license agreement by BROWNSVILLE INDEPENDENT SCHOOL DISTRICT if no maintenance or repairs have begun within 60 days of a written notice to the City Manager of the City which detail the issue(s) needing maintenance or repair. The termination shall be effective upon the filing of a written notice of termination and cancellation in the office of the County Clerk of Cameron County, Texas, together with a notice of termination and cancellation mailed or delivered to the City Manager.

5. Non-Exclusive License and Joint Use Rights. The license, rights and privileges granted by this instrument are not exclusive. This grant is non-exclusive to the City and the City agrees and recognizes that BROWNSVILLE INDEPENDENT SCHOOL DISTRICT has and possesses the superior right to utilize its easements.

6. Indemnity. Subject to any statutory immunities or waivers available to the City, the City shall indemnify and hold BROWNSVILLE INDEPENDENT SCHOOL DISTRICT, its successors, assigns and agents, harmless against any and all claims, actions, demands, damages, liabilities and costs, including attorneys' fees, incurred or to be incurred by BROWNSVILLE INDEPENDENT SCHOOL DISTRICT, which directly or indirectly results from or arises in connection with any fault, liability, premises defects/liabilities, negligent act or omission or gross negligence of City, or any of its agents, officers, directors, employees, contractors, subcontractors or any others pertaining to its activities and obligations under this Agreement, including the installation and maintenance of the City Improvements. This indemnity is subject to (i) the limits of the lesser of either the City's or BROWNSVILLE INDEPENDENT SCHOOL DISTRICT maximum liability, as set forth under the Texas Tort Claims Act and (ii) any governmental immunity available to the City from liability and suit and (iii) any immunities contained in the Texas Recreational Use Statute. Nothing contained in this agreement shall constitute a waiver of the governmental immunity of either the City or BROWNSVILLE INDEPENDENT SCHOOL DISTRICT.

7. Miscellaneous.
   (a) Disclaimer. BROWNSVILLE INDEPENDENT SCHOOL DISTRICT hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present, or future, of, as to, or concerning (i) the nature and condition of the District Tracts, including but not by way of limitation, the water, soil, geology and the suitability thereof of the BROWNSVILLE INDEPENDENT SCHOOL DISTRICT Tracts for all activities and uses which the City may conduct thereon.

   (b) Entire Agreement and Amendment. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supersedes any prior understandings, representations, memorandums or agreements regarding the license that is the subject of this Agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect. This Agreement may be amended, provided that no amendment, modification or alteration of the terms of this Agreement shall be binding unless the same is in writing and duly executed by the parties hereto.
(c) Law Governing Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The obligation and undertaking of each of the parties to this Agreement shall be performable in Cameron County, Texas.

(d) Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, legal representatives, successors and assigns, as appropriate.

EXECUTED on the 18th day of March 2020 at Brownsville, Cameron County, Texas.

BROWNSVILLE INDEPENDENT SCHOOL DISTRICT

\[Signature\] Dr. Rene Gutierrez
Superintendent

\[Signature\] 5/11/2020

CITY OF BROWNSVILLE

Noel Bernal
City Manager
Exhibit B

- Fence line
- Proposed Trail
Consideration and ACTION for the City Commission to adopt RESOLUTION No. 2020-49 approving the Texas Department of Transportation sponsored Public Transportation Agency Safety Plan (PTASP) and establishing Safety Performance Targets for Brownsville Metro (B-Metro).

**Reviewing Departments:** Please review and forward to the next reviewing department in a timely manner.

<table>
<thead>
<tr>
<th>Reviewing Departments</th>
<th>Date Reviewed</th>
<th>By:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Attorney</td>
<td></td>
<td></td>
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<tr>
<td>Finance Department</td>
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<td></td>
</tr>
</tbody>
</table>

**City Manager's Approval**

<table>
<thead>
<tr>
<th>Approved:</th>
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<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
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</table>

**Signature:**

<table>
<thead>
<tr>
<th>Date:</th>
</tr>
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</table>
To: Mayor and City Commission
Through: Noel Bernal, City Manager
From: Norma Zamora, MMT – Transit Director
Date: May 22, 2020
Agenda: Consideration and ACTION for the City Commission to adopt RESOLUTION #2020-49 approving the Texas Department of Transportation sponsored Public Transportation Agency Safety Plan (PTASP) and establishing Safety Performance Targets for Brownsville Metro (B-Metro)

Summary:
In compliance with MAP-21 and the FAST Act, FTA promulgated a Public Transportation Safety Program on August 11, 2016 that adopted Safety Management System (SMS) as the foundation for developing and implementing a Safety Program. FTA is committed to developing, implementing, and consistently improving strategies and processes to ensure that transit agencies achieve the highest practicable level of safety. SMS helps organizations improve upon their safety performance by supporting the institutionalization of beliefs, practices, and procedures for identifying, mitigating, and monitoring safety risks.

This Public Transportation Agency Safety Plan (PTASP) has been developed by TxDOT on behalf of Rio Grande Valley Metropolitan Planning Organization (RGVMPO) and the City of Brownsville/B-Metro Transit department in accordance with all requirements stated in 49 CFR Part 673 applicable to a small public transportation provider. TxDOT mailed a formal call for participation in a State sponsored PTASP development process to all Texas Section 5307 small bus transit agencies on January 15, 2019 and followed that call with a series of phone calls and additional correspondence. B-Metro provided a letter to TxDOT opting into participation on March 15, 2019 and has been an active participant in the development of this plan through sharing existing documentation and participating in communication and coordination throughout the development of this plan.

Project Scope and Analysis:
Safety is a core business function of all public transportation providers and should be systematically applied to every aspect of service delivery. At Brownsville Metro (B-Metro), all levels of management, administration and operations are responsible for the safety of their clientele and themselves. Through this plan B-Metro is establishing the necessary authority, accountabilities, and responsibilities for the management of the SMS.

To ensure that the necessary processes are in place to accomplish both enhanced safety at the local level and the goals of the NSP, the City of Brownsville/ B-Metro will adopt this ASP and the views of SMS including a Safety Management Policy (SMP) and the processes for Safety Risk Management (SRM), Safety
Assurance (SA), and Safety Promotion (SP). While safety has always been a primary function at B-Metro, this document lays out a process to fully implement an SMS over the next several years that complies with the PTASP final rule.

This plan includes provisions for annual updates of the SMS. As part of B-Metro’s ongoing commitment to fully implementing SMS and engaging our agency employees in developing a robust safety culture, B-Metro will review the ASP and all supporting documentation annually. The review will be conducted as a precursor to certifying to FTA that the ASP is fully compliant with 49 CFR Part 673 and accurately reflects the agency’s current implementation status. Certification will be accomplished through B-Metro’s Annual Certifications and Assurances reporting to FTA.

As processes are changed to fully implement SMS or new processes are developed, B-Metro will track those changes for use in the annual review.

**Recommendation:**
Brownsville Metro recommends approval of this plan and request adoption through Resolution No. 2020-49.

**Attachments:**
1. Brownsville Metro Public Transportation Agency Safety Plan
2. Resolution No. 2020-49
RESOLUTION No. 2020-049

A RESOLUTION APPROVING THE TEXAS DEPARTMENT OF TRANSPORTATION SPONSORED PUBLIC TRANSPORTATION AGENCY SAFETY PLAN AND ESTABLISHING SAFETY PERFORMANCE TARGETS FOR BROWNSVILLE METRO (B-METRO)

WHEREAS, Safety is a core business function of all public transportation providers and should be systematically applied to every aspect of service delivery, as the Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States; and

WHEREAS, On July 19, 2018 the FTA published the Public Transportation Agency Safety Plan (PTASP) Final Rule, 49 CFR Part 673, which took effect July 19, 2019 requiring all FTA Section 5307 recipient transit agencies to, within one calendar year after July 19, 2019, establish a PTASP that meets the requirements of Part 673; and

WHEREAS, The PTASP, and subsequent updates, must be signed by the Accountable Executive and approved by the agency’s Board of Directors, or an Equivalent Authority; and

WHEREAS, PTASP must document the processes and activities related to Safety Management System (SMS) implementation and include performance targets based on the safety performance measures established under the National Public Transportation Safety Plan, with those targets being shared with the Rio Grande Valley MPO and the Texas Department of Transportation (TxDOT); and

WHEREAS, The initial PTASP for B-Metro has been drafted by TxDOT per 49 CFR 673.11(d) and will remain in effect until the B-Metro has drafted the next version; and

WHEREAS, B-Metro is dedicated to ensuring that the necessary processes are in place to accomplish both enhanced safety at the local level and the goals of the NSP, as the SMS helps organizations improve upon their safety performance by supporting the institutionalization of beliefs, practices, and procedures for identifying, mitigating, and monitoring safety risks; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF BROWNSVILLE, TEXAS THAT:

The Brownsville City Commission approves this PTASP and the tenets of SMS including a Safety Management Policy (SMP) and the processes for Safety Risk Management (SRM), Safety Assurance (SA), and Safety Promotion (SP), per 49 U.S.C. 5329(d)(1)(A); and as

Safety has always been a primary function at B-Metro, this PTASP lays out a process to fully implement and review an SMS on a yearly and ongoing basis in order to continue compliance with the PTASP final rule.

PASSED AND APPROVED THIS ____________ DAY OF June, 2020

__________________________________________
Trey Mendez, Mayor - City of Brownsville

ATTEST: _______________________________________
Norma Zamora, MMT B-Metro Director /Accountable Executive
Brownsville Metro
Public Transportation Agency Safety Plan
Version 1
Adopted June 2, 2020
In compliance with 49 CFR Part 673

Developed in conjunction with the
Texas Department of Transportation
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1. EXECUTIVE SUMMARY

Moving Ahead for Progress in the 21st Century (MAP-21) granted the Federal Transit Administration (FTA) the authority to establish and enforce a comprehensive framework to oversee the safety of public transportation throughout the United States. MAP-21 expanded the regulatory authority of FTA to oversee safety, providing an opportunity to assist transit agencies in moving towards a more holistic, performance-based approach to Safety Management Systems (SMS). This authority was continued through the Fixing America’s Surface Transportation (FAST) Act.

In compliance with MAP-21 and the FAST Act, FTA promulgated a Public Transportation Safety Program on August 11, 2016 that adopted SMS as the foundation for developing and implementing a Safety Program. FTA is committed to developing, implementing, and consistently improving strategies and processes to ensure that transit agencies achieve the highest practicable level of safety. SMS helps organizations improve upon their safety performance by supporting the institutionalization of beliefs, practices, and procedures for identifying, mitigating, and monitoring safety risks.

There are several components of the national safety program, including the National Public Transportation Safety Plan (NSP) that FTA published to provide guidance on managing safety risks and safety hazards. One element of the NSP is the Transit Asset Management (TAM) Plan. Public transportation agencies implemented TAM plans across the industry in 2018. The subject of this document is the Public Transportation Agency Safety Plan (PTASP) rule, 49 CFR Part 673, and guidance provided by FTA.

Safety is a core business function of all public transportation providers and should be systematically applied to every aspect of service delivery. At Brownsville Metro (B-Metro), all levels of management, administration and operations are responsible for the safety of their clientele and themselves. To improve public transportation safety to the highest practicable level in the State of Texas and comply with FTA requirements, the Texas Department of Transportation (TxDOT) has developed this Agency Safety Plan (ASP) in collaboration with the City of Brownsville and B-Metro.

To ensure that the necessary processes are in place to accomplish both enhanced safety at the local level and the goals of the NSP, the Brownsville City Commission and B-Metro adopt this ASP and the tenets of SMS including a Safety Management Policy (SMP) and the processes for Safety Risk Management (SRM), Safety Assurance (SA), and Safety Promotion (SP), per 49 U.S.C. 5329(d)(1)(A). While safety has always been a primary function at B-Metro, this document lays out a process to fully implement an SMS over the next several years that complies with the PTASP final rule.

---

1 Federal Register, Vol. 81, No. 24
A. Plan Adoption – 673.11(a)(1)

This Public Transit Agency Safety Plan is hereby adopted, certified as compliant, and signed by:

Norma Zamora, Director, MMT-Brownsville Metro

ACCOUNTABLE EXECUTIVE SIGNATURE DATE

Since B-Metro is considered a department of the City of Brownsville, the main governing body is the Brownsville City Commission. Approval of this plan by the Brownsville City Commission occurred on JUNE 2, 2020 and is documented in RESOLUTION NO. 2020-049 from the City Commission Meeting.

B. Certification of Compliance – 673.13(a)(b)

TxDOT certifies on [DATE] that this Agency Safety Plan is in full compliance with 49 CFR Part 673 and has been adopted and will be implemented by B-Metro as evidenced by the plan adoption signature and necessary City Commission approvals under Section 1.A of this plan.
2. TRANSIT AGENCY INFORMATION – 673.23(D)

The City of Brownsville began operating public transportation in 1978. B-Metro is the public transportation provider for the City of Brownsville, Texas and has the largest ridership in the region. The service area covers 164 square miles and has a population of just under 182,000.

B-Metro provides fixed route service throughout Brownsville on thirteen (13) bus routes. Most routes originate from the Brownsville Multimodal Terminal at La Plaza in downtown Brownsville, which also provides connections to multiple intercity bus providers with bus service to cities throughout the United States and Mexico. La Plaza at Brownsville Terminal is also the physical location of B-Metro headquarters at 755 International Blvd., Brownsville, TX 78520.

All B-Metro fixed route vehicles meet applicable American's with Disabilities Act (ADA) of 1990 requirements and are accessible for persons who use mobility aids. Service hours are from 6 am to 8 pm from Monday through Saturday. Most routes are scheduled to provide trips on top of the hour. B-Metro also operates curb-to-curb, paratransit service on a next-day reservation basis for people with disabilities who are not able to ride fixed route public transportation.

B-Metro is the transit department of the City of Brownsville and is managed by First Transit, Inc. who provides management and operations oversight services. Under the contract, First Transit, Inc. provides a General Manager/Director and an Assistant General Manager/Assistant Director.

No additional transit service is provided by B-Metro on behalf of another transit agency or entity at the time of the development of this plan.

Table 1 contains agency information, while an organizational chart for B-Metro is provided in
Table 1: Agency Information

<table>
<thead>
<tr>
<th>Information Type</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Transit Agency Name</td>
<td>Brownsville Metro (B-Metro)</td>
</tr>
<tr>
<td>Transit Agency Address</td>
<td>755 International Boulevard Brownsville, TX 78520</td>
</tr>
<tr>
<td>Name and Title of Accountable Executive 673.23(d)(1)</td>
<td>Norma Zamora, Multimodal Transportation/Transit Director, Brownsville Metro</td>
</tr>
<tr>
<td>Name of Chief Safety Officer or SMS Executive 673.23(d)(2)</td>
<td>Norma Zamora, Multimodal Transportation/Transit Director, Brownsville Metro (until Assistant Director (CSO) position filled)</td>
</tr>
<tr>
<td>Key Staff</td>
<td></td>
</tr>
<tr>
<td></td>
<td>James Campbell, GM of Maintenance</td>
</tr>
<tr>
<td></td>
<td>Tracie Orcillez, Transit Manager</td>
</tr>
<tr>
<td></td>
<td>Simon Ortiz, Lead Supervisor –Safety &amp; Training</td>
</tr>
<tr>
<td></td>
<td>Manuel Cortinas, InterimFacilities and Fleet Contract Manager</td>
</tr>
<tr>
<td></td>
<td>Antonio Zubieta, Transit and Mobility Planner</td>
</tr>
<tr>
<td>Mode(s) of Service Covered by This Plan 673.11(b)</td>
<td>Fixed Route Bus &amp; Paratransit Service</td>
</tr>
<tr>
<td>List All FTA Funding Types (e.g., 5307, 5310, 5311)</td>
<td>5307, 5339a, 5310,</td>
</tr>
<tr>
<td>Mode(s) of Service Provided by the Transit Agency (Directly operated or contracted service)</td>
<td>Directly Operated Fixed Route Bus &amp; Paratransit Service</td>
</tr>
<tr>
<td>Number of Vehicles Operated</td>
<td>22 Total (6 paratransit service vehicles and 16 fixed route buses).</td>
</tr>
</tbody>
</table>
FIGURE 1: B-METRO ORGANIZATIONAL CHART

Organizational Chart
Multimodal Transportation
April 2020

- B-Metro Assistant Director
- Chief Safety Officer
- Mobility Director
- Mobility Assistant Director
- Bicycle and Pedestrian Coordinator
- Transit and Mobility Planner
- Transit Supervisor Safety & Training
- Customer Service Representative
- Dispatch
- Transit Operator
- Administrative Specialist
- Administrative Supervisor
- Accountant
- Grant & Public Outreach Manager
- Transit Manager
- Facilities & Fleet Contract Manager
- Maintenance Supervisor
- Crew Leader
- Parking & Open Tech
- Maintenance Worker
- Equipment Operator

Multimodal Transportation/Transit Director
A. Authorities & Responsibilities – 673.23(d)

As stated in 49 CFR Part 673.23(d), B-Metro is establishing the necessary authority, accountabilities, and responsibilities for the management of safety amongst the key individuals within the organization, as those individuals relate to the development and management of our SMS. In general, the following defines the authority and responsibilities associated with our organization.

The **Accountable Executive** has ultimate responsibility for carrying out the SMS of our public transportation agency, and control or direction over the human and capital resources needed to develop and maintain both the ASP, in accordance with 49 U.S.C. 5329(d), and the agency’s TAM Plan, in accordance with 49 U.S.C. 5326. The Accountable Executive has authority and responsibility to address substandard performance in the B-Metro SMS, per 673.23(d)(1).

**Agency leadership and executive management** are those members of our agency leadership or executive management, other than the Accountable Executive, Chief Safety Officer (CSO)/SMS Executive, who have authority or responsibility for day-to-day implementation and operation of our agency’s SMS.

The **CSO** is an adequately trained individual who has the authority and responsibility as designated by the Accountable Executive for the day-to-day implementation and operation of the B-Metro SMS. As such, the CSO is able to report directly to our transit agency’s Accountable Executive.

**Key staff** are staff, groups of staff, or committees to support the Accountable Executive, CSO, or SMS Executive in developing, implementing, and operating our agency’s SMS.

**Front line employees** perform the daily tasks and activities where hazards can be readily identified so the identified hazards can be addressed before the hazards become adverse events. These employees are critical to SMS success through each employee’s respective role in reporting safety hazards, which is where an effective SMS and a positive safety culture begins.

In addition, over the next year, B-Metro Accountable Executive and CSO in collaboration with the Office of Organizational Development and Human Resources will be reviewing and modifying, if necessary, our current job descriptions to ensure the job descriptions comply with 49 CFR Part 673.
3. SAFETY POLICIES AND PROCEDURES

A. Policy Statement – 673.23(a)

B-Metro recognizes that the management of safety is a core value of our business. The management team at B-Metro will embrace the SMS and is committed to developing, implementing, maintaining, and constantly improving processes to ensure the safety of our employees, customers, and the general public. All levels of management and frontline employees are committed to safety and understand that safety is the primary responsibility of all employees.

B-Metro is committed to:

- Communicating the purpose and benefits of the SMS to all staff, managers, supervisors, and frontline employees. This communication will specifically define the duties and responsibilities of each employee throughout the organization and all employees will receive appropriate information and SMS training.
- Providing appropriate management involvement and the necessary resources to establish an effective reporting system that will encourage employees to communicate and report any unsafe work conditions, hazards, or at-risk behavior to the management team.
- Identifying hazardous and unsafe work conditions and analyzing data from the employee reporting system. After thoroughly analyzing provided data, the transit operations division will develop processes and procedures to mitigate safety risk to an acceptable level.
- Ensuring that no action will be taken against employees who disclose safety concerns through the reporting system, unless disclosure indicates an illegal act, gross negligence, or deliberate or willful disregard of regulations or procedures.
- Establishing Safety Performance Targets (SPT) that are realistic, measurable, and data driven.
- Continually improving our safety performance through management processes that ensure appropriate safety management action is taken and is effective.

I. Employee Safety Reporting Program – 673.23(b)

Frontline employees are a significant source of safety data. These employees are typically the first to spot unsafe conditions that arise from unplanned conditions either on the vehicles, in the maintenance shop, or in the field during operations. For this reason, the Employee Safety Reporting Program (ESRP) is a major tenet of the PTASP Rule. Under this rule, agencies must establish and implement a process that allows employees to report safety conditions directly to senior management; provides protections for employees who report safety conditions to senior management; and includes a description of employee behaviors that may result in disciplinary action.

In Chapter 12, Section 1202 B, City of Brownsville Personnel Policy Manual (Appendix A, Table 8 shows the document name, file name, and date of adoption) has a policy that requires all employees to
immediately report accidents and unsafe conditions or practices to their Safety and Training Supervisor and Chief Safety Officer. This policy is also reiterated in B-Metro’s System Safety Program Plan (Appendix A), which, in Chapter 1 Section 1.4.d and 1.4.m directs all employees to immediately report all accidents, incidents or near misses, no matter how insignificant the incident may appear to be to their Safety and Training Supervisor and the Chief Safety Officer.

The procedures outlined in Chapter 1 Section 1.3 & 1.5 requires that when reports are submitted, the Safety and Training Supervisor and Chief Safety Officer investigate the reported incident and refer it to the Safety Committee for further action. The Safety Committee is led by the Chief Safety Officer and/or Safety and Training Supervisor and is composed of a representative from the Transit Advisory Committee, a driver, the Operations Manager, and Maintenance Supervisor. The Safety Committee is responsible for conducting any necessary follow-up to ensure that identified workplace hazards are abated and for helping management to develop any safety policies or procedures needed to prevent future incidents.

Over the next year, B-Metro will review and modify, if necessary, the reporting procedures in the System Safety Program Plan to develop those procedures into a full Employee Safety Reporting Program (ESRP) to ensure that the procedures comply with 49 CFR Part 673. In general, the B-Metro ESRP will ensure that all employees are encouraged to report safety conditions directly to senior management or their direct supervisor for elevation to senior management. The policy will include any contract employees.

The policy will also spell out what protections are afforded employees who report safety related conditions and will describe employee behaviors that are not covered by those protections. B-Metro will also review our current policy for how our agency receives information and safety related data from employees and customers. If necessary, we will develop and implement additional means for receiving, investigating and reporting the results from investigations back to the initiator(s) – either to the individual or groups of individuals or organization, including the entire B-Metro organization, as appropriate, dependent on the nature of the safety condition.

II. Communicating the Policy Throughout the Agency – 673.23(c)

B-Metro is committed to ensuring the safety of our clientele, personnel, and operations. Part of that commitment is developing an SMS and agency-wide safety culture that reduces agency risk to the lowest level possible. The first step in developing a full SMS and agency-wide safety culture is communicating our SMP throughout our agency. B-Metro will provide training to all employees so that they can be familiar with our SMP and where they can find it.

The SMP and safety objectives are at the forefront of all communications. This communication strategy will include posting the policy in prominent work locations for existing employees and adding the policy statement to the on-boarding material for all new employees. In addition, the policy statement will become part of our agency’s regular safety meetings and other safety communications efforts. The
policy will be signed by the Accountable Executive so that all employees know that the policy is supported by management.

Possible methods of communicating B-Metro’s Safety Management Policy to employees include, but are not limited to, the following:

- New Employee Orientation
- Driver’s Training
- Safety Meetings
- Staff Meetings
- Divisional Bulletin Boards
- Employee Handbooks
- Internal Marketing Strategies

**B. PTASP Development and Coordination with TxDOT – 673.11(d)**

This Public Transportation Agency Safety Plan (PTASP) has been developed by TxDOT on behalf of Rio Grande Valley Metropolitan Planning Organization (RGVMPO) and the City of Brownsville/B-Metro Transit department in accordance with all requirements stated in 49 CFR Part 673 applicable to a small public transportation provider. TxDOT mailed a formal call for participation in a State sponsored PTASP development process to all Texas Section 5307 small bus transit agencies on January 15, 2019 and followed that call with a series of phone calls and additional correspondence. B-Metro provided a letter to TxDOT opting into participation on March 15, 2019 and has been an active participant in the development of this plan through sharing existing documentation and participating in communication and coordination throughout the development of this plan. The B-Metro documentation used in the development of this plan is presented in Table 8, in Appendix A.

In support of tracking performance on our SA and SP processes, B-Metro conducts a yearly safety culture survey. The survey is intended to help B-Metro assess how well we communicate safety and safety performance information throughout our organization by gauging how safety is perceived and embraced by B-Metro administrators, supervisors, staff, and contractors. The survey is designed to help us assess how well we are conveying information on hazards and safety risks relevant to employees’ roles and responsibilities and informing employees of safety actions taken in response to reports submitted through our ESRP. Results from our most recent survey were analyzed and incorporated into the implementation strategies contained in this ASP.

Once the documents were reviewed, an on-site interview was conducted with B-Metro to gain a better understanding of the agency. This understanding was necessary to ensure that the ASP was developed to fit B-Metro’s size, operational characteristics, and capabilities.
The draft ASP was delivered to B-Metro in March 2020 for review and comment. Once review was completed and any adjustments made, the final was delivered to B-Metro for review and adoption.

**C. PTASP Annual Review – 673.11(a)(5)**

Per 49 U.S.C. 5329(d)(1)(D), this plan includes provisions for annual updates of the SMS. As part of B-Metro’s ongoing commitment to fully implementing SMS and engaging our agency employees in developing a robust safety culture, B-Metro will review the ASP and all supporting documentation annually. The review will be conducted as a precursor to certifying to FTA that the ASP is fully compliant with 49 CFR Part 673 and accurately reflects the agency’s current implementation status. Certification will be accomplished through B-Metro’s Annual Certifications and Assurances reporting to FTA.

The annual review will include the ASP and supporting documents (Standard Operating Procedures [SOP], Policies, Manuals, etc.) that are used to fully implement all the processes used to manage safety at B-Metro. All changes will be noted (as discussed below) and the Accountable Executive will sign and date the title page of this document and provide documentation of approval by the City of Brownsville Commission whether by signature or by reference to resolution.

As processes are changed to fully implement SMS or new processes are developed, B-Metro will track those changes for use in the annual review. The annual ASP review will follow the updated activities and schedule provided below in Table 2.

### Table 2: ASP Annual Update Timeline

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<th>Task</th>
<th>Feb</th>
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<tr>
<td>Review Previous Targets and Set or Continue Targets</td>
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<td>Report Targets to National Transit Database (NTD), TxDOT, Rio Grande Valley MPO (RGVMPO)</td>
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<td>Make Any Necessary Adjustments to PTASP</td>
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<td>Update Version No., Adopt &amp; Certify Plan Compliance</td>
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As presented in Table 2, B-Metro will hold staff meetings to review agency operations from February 1 to March 30. Management, key personnel, and the CSO will review SMS documentation from March 1 to April 30. B-Metro will hold a staff meeting to review previous targets and set or continue targets from April 1 to May 30. The Accountable Executive, Transit and Mobility Planner, and CSO will report targets to NTD, TxDOT, and RGVMPO from June 1 to June 30. B-Metro will hold a staff meeting to discuss any necessary adjustments to the PTASP from July 1 to August 30. From September 1 to September 30, the
Accountable Executive will review changes and sign and date the document. The document will be submitted to City Management and the City of Brownsville Commission (Transit Board) for approval and adoption. B-Metro will coordinate with TxDOT to advise of the updated version of the PTASP and it will be submitted to FTA. Training will be provided to all employees informing them of any changes.

The following table, Table 3, will be used to record final changes made to the ASP during the annual update. This table will be a permanent record of the changes to the ASP over time.

<table>
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<th>Document Version</th>
<th>Section/Pages Changed</th>
<th>Reason for Change</th>
<th>Reviewer Name</th>
<th>Date of Change</th>
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</tbody>
</table>

The implementation of SMS is an ongoing and iterative process, and as such, this PTASP is a working document. Therefore, a clear record of changes and adjustments is kept in the PTASP for the benefit of safety plan performance management and to comply with Federal statutes.

**D. PTASP Maintenance – 673.11(a)(2)(c)**

B-Metro will follow the annual review process outlined above and adjust this ASP as necessary to accurately reflect current implementation status. This plan will document the processes and activities related to SMS implementation as required under 49 CFR Part 673 Subpart C and will make necessary updates to this ASP as B-Metro continues to develop and refine our SMS implementation.

**E. PTASP Documentation and Recordkeeping – 673.31**

At all times, B-Metro will maintain documents that set forth our ASP, including those documents related to the implementation of B-Metro’s SMS and those documents related to the results from SMS processes and activities. B-Metro will also maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that our agency uses to carry out our ASP and all iterations of those documents. These documents will be made available upon request to the FTA, other Federal entity, or TxDOT. B-Metro will maintain these documents for a minimum of three years after the documents are created. These additional supporting documents are cataloged in Appendix A and the list will be kept current as a part of the annual ASP review and update.

**F. Safety Performance Measures – 673.11(a)(3)**

The PTASP Final Rule, 49 CFR Part 673.11(a)(3), requires that all public transportation providers must develop an ASP to include SPTs based on the safety performance measures established under the NSP. The safety performance measures outlined in the NSP were developed to ensure that the measures can be applied to all modes of public transportation and are based on data currently being submitted to the
NTD. The safety performance measures included in the NSP are fatalities, injuries, safety events, and system reliability (State of Good Repair as developed and tracked in the TAM Plan).

There are seven (7) SPTs that must be included in each ASP that are based on the four (4) performance measures in the NSP. These SPTs are presented in terms of total numbers reported and the rate per 100,000 Vehicle Revenue Mile (VRM). Each of the seven (7) is required to be reported by mode as presented in Table 4.

**Table 4: NSP Safety Performance Measures**

<table>
<thead>
<tr>
<th>Safety Performance Measure</th>
<th>SPT</th>
<th>SPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatalities</td>
<td>Total Number Reported</td>
<td>Rate Per 100,000 VRM</td>
</tr>
<tr>
<td>Injuries</td>
<td>Total Number Reported</td>
<td>Rate Per 100,000 VRM</td>
</tr>
<tr>
<td>Safety Events</td>
<td>Total Number Reported</td>
<td>Rate Per 100,000 VRM</td>
</tr>
<tr>
<td>System Reliability</td>
<td>Mean distance between major mechanical failure</td>
<td></td>
</tr>
</tbody>
</table>

Table 5 presents B-Metro's baseline numbers for each of the performance measures. B-Metro collected the past five (5) years of reported data to develop the rolling averages listed in the table.

**Table 5: Baseline 2019 Safety Performance Measures**

<table>
<thead>
<tr>
<th>Mode</th>
<th>Fatalities</th>
<th>Rate of Fatalities per 100,000 Miles*</th>
<th>Injuries</th>
<th>Rate of Injuries per 100,000 Miles*</th>
<th>Safety Events</th>
<th>Rate of Safety Events per 100,000 Miles*</th>
<th>Mean Distance Between Major Mechanical Failure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed Route (Bus)</td>
<td>0</td>
<td>0</td>
<td>5.8</td>
<td>.78</td>
<td>0</td>
<td>0</td>
<td>4,175</td>
</tr>
<tr>
<td>Demand Response</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1.26</td>
<td>0</td>
<td>0</td>
<td>18,468</td>
</tr>
</tbody>
</table>

*rate = total number x 100,000/total revenue vehicle miles traveled

While safety has always been a major component of the B-Metro operation, the adoption of this ASP will result in changes across all aspects of the organization. The SPTs set in

Table 6 and Table 7 reflect an acknowledgment that SMS implementation will produce new information that will be needed to accurately set meaningful SPTs. We will set our targets at the current NTD reported five-year average as we begin the process of fully implementing our SMS and developing our targeted safety improvements. This will ensure that we do no worse than our baseline performance over the last five years.
<table>
<thead>
<tr>
<th>Mode</th>
<th>Baseline</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatalities</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rate of Fatalities per 100,000 VRM*</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Injuries</td>
<td>5.8</td>
<td>5.8</td>
</tr>
<tr>
<td>Rate of Injuries per 100,000 VRM*</td>
<td>.78</td>
<td>.78</td>
</tr>
<tr>
<td>Safety Events</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rate of Safety Events per 100,000 VRM*</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mean Distance Between Major Mechanical Failure</td>
<td>4,175</td>
<td>4,174</td>
</tr>
</tbody>
</table>

*rate = total number for the year x 100,000/total revenue vehicle miles traveled

<table>
<thead>
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<th>Mode</th>
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<td>0</td>
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<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Rate of Injuries per 100,000 VRM*</td>
<td>1.26</td>
<td>1.26</td>
</tr>
<tr>
<td>Safety Events</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rate of Safety Events per 100,000 VRM*</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mean Distance Between Major Mechanical Failure</td>
<td>18,468</td>
<td>18,468</td>
</tr>
</tbody>
</table>

*rate = total number for the year x 100,000/total revenue vehicle miles traveled

As part of the annual review of the ASP, B-Metro will reevaluate our SPTs and determine whether the SPTs need to be refined. As more data is collected as part of the SRM process discussed later in this plan, B-Metro may begin developing safety performance indicators to help inform management on safety related investments.

**G. Safety Performance Target Coordination – 673.15(a)(b)**

B-Metro will make our SPTs available to TxDOT and the RGVMPO to aid in those agencies’ respective regional and long-range planning processes. To the maximum extent practicable, B-Metro will coordinate with TxDOT and the RGVMPO in the selection of State and MPO SPTs as documented in the Interagency Memorandum of Understanding (MOU).

Each year during the FTA Certifications and Assurances reporting process, B-Metro will transmit any updates to our SPTs to both the RGVMPO and TxDOT (unless those agencies specify another time in writing).
4. SAFETY MANAGEMENT SYSTEMS – 673 SUBPART C

As previously noted, FTA has adopted SMS as the basis for improving safety across the public transportation industry. In compliance with the National Safety Program, National Public Transportation Safety Plan, and 49 CFR Part 673, B-Metro is adopting SMS as the basis for directing and managing safety and risk at our agency. B-Metro has always viewed safety as a core business function. All levels of management and employees are accountable for appropriately identifying and effectively managing risk in all activities and operations in order to deliver improvements in safety and reduce risk to the lowest practical level during service delivery.

SMS is comprised of four basic components - SMP, SRM, SA and SP. The SMP and SP are the enablers that provide structure and supporting activities that make SRM and SA possible and sustainable. The SRM and SA are the processes and activities for effectively managing safety as presented in Figure 2.

**Figure 2: Safety Management Systems**
Implementing SMS at B-Metro will be a major undertaking over the next several years. This ASP is the first step to putting in place a systematic approach to managing the agency’s risk. B-Metro has already taken several steps to implement SMS, such as developing this initial ASP and designating a CSO. During the first year of implementation, B-Metro will identify SMS roles and responsibilities and key stakeholder groups, identify key staff to support implementation, and ensure the identified staff receive SMS training. B-Metro will also develop a plan for implementing SMS, inform stakeholders about the ASP, and discuss our progress toward implementation with the City Commission and our agency’s planning partners.

**A. Safety Risk Management – 673.25**

By adopting this ASP, B-Metro is establishing the SRM process presented in Figure 3 for identifying hazards and analyzing, assessing and mitigating safety risk in compliance with the requirements of 49 CFR Part 673.25. The SRM processes described in this section are designed to implement the B-Metro SMS.

**FIGURE 3: SAFETY RISK MANAGEMENT PROCESS**

The implementation of the SRM component of the SMS will be carried out over the course of the next year. The SRM components will be implemented through a program of improvement during which the SRM processes will be implemented, reviewed, evaluated, and revised as necessary, to ensure the processes are achieving the intended safety objectives as the processes are fully incorporated into B-Metro’s SOPs.

The SRM is focused on implementing and improving actionable strategies that B-Metro has undertaken to identify, assess and mitigate risk. The creation of a Risk Register provides an accessible resource for documenting the SRM process, tracking the identified risks, and documenting the effectiveness of mitigation strategies in meeting defined safety objectives and performance measures. The draft Risk Register is presented in Figure 4.
As the SRM process progresses through the steps of identifying what may be wrong, what could happen as a result, and what steps B-Metro is taking to resolve the risk and mitigate the hazard, the CSO completes and publishes the various components of the Risk Register. These components include the use of safety hazard identification, safety risk assessment, and safety risk mitigation, as described in the following sections.

I. Safety Hazard Identification – 673.25(b)

B-Metro currently has a Facility Inspection Checklist (Monthly Safety Walk Checklist) and a Bus Inspection Card, both found in the Facility Maintenance Plan Attachment A in Appendix A. These checklists provide a means of regularly inspecting job sites and equipment to identify potential hazards before they result in negative safety outcomes.

In addition to receiving reports of hazards from front line employees, B-Metro has several other procedures to identify safety and operational risks. Section 4.1 of the System Security and Emergency Preparedness Plan (SSEPP) (Appendix A) describes threat and vulnerability identification roles, responsibilities and procedures. The System Safety Program Plan provides the bases for B-Metro staff to identify and address security risk, including safety hazard identification, along with an annual audit of compliance with monthly inspection and reporting procedures.

Although the current procedures have been effective in achieving our safety objectives, to help better coordinate these procedures and to ensure compliance with 49 CFR Part 673, B-Metro is working to implement the following expanded SRM process.
B-Metro’s SRM process is a forward-looking effort to identify safety hazards that could potentially result in negative safety outcomes. In the SRM process, a hazard is any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or, damage to the environment.

Hazard identification focuses on out-of-the-norm conditions that need special attention or immediate action, new procedures, or training to resolve a condition that is unacceptable and return conditions to an acceptable level. B-Metro uses a variety of mechanisms for identifying and documenting hazards, namely:

- Through training and reporting procedures, B-Metro ensures personnel can identify hazards and that each employee clearly understands that the employee has a responsibility to immediately report any safety hazards identified to the employee’s supervisors. Continued training helps employees to develop and improve the skills needed to identify hazards.
- Employee hazard training coupled with the ESRP ensures that B-Metro has full use of information from frontline employees for hazard identification.
- Upon receiving the hazard report, Supervisors/Division Heads communicate the identified hazard to the CSO for entry into the risk register for risk assessment, classification and possible mitigation.
- In carrying out the risk assessment, the CSO uses standard reporting forms (e.g. Pre-and Post-Trip Inspection Forms, Facility Inspection Forms) and other reports completed on a routine basis by administrative, operations, and maintenance personnel. The B-Metro Operator’s Manual (Appendix A) contains procedures for flagging and reporting hazards as a part of day-to-day operations.
- Supervisors are responsible for performing and documenting regular safety assessments, which include reporting and recommending methods to reduce identified hazards.
- B-Metro uses incident reports and records to determine specific areas of training that need to be covered with employees to ensure safety hazard identification is continually improved, and thus ensure that hazards are identified before an event recurrence.
- Incident reports are also analyzed by the risk management team (Safety & Training Supervisor and Chief Safety Officer) to identify any recurring patterns or themes that would help to identify underlying hazards and root causes of the event that can be mitigated to prevent recurrence.
- If a hazard is such that an employee would be reluctant to report the information due to perceived negative consequences (e.g. disciplinary action), alternative, anonymous reporting mechanisms are available through an anonymous suggestion box or anonymous online reporting form, or other secure mechanism.
To increase the safety knowledge of our agency, the CSO, Safety Committee, key safety personnel and qualified personnel from other departments are also encouraged to participate in available professional development activities and peer-to-peer exchanges as a source of expertise and information on lessons learned and best practices in hazard identification.

Other sources for hazard identification include:

- ESRP
- Inspections of personnel job performance, vehicles, facilities and other data
- Investigations of safety events
- Safety trend analysis on data currently collected
- Training and evaluation records
- Internal safety audits
- External sources of hazard information could include:
  - FTA and other federal or state authorities
  - Reports from the public
  - Safety bulletins from manufacturers or industry associations

In addition to identifying the hazard, the hazard identification process also classifies the hazard by type (organizational, technical, or environmental) to assist the CSO in identifying the optimal combination of departmental leadership and qualified personnel from other respective departments to select in assembling the safety risk assessment team.

The various hazard types can also be categorized by subcategory for each type. For example, organizational hazards can be subcategorized into resourcing, procedural, training, or supervisory hazards. Each of the subcategories implies different types of mitigation strategies and potentially affect overall agency resources through varying costs for implementation. Technical hazards can be subcategorized into operational, maintenance, design, and equipment. Additionally, environmental hazards can be subcategorized into weather and natural, which is always a factor for every operation.

II. Safety Risk Assessment – 673.25(e)

As part of the new SRM process, B-Metro has developed methods to assess the likelihood and severity of the consequences of identified hazards, and prioritizes the hazards based on the safety risk. The process continues the use of the Risk Register described in the previous section to address the next two components.

To accurately assess a risk, B-Metro may need to perform an investigation. Currently, B-Metro actively investigates accidents or crashes to identify causal factors but will review those procedures to ensure that they fully inform the SRM process. The investigation procedure will start with the Assessment Form and framework found in the SSEPP (Appendix A) and will be developed to cover all risk assessment.
Once fully developed, the document will become the Investigation SOP. The SOP will include accident investigation procedures as well as risk investigation procedures. These procedures will be used to investigate risks identified from multiple sources including the ESRP.

Safety risk is based on an assessment of the likelihood of a potential consequence and the potential severity of the consequences in terms of resulting harm or damage. The risk assessment also considers any previous mitigation efforts and the effectiveness of those efforts. The results of the assessment are used to populate the third and fourth components of the Risk Register as presented in Figure 5.

**Figure 5: Safety Risk Assessment Steps in Populating the Risk Register**

<table>
<thead>
<tr>
<th>Hazard</th>
<th>Type</th>
<th>Likelihood</th>
<th>Consequence</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</table>

The risk assessment is conducted by the CSO and their risk management team through the Safety Committee supplemented by qualified personnel from the respective department(s) or section to which the risk applies. The process employs a safety risk matrix, similar to the one presented in Figure 6, that allows the safety team to visualize the assessed likelihood and severity, and to help decision-makers understand when actions are necessary to reduce or mitigate safety risk.
Figure 6: Safety Risk Assessment Matrix

<table>
<thead>
<tr>
<th>SEVERITY</th>
<th>Catastrophic (1)</th>
<th>Critical (2)</th>
<th>Marginal (3)</th>
<th>Negligible (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Likelihood</td>
<td>Frequent (A)</td>
<td>High</td>
<td>High</td>
<td>Medium</td>
</tr>
<tr>
<td></td>
<td>Probable (B)</td>
<td>High</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td></td>
<td>Occasional (C)</td>
<td>High</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td></td>
<td>Remote (D)</td>
<td>Medium</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td></td>
<td>Improbable (E)</td>
<td>Medium</td>
<td>Low</td>
<td>Low</td>
</tr>
</tbody>
</table>

Although the current version of the matrix relies heavily on the examples and samples that are listed on the PTASP Technical Assistance Center website, lessons learned from the implementation process during the coming years will be used to customize the matrix that B-Metro will use to address our unique operating realities and leadership guidance.

The Risk Assessment Matrix is an important tool. If a risk is assessed and falls within one of the red zones, the risk is determined to be unacceptable under existing circumstances. This determination means that management must take action to mitigate the situation. This is the point in the process when SRMs are developed. If the risk is assessed and falls within one of the yellow zones, the risk is determined to be acceptable, but monitoring is necessary. If the risk falls within one of the green zones, the risk is acceptable under the existing circumstances.

Once a hazard’s likelihood and severity have been assessed, the CSO enters the hazard assessment into the Risk Register that is used to document the individual hazard and the type of risk it represents. This information is used to move to the next step, which is hazard mitigation.

III. Safety Risk Mitigation – 673.25(d)

Over the next year, B-Metro will hold staff meetings to discuss the Safety Risk Mitigation process and procedures. B-Metro will provide trainings on the Safety Risk Mitigation process and procedures to all key personnel and Division Heads. PTASP Technical Assistance Center Webinars will also be on respective topics to all employees.

Upon completion of the risk assessment, the CSO and the Safety and Training Supervisor continue populating the Risk Register by identifying mitigations or strategies necessary to reduce the likelihood
and/or severity of the consequences. The goal of this step is to avoid or eliminate the hazard or, when elimination is not likely or feasible, to reduce the assessed risk rating to an acceptable level (Figure 7). However, mitigations do not typically eliminate the risk entirely.

**Figure 7: Risk Register Mitigation Component**

<table>
<thead>
<tr>
<th>Hazard</th>
<th>Type</th>
<th>Likelihood</th>
<th>Consequence</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

To accomplish this objective, the CSO, through the risk management team, works with qualified personnel from the respective department(s) or section to which the risk applies. The risk management team then conducts a brainstorming exercise to elicit feedback from staff and supervisors with the highest level of expertise in the components of the hazard.

Documented risk resolution and hazard mitigation activities from previous Risk Register entries and the resolution’s documented level of success at achieving the desired safety objectives may also be reviewed and considered in the process. If the hazard is external (e.g., roadway construction by an outside agency) information and input from external actors or experts may also be sought to take advantage of all reasonably available resources and avoid any unintended consequences.

Once a mitigation strategy is selected and adopted, the strategy is assigned to an appropriate staff member or team for implementation. The assigned personnel and the personnel’s specific responsibilities are entered into the Risk Register. Among the responsibilities of the mitigation team leader is the documentation of the mitigation effort, including whether the mitigation was carried out as designed and whether the intended safety objectives were achieved. This information is recorded in the appendix to the Risk Register for use in subsequent SA activities and to monitor the effectiveness of the SRM program.

**B. Safety Assurance – 673.27 (a)**

Safety Assurance means processes within the B-Metro SMS that function to ensure a) the implementation and effectiveness of safety risk mitigation, and b) B-Metro meets or exceeds safety objectives through the collection, measurement, analysis, and assessment of information.
SA helps to ensure early identification of potential safety issues. SA also ensures that safeguards are in place and are effective in meeting B-Metro’s critical safety objectives and contribute towards SPTs.

I. Safety Performance Monitoring and Measuring – 673.27 (b)

As the first step in the B-Metro SA program, B-Metro collects and monitors data on safety performance indicators through a variety of mechanisms described in the following sections. Safety performance indicators can provide early warning signs about safety risks. B-Metro currently relies primarily on lagging indicators representing negative safety outcomes that should be avoided or mitigated in the future. However, initiatives are underway to adopt a more robust set of leading indicators that monitor conditions that are likely to contribute to negative outcomes in the future. In addition to the day-to-day monitoring and investigation procedures detailed below, B-Metro will review and document the safety performance monitoring and measuring processes as part of the annual update of this ASP.

MONITORING COMPLIANCE AND SUFFICIENCY OF PROCEDURES – 673.27 (B)(1)

B-Metro monitors our system for personnel compliance with operations and maintenance procedures and monitors these procedures for sufficiency in meeting safety objectives. A list of documents describing the safety related operations and maintenance procedures cited in this ASP is provided in Appendix A of this document.

Supervisors monitor employee compliance with B-Metro SOPs through direct observation and review of information from internal reporting systems such as the Complaint Report System, from both employees and customers.

B-Metro addresses non-compliance with standard procedures for operations and maintenance activities through a variety of actions, including revision to training materials and delivery of employee and supervisor training if the non-compliance is systemic. If the non-compliance is situational, then activities may include supplemental individualized training, coaching, and heightened management oversight, among other remedies.

Sometimes personnel are fully complying with the procedures, but the operations and maintenance procedures are inadequate and pose the risk of negative safety outcomes. In this case, the cognizant person submits the deficiency or description of the inadequate procedures to the SRM process. Through the SRM process, the SRM team will then evaluate and analyze the potential organizational hazard and assign the identified hazard for mitigation and resolution, as appropriate. The SRM team will also conduct periodic self-evaluation and mitigation of any identified deficiencies in the SRM process itself.

MONITORING OPERATIONS – 673.27(B) (2)

Division heads are required to monitor investigation reports of safety events and SRM resolution reports to monitor the division’s operations to identify any safety risk mitigations that may be ineffective, inappropriate, or not implemented as intended. If it is determined that the safety risk mitigation did not bring the risk to an acceptable level or otherwise failed to meet safety objectives, then the supervisor
resubmits the safety risk/hazard to the SRM process. The CSO will work with the Safety and Training Supervisor and qualified personnel to reanalyze the hazard and consequences and identify additional mitigation or alternative approaches to implementing the mitigation.

II. Safety Event Investigation – 673.27(B)(3)

B-Metro Accident Management program is documented in Chapter 6 of the B-Metro System Safety Program Plan. Procedures for supervisors to use in conducting accident investigations are described in Section 6.3. Although the procedures focus heavily on vehicle accidents, as stated in the document, the procedures of active listening, proper documentation and attention to the root cause of the event are applicable to all B-Metro safety incidents. From an SA perspective, the objective of the investigation is to identify causal factors of the event and to identify actionable strategies that B-Metro can employ to address any identifiable organizational, technical or environmental hazard at the root cause of the safety event. B-Metro also applies procedures documented in the SSEPP to identify safety and operational risks.

Safety Event Investigations that seek to identify and document the root cause of an accident or other safety event are a critical component of the SA process because they are a primary resource for the collection, measurement, analysis and assessment of information. B-Metro gathers a variety of information to help in identifying and documenting hazards, namely:

1. **Advance Preparation** - To be prepared to conduct safety investigations, each supervisor is trained and equipped with an Accident Documentation Packet.

2. **Operator Responsibility** - In the case of an accident, operators are instructed and trained to secure the scene, take actions necessary to prevent further a) injury to people and b) damage to property. The operator should provide what assistance they can to injured parties, immediately notify dispatcher for management assistance, request emergency medical response as appropriate. After all emergency procedures have been completed or turned over to qualified emergency personnel; the operator should, when possible, gather and preserve information and clearly and legibly complete the accident report form.

3. **Management Responsibility in Conducting Investigation** - B-Metro Accident Investigation is designed to be a system of collecting and documenting factual data that can reveal and accident/incident cause, whether it be employee error, vehicle/equipment failure or operational deficiencies. The procedure also includes analysis to identify trends to help improve vehicle and equipment purchase specifications, plan operator and employee safety training programs and improve operational procedures.
B-Metro encourages accident investigation using a positive tone focused on improving employee and
customer safety through fact finding, not fault finding. The accident investigation procedure is carried
out in five (5) steps for vehicle or employee accidents as described in the System Safety Program Plan:

a. **Manage the Accident Scene**
   i. Protect the injured and assist the driver in obtaining any needed medical or law
      enforcement support.
   ii. Preserve the accident/incident scene – Eliminate and control remaining hazards.
   iii. Determine the extent of damage.
   iv. Notify appropriate parties.
   v. Refer the operator for required drug and alcohol testing in compliance with 49 CFR
      § 655.44 Post-accident testing, if the safety event meets the definition of accident in
      49 CFR § 655.4

b. **Gather Information**
   i. Get facts on “who, what, where, when and how” using the accident investigation
      kit.
   ii. Gather physical evidence including drawing sketches, taking photographs, recording
      weather conditions, and examining equipment and materials around the accident
      scene. Interview witnesses using active listening techniques and asking non-leading,
      open-ended questions (documented with a written statement if possible).

c. **Analyze Information**
   i. Analyze the information gathered to find causes behind the accident/incident. Dig
      below superficial cause to identify the real/’root cause’ of the event.

d. **Recommend and Implement Corrective Action**
   i. Identify systemic actions that need to be taken. Assign the responsibility for
      implementation. Set a target completion date, obtain management approval to
      implement changes and communicate the desired outcome of implementation.

e. **Follow up and Monitor Implementation Progress**
   Monitor the actions taken and identify follow-up activities. Responsibility for follow-
   up investigation reports shall include the following information:
   i. Operator and supervisor who completed the investigation form/accident report
   ii. A copy of the police accident report
   iii. Facts obtained while reviewing physical evidence
   iv. Witnesses and witness statements
   v. Information from documentation records.
   vi. Pictures, sketches, and operator and witness statements.
   vii. Recommended corrective actions to be taken.

As B-Metro implements this ASP, we will review these accident procedures to ensure that they support
and complement the SMS program. As needed, we will update the Accident Management guidelines to
fully integrate the accident investigation procedures into the SMS and SRM processes.
MONITORING INTERNAL SAFETY REPORTING PROGRAMS – 673.27(B)(4)

As a primary part of the internal safety reporting program, our agency monitors information reported through the ESRP. When a report originating through the complaint process documents a safety hazard, the supervisor submits the hazards identified through the internal reporting process, including previous mitigation in place at the time of the safety event. The supervisor submits the hazard report to the SRM process to be analyzed, evaluated, and if appropriate, assigned for mitigation/resolution.

OTHER SAFETY ASSURANCE INITIATIVES

Because leading indicators can be more useful for safety performance monitoring and measurement than lagging indicators, B-Metro is undertaking efforts to implement processes to identify and monitor more leading indicators or conditions that have the potential to become or contribute to negative safety outcomes. This may include trend analysis of environmental conditions through monitoring National Weather Service data; monitoring trends toward or away from meeting the identified SPTs; or other indicators as appropriate.

C. Safety Promotion – 673.29

Management support is essential to developing and implementing SMS. SP includes all aspects of how, why, when and to whom management communicates safety related topics. SP also includes when and how training is provided. The following sections outline both the safety competencies and training that B-Metro will implement and how safety related information will be communicated.

I. Safety Competencies and Training – 673.29(a)

B-Metro provides comprehensive training to all employees regarding each employee’s job duties and general responsibilities. This training includes safety responsibilities related to the employee’s position. In addition, regular Operations safety meetings are held to ensure that safety related information is relayed to the key members of our agency’s safety processes.

As part of SMS implementation, B-Metro will:

- Conduct a thorough review of all current general staff categories (administrative, driver, supervisor, mechanic, maintenance, etc.) and the respective staff safety related responsibilities.
- Assess the training requirements spelled out in 49 CFR Part 672 and the various courses required for different positions. (B-Metro is not subject to the requirements under 49 CFR Part 672 but will review the training requirements to understand what training is being required of other larger agencies in the event these trainings might be useful).
- Assess the training material available on the FTA PTASP Technical Assistance Center website.
• Review other training material available from industry sources such as the Community Transportation Association of America and the American Public Transportation Association websites.
• Develop a set of competencies and trainings required to meet the safety related activities for each general staff category.
• Develop expectations for ongoing safety training and safety meeting attendance.
• Develop a training matrix to track progress on individuals and groups within the organization.
• Adjust job notices associated with general staff categories to ensure that new personnel understand the safety related competencies and training needs and the safety related responsibilities of the job.
• Include refresher training in all trainings and apply it to the agency personnel and contractors.

B-Metro’s SMS is important and the CSO is the resource person for providing a departmental perspective on B-Metro’s approach to safety management. Federal, State, and SMS training will be provided to key personnel and all Division Heads. Courses, conferences, or training seminars will include but are not limited to:

• Defensive driver training
• Behind-the-wheel training
• Occupational Safety training
• Formal certification from accredited institutions
• Other trainings required for employees designated as “directly responsible for safety”

Safety Management training topics may include:

A. Initial Safety Training for All Staff
   1. Basic principles of safety management including the integrated nature of SMS, risk management, safety culture, etc.
   2. Corporate safety goals and objectives, safety policy, and safety standards
   3. Importance of complying with the safety policy and SMS procedures, and the approach to disciplinary actions for different safety issues
   4. Organizational structure, roles, and responsibilities of staff in relation to safety
   5. Transit agency’s safety record, including areas of systemic weakness
   6. Requirements for ongoing internal assessment of organization safety performance (e.g. employee surveys, safety audits, and assessments)
   7. Reporting accidents, incidents, and perceived hazards
   8. Lines of communication for safety managers
   9. Feedback and communication methods for the dissemination of safety information
10. SP and information dissemination

B. Safety Training for Operations and Maintenance Personnel
   1. Unique hazards facing operational personnel
   2. Seasonal safety hazards and procedures (e.g. winter operations)
   3. Procedures for hazard reporting
   4. Procedures for reporting safety events (accidents and incidents)
   5. Emergency procedures

C. Safety Training for Key Personnel and Department Heads
   1. Principles of the SMS
   2. Management responsibilities and accountabilities for safety
   3. Legal issues (e.g. liability)

D. Training for the CSO and Safety & Training Coordinator
   1. Familiarization with different transit modes, types of operation, routes, etc.
   2. Understanding the role of human performance in safety event causation and prevention
   3. Operation of the SMS
   4. Investigating safety events
   5. Crisis management and emergency response planning
   6. SP
   7. Communication skills
   8. Performing safety audits and assessments
   9. Monitoring safety performance
   10. NTD safety event reporting requirements

II. Safety Communication – 673.29(b)

B-Metro regularly communicates about safety and safety performance information throughout our agency’s organization that, at a minimum, conveys information on hazards and safety risks relevant to employees’ roles and responsibilities and informs employees of safety actions taken in response to reports submitted through the ESRP (noted in Section 3.A.I) or through other means.

Over the next year, B-Metro will have staff meetings to discuss the Safety Communication processes and methods. PTASP Technical Assistance Center webinars will be used to present respective topics and all approved processes and methods to all B-Metro employees.

Other possible methods of communicating will include:

- New Employee Orientation
- Internal Marketing Strategies
• Daily Safety Messaging
• Divisional bulletin boards
• Staff Meetings

B-Metro reports any safety related information to the City Management at the weekly Leadership Directors Meeting and will begin including safety performance information. This information will be shared with the Brownsville City Commission through monthly reports. In addition, B-Metro holds regularly scheduled meetings with drivers to ensure that any safety related information is passed along that would affect the execution of the drivers duties.

B-Metro will begin systematically collecting, cataloging, and, where appropriate, analyzing and reporting safety and performance information to all staff. To determine what information should be reported, how the information should be reported and to whom, B-Metro will answer the following questions:

• What information does this individual need to do their job?
• How can we ensure the individual understands what is communicated?
• How can we ensure the individual understands what action must be taken as a result of the information?
• How can we ensure the information is accurate and kept up-to-date?
• Are there any privacy or security concerns to consider when sharing information? If so, what should we do to address these concerns?

In addition, B-Metro will review our current communications strategies and determine whether others are needed. As part of this effort, B-Metro has conducted, and will continue to conduct, a Safety Culture Survey to understand how safety is perceived in the workplace and what areas B-Metro should be addressing to fully implement a safety culture at our agency.
## 5. APPENDIX A

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A. Glossary of Terms

Accident: means an event that involves any of the following: a loss of life; a report of a serious injury to a person; a collision of transit vehicles; an evacuation for life safety reasons; at any location, at any time, whatever the cause.

Accountable Executive (typically the highest executive in the agency): means a single, identifiable person who has ultimate responsibility for carrying out the SMS of a public transportation agency, and control or direction over the human and capital resources needed to develop and maintain both the agency’s PTASP, in accordance with 49 U.S.C. 5329(d), and the agency’s TAM Plan in accordance with 49 U.S.C. 5326.

Agency Leadership and Executive Management: means those members of agency leadership or executive management (other than an Accountable Executive, CSO, or SMS Executive) who have authorities or responsibilities for day-to-day implementation and operation of an agency’s SMS.

Chief Safety Officer (CSO): means an adequately trained individual who has responsibility for safety and reports directly to a transit agency’s chief executive officer, general manager, president, or equivalent officer. A CSO may not serve in other operational or maintenance capacity, unless the CSO is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guide way public transportation system.

Corrective Maintenance: Specific, unscheduled maintenance typically performed to identify, isolate, and rectify a condition or fault so that the failed asset or asset component can be restored to a safe operational condition within the tolerances or limits established for in-service operations.
**Equivalent Authority:** means an entity that carries out duties similar to that of a Board of Directors, for a recipient or sub-recipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or sub-recipient’s PTASP.

**Event:** means an accident, incident, or occurrence.

**Federal Transit Administration (FTA):** means the Federal Transit Administration, an operating administration within the United States Department of Transportation.

**Hazard:** means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

**Incident:** means an event that involves any of the following: a personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.

**Investigation:** means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

**Key staff:** means a group of staff or committees to support the Accountable Executive, CSO, or SMS Executive in developing, implementing, and operating the agency’s SMS.

**Major Mechanical Failures:** means failures caused by vehicle malfunctions or subpar vehicle condition which requires that the vehicle be pulled from service.

**National Public Transportation Safety Plan (NSP):** means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.

**Occurrence:** means an event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.

**Operator of a Public Transportation System:** means a provider of public transportation as defined under 49 U.S.C. 5302(14).

**Passenger:** means a person, other than an operator, who is on board, boarding, or alighting from a vehicle on a public transportation system for the purpose of travel.

**Performance Measure:** means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

**Performance Target:** means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the FTA.
Preventative Maintenance: means regular, scheduled, and/or recurring maintenance of assets (equipment and facilities) as required by manufacturer or vendor requirements, typically for the purpose of maintaining assets in satisfactory operating condition. Preventative maintenance is conducted by providing for systematic inspection, detection, and correction of anticipated failures either before they occur or before they develop into major defects. Preventative maintenance is maintenance, including tests, measurements, adjustments, and parts replacement, performed specifically to prevent faults from occurring. The primary goal of preventative maintenance is to avoid or mitigate the consequences of failure of equipment.

Public Transportation Agency Safety Plan (PTASP): means the documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and this part.

Risk: means the composite of predicted severity and likelihood of the potential effect of a hazard.

Risk Mitigation: means a method or methods to eliminate or reduce the effects of hazards.

Road Calls: means specific, unscheduled maintenance requiring either the emergency repair or service of a piece of equipment in the field or the towing of the unit to the garage or shop.

Safety Assurance (SA): means the process within a transit agency’s SMS that functions to ensure the implementation and effectiveness of safety risk mitigation and ensures that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Management Policy (SMP): means a transit agency’s documented commitment to safety, which defines the transit agency’s safety objectives and the accountabilities and responsibilities of the agency’s employees regarding safety.

Safety Management System (SMS): means the formal, top-down, data-driven, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency’s safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.

Safety Management System (SMS) Executive: means a CSO or an equivalent.

Safety Objective: means a general goal or desired outcome related to safety.

Safety Performance: means an organization’s safety effectiveness and efficiency, as defined by safety performance indicators and targets, measured against the organization's safety objectives.


Safety Performance Measure: means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.
**Safety Performance Monitoring:** means activities aimed at the quantification of an organization’s safety effectiveness and efficiency during service delivery operations, through a combination of safety performance indicators and SPTs.

**Safety Performance Target (SPT):** means a quantifiable level of performance or condition, expressed as a value for a given performance measure, achieved over a specified timeframe related to safety management activities.

**Safety Promotion (SP):** means a combination of training and communication of safety information to support SMS as applied to the transit agency’s public transportation system.

**Safety Risk:** means the assessed probability and severity of the potential consequence(s) of a hazard, using as reference the worst foreseeable, but credible, outcome.

**Safety Risk Assessment:** means the formal activity whereby a transit agency determines SRM priorities by establishing the significance or value of its safety risks.

**Safety Risk Management (SRM):** means a process within a transit agency’s Safety Plan for identifying hazards, assessing the hazards, and mitigating safety risk.

**Safety Risk Mitigation:** means the activities whereby a public transportation agency controls the probability or severity of the potential consequences of hazards.

**Safety Risk Probability:** means the likelihood that a consequence might occur, taking as reference the worst foreseeable, but credible, condition.

**Safety Risk Severity:** means the anticipated effects of a consequence, should the consequence materialize, taking as reference the worst foreseeable, but credible, condition.

**Serious Injury:** means any injury which:

- Requires hospitalization for more than 48 hours, commencing within seven days from the date that the injury was received;
- Results in a fracture of any bone (except simple fractures of fingers, toes, or nose);
- Causes severe hemorrhages, nerve, muscle, or tendon damage;
- Involves any internal organ; or
- Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

**Small Public Transportation Provider:** means a recipient or sub-recipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guide way public transportation system.
**State:** means a State of the United States, the District of Columbia, or the Territories of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

**State of Good Repair:** means the condition in which a capital asset is able to operate at a full level of performance.

**State Safety Oversight Agency:** means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR part 674.

**Transit Agency:** means an operator of a public transportation system.

**Transit Asset Management (TAM) Plan:** means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

**Vehicle Revenue Miles (VRM):** means the miles that vehicles are scheduled to or actually travel while in revenue service. Vehicle revenue miles include layover/recovery time and exclude deadhead; operator training; vehicle maintenance testing; and school bus and charter services.

### B. Additional Acronyms Used

**ADA:** American's with Disabilities Act

**ASP:** Agency Safety Plan

**B-Metro:** Brownsville Metro Transit, City of Brownsville, Texas

**ESRP:** Employee Safety Reporting Program

**FAST Act:** Fixing America’s Surface Transportation Act

**MAP-21:** Moving Ahead for Progress in the 21st Century Act

**MOU:** Memorandum of Understanding

**MPO:** Metropolitan Planning Organization

**NTD:** National Transit Database

**SOP:** Standard Operating Procedure

**SSEPP:** System Security and Emergency Preparedness Plan

**TxDOT:** Texas Department of Transportation
6. APPENDIX B

A. Commission Minutes or Resolution

To be attached.
TO: Noel Bernal, City Manager
FROM: Roxanna Moreno, Internal Services Director
SUBJECT: Televon Agreement
DATE: 5/18/2020
THROUGH: Mariana Zolezzi, Assistant to the City Manager

AGENDA ITEM

Executive Session (City Attorney Only)

Time Needed:

Action Item:

Select

- [ ] Public Hearing
- [x] Contract
- [ ] Grant
- [x] Action
- [ ] Consent

Agenda

Time Needed:

Ordinance

First Reading

Second Reading

Information: Please include additional information/request.

Consideration and ACTION to enter into an agreement for services provided by Televon, a Telecommunications Management Consulting Firm, via TIPS-USA Interlocal Purchasing System. (Internal Services Department)

Reviewing Departments: Please review and forward to the next reviewing department in a timely manner.

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City Manager’s Approval

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To: Mayor and City Commission

Through: Noel Bernal, City Manager

From: Roxanna Moreno, Internal Services Director

Date: May 18, 2020

Subject: Consideration and ACTION to enter into an agreement for services provided by Televon, a Telecommunications Management Consulting Firm, via TIPS-USA Interlocal Purchasing System. (Internal Services Department)

Summary:

The Internal Services Department is presenting a proposal to enter into an agreement for services provided by Televon, a Telecommunications Management Consulting Firm. One of the key functions of Internal Services is to evaluate, analyze, and propose solutions for proactive management of enterprise-wide services including ways to standardize and centralize services for efficiency and service improvements.

In prior years, our telecommunications services were periodically evaluated by our Management Information Systems (now Enterprise Applications) and the Purchasing Department (now an division of Finance) to seek competitive pricing through State contracts and eliminate unused features of our services in certain departments. Enterprise-wide Telecommunications Expense Management (TEM), Auditing, and Project Management is a best practice for cities.

Televon’s service provide a proactive management model where our telecommunications infrastructure, service providers, plans, service quality and capabilities can be evaluated as part of a Strategic Plan. They will ensure that we secure optimum operational performance at the most competitive prices possible. They will also evaluate our phones, faxes, security lines, and elevator lines, cellular, and data networks. They will assess our usage and see where we have billing and/or service issues.

The scope of service for this contract will include:

- Review our City’s technology service billing to ensure that we are obtaining accurate pricing which include exempt taxes;
• Provide a comparison of rates being offered in the area and/or to local governments/companies of similar size;

• Ensure that we are receiving all applicable government discounts; ensure that all active lines being billed are for active City employees;

• Review the services being provided to the City to ensure that we are on the most advantageous plan based on usage;

• Continuously identify new promotional offers which the City could utilize;

• Proactive management of City service accounts to ensure continued optimization;

• Continuously evaluate no-usage accounts, devices and services;

• Bill error identification and resolution of such errors on the City’s behalf;

• Monthly proactive overage protection analysis.

• Help desk services that may include, but are not limited to:
  ➢ Add or delete devices;
  ➢ Change plans on existing devices;
  ➢ Order new hardware and accessories;
  ➢ Open and manage trouble tickets with the provider;
  ➢ Add account users; and,
  ➢ Change passwords.

• Assistance with determining Projected Technology Costs for budgeting and appropriation purposes

We can start with a wireless assessment that can give us a thorough understanding of their process and gauge the level of savings with the last three (3) wireless bills. After evaluating the service provided, we can then follow through with our office phones/long distance, data/internet and other areas.

Financial:

Televon would be paid a fee in the amount of 45% of actual or estimated savings calculated over the Optimization Period. The fee is earned at the time of implementation of an Optimization Change recommended by Televon. After the expiration of the Optimization Period, the fee for such Optimization Change will drop to zero percent (0%). Therefore, there is no upfront cost until a savings is realized. The City would earn 55% of realized savings for two years and 100% thereafter. Any realized savings would be utilized to implement technology enhancements within the organization. We would not have to appropriate new funds for this service.
With the participation of our Enterprise Applications and Finance Department, we have concluded that this would serve as an opportunity to evaluate our services and at no cost to the City meanwhile we would earn some savings by entering into this partnership.

Internal Services recommends partnering with Televon utilizing an Interlocal Purchasing System, a cooperative procurement method, through TIPS-USA.
Date: May 28, 2020  
To: Mr. Noel Bernal City Manager  
From: Mr. Lupe Granado III, Finance Director  
CC: Jose F. Perez, Assistant Director  
Subject: Agenda Item for the City Commission meeting of June 2, 2020: “Consideration and Action to enter into an agreement for services provided by Televon, a Telecommunications Management for the Internal Services Department.” BID # TMC-44-0620

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**Background:**

At the request of Internal Services Director, Roxanna Moreno, the Finance Department-Procurement Services has solicited a “TIPS” proposal for Telecommunications Management for the use by the Internal Services Department.

**Process:**

The Cooperative proposal satisfies Texas Local Government Code Section §252.022-(12) (D) General Exemptions “under an Interlocal contract for cooperative purchasing administered by a regional planning commission established under chapter 391; provides goods or services at the best value for the municipality” and Section § 271.101 Cooperative Purchasing Program, the bidding requirement has been satisfied. Therefore, advertisement or invitations for sealed formal bids were not required for this procurement. [Bookmark “A” - Section §252.022-(12) (D) General Exemptions and Section § 271.101 Cooperative Purchasing Program of the Texas Government Code]

**Procurement Summary and/or Result:**

Televon, TIPS Contract # 180304 is eligible to provide key functions to Internal Services by evaluating, analyzing, and proposing solutions for proactive management of enterprise-wide services including ways to standardize and centralize services for efficiency and service improvements.  
Televon would be paid a fee in the amount of 45% of actual or estimated savings calculated over the Optimization Period.
TECHNOLOGY MANAGEMENT SERVICE AGREEMENT (TIPS)

This Agreement (the “Agreement”) is entered into between Plenteous Consulting, LLC, a Colorado limited liability company, d/b/a Televon Consulting Services, (“Televon”) with principal offices at 1624 Market St, #202-19418, Denver, CO 80202 and City of Brownsville (the “Client”) with principal office at 1001 E Elizabeth, Brownsville, TX 78520.

RECITALS

A. Televon assesses technology systems, identifies ways to save costs or improve the system, and makes recommendations for changes to the system to accomplish such improvement and/or cost savings;

B. Televon charges fees for its services as a percentage of the amounts saved by its client as a result of Televon’s services, with the base line being the clients’ budget for technology services in effect on the Effective Date as more described herein;

C. Client routinely appropriates and budgets funds to pay for technology costs each fiscal year, and wishes to utilize Televon’s services to reduce the costs and improve the system and to establish its budget for technology services in accordance with the terms of this Agreement;

D. Client desires to purchase Telephone and Communications Data Systems and Solutions by utilizing the TIPS awarded contract with Televon pursuant to TIPS contract 180304 Telephone and Communications Data Systems and Solutions, and

E. Client’s governing body has determined that it is in the best interest of the Client to contract with Televon to provide its services and has authorized that unexpended funds appropriated for the payment of technology costs be re-appropriated and budgeted for the payment of Televon’s services due under the terms of this Agreement;

For good and valuable consideration, the Recitals set forth above, which are incorporated into the body of this Agreement, and the mutual benefits and obligations of the parties hereto, the parties agree as follows;

I. DEFINITIONS

Whenever used in this Agreement, the following terminologies shall have the following meanings:

• **Supplier**: vendor that provides technology (or related) services, goods and/or devices.

• **Recommendation**: a written recommended course of action by Televon to Client to reduce Client’s costs relating to Client’s Technology System, which may include Client’s anticipated savings or cost reductions if Client follows such recommendation and the approximate cost to Client to realize such savings or cost reduction by following such Recommendation.

• **Optimization Change**: a change to Client’s Technology System having a benefit of lowering Client’s costs resulting from a Recommendation or realized as a result of Televon’s instigation, negotiation, and/or efforts in its performance of this Agreement.

• **Operational Change**: a change to Client’s Technology System with the primary purpose of supporting Client’s operational needs that may also have a secondary benefit of lowering Client’s costs.

• **Account Access**: access to Client’s Supplier online account information for the purposes of bill review, reporting and usage analysis.

• **Information**: equipment records, invoices, contracts and other related information, as well as written authorization for Televon to receive all such records and information directly from Suppliers.

• **System**: the Client’s technology services and systems, including data, software, landline and cellular.

• **Acceptance Period**: the period beginning on the date on which Televon submits a Recommendation to Client and ending on the date that is 24 months thereafter.
• **Effective Date:** The date on which this Agreement has been executed by both parties.

• **Term:** means the Initial Term of this Agreement and all extensions thereof as described in Section VII.

• **Optimization Period:** The period beginning on the date on which a Recommendation is implemented or deemed implemented as described in Section V 1) a) (ii), and ending on the date that is 24 months thereafter, as applicable.

• **Projected Technology Costs:** the Client’s projected costs for technology services and fees earned under this Agreement for a specified fiscal year or other specified duration.

II. **TELEVON SERVICES**

1) Client hereby retains Televon to perform consulting services related to Client’s System during the Term as described in this Agreement.

2) Televon will (a) assess and continuously monitor the Client’s System, usage patterns and billing to identify opportunities for Optimization Changes and Operational Changes, (b) make Recommendations to Client for identified Optimization and Operational Changes; (c) manage the implementation of Optimization and Operational Changes to the System, and (d) provide first tier support to Client’s designated staff regarding the System, as more fully outlined in Schedule A. The Recommendations may include alternate methods, systems, services, equipment, Suppliers, plans or other suggestions for improvement or cost savings.

3) Prior to the end of each fiscal year, Televon will calculate Client’s Projected Technology Costs for the following fiscal year and provide that information to Client to assist Client in budgeting and appropriating sufficient funds for the following fiscal year.

4) All changes to the Client’s System are subject to Client approval. Any Recommendation independently acted upon directly or indirectly by the Client within the Acceptance Period shall be deemed to be accepted by Client.

5) Televon and Client agree that once an Optimization Change is implemented during the Acceptance Period, regardless of who implements it, Televon’s full fee for the Optimization Period is earned. In addition, if the Client is deemed to have accepted Televon’s Recommendation through the Client’s independent activity as described above in 3), then upon implementation of the Recommendation, Televon will be entitled to, and will be deemed to have earned, Televon’s full fee for the Optimization Period.

III. **CALCULATION OF SAVINGS**

Savings will be determined based on the reduction in the cost of technology services realized by Client during the Optimization Period as a result of Recommendations for Optimization Changes that are accepted by Client and implemented. For each Optimization Change that is implemented, the savings will be measured by comparing the cost of the affected services after implementation on a month-to-month basis during the Optimization Period. Savings for Data Services will be based on speeds that are most similar to existing services. If the information required to be provided by the Client under this Agreement is not timely furnished, Televon will estimate the savings to the Client as described in Section V 1) (a) (ii) below. The parties agree that the calculation of savings described in this Section IV is a reasonable and equitable method for measuring the value of Televon’s services to Client, and compensating Televon for those services.

IV. **CLIENT OBLIGATIONS**

1) The Client agrees to provide Televon with Account Access throughout the Term of this Agreement, and all Acceptance Periods and Optimization Periods, and pre-authorizes and pre-approves Televon to identify and pursue, on Client’s behalf, possible refunds or credits due from Suppliers’ billing errors or other causes.

2) Client agrees to promptly provide Televon with the Information required by Televon during the Term of this Agreement, and during Acceptance Periods and Optimization Periods.
3) Client agrees to perform its obligations under this Agreement in a timely manner.

4) Client agrees that in each fiscal year, unexpended funds in the budget for technology expenses resulting from savings shall be used for the payment of fees to Televon under this Agreement, with the understanding that such funds constitute current revenues for the year in which this Agreement was entered into and/or a fund in the immediate control of the Client that is available for such payments. Client further agrees to take such action as may be necessary or appropriate to make these unexpended funds available for the purpose of payment to Televon, including, if required, by using its best efforts to appropriate or reappropriate the funds for such purpose.

5) Client agrees to use its best efforts each fiscal year to appropriate and budget funds for the following fiscal year which are sufficient to cover the Projected Technology Costs.

V. FEES

1) The fees payable to Televon for services rendered under this Agreement on both landline (data, conference, office voice, etc.) and cellular services, will be determined as follows:

a) Televon shall be paid a fee in the amount of 45% of actual or estimated savings calculated over the Optimization Period. The fee is earned at the time of implementation of an Optimization Change recommended by Televon. The fee will be based on actual savings or estimated savings in accordance with the following provisions:

   (i) If the Client provides the Information required by Televon during the Term, the Acceptance Period(s), and the Optimization Period(s) in accordance with this Agreement, then Televon’s fee will be determined based on forty-five percent (45%) of all actual savings realized by Client from each Optimization Change commencing on the date of each implementation and continuing for the each Optimization Period. After the expiration of the Optimization Period, the fee for such Optimization Change will drop to zero percent (0%).

   (ii) If the Client does NOT provide, or continue to provide, the required Information during the Term, the Acceptance Period(s), and the Optimization Period(s) in accordance with this Agreement, then Televon’s fee will be forty-five percent (45%) of the estimated savings resulting from each Optimization Change, commencing on the earlier of the date of implementation or the date the Information is no longer provided, as applicable, and continuing for a period of twenty-four (24) months thereafter. If a Recommendation is made and the Client ceases to provide Information, so that Televon is unable to determine whether implementation has occurred, the parties agree that the Recommendation will be deemed implemented on the date the Information ceases to be provided and that Televon will have the right to assess its fees based on estimated savings as liquidated damages. After the termination of the twenty-four month period the fee for such Optimization Change will drop to zero percent (0%). Savings for Data Services will be based on speeds which are most similar to existing services. The Client’s technology expenses existing prior to the Recommendation will be estimated based on the Client’s average usage and billing during the three months prior to the Recommendation, if the relevant Information is not made available to Televon.

b) In addition to the fee based on savings or estimated savings described above, Televon will be paid a one-time fee of forty-five percent (45%) of each refund or credit or other consideration realized based upon Televon’s identification of billing errors or other causes.

c) Televon and Client agree that, except in cases where Client cancels Supplier services, any increases or decreases in costs resulting from Operational Changes are excluded and do not impact Televon’s fees. Canceling Supplier services for operational reasons based on a Recommendation will terminate any
remaining fees to Televon for said services. Televon and Client further agree that the designation of what is deemed an Operational Change will be mutually agreed upon by Client and Televon.

VI. PAYMENTS

1) Client will be invoiced monthly for fees based on accrued savings and realized refunds or credits.

2) All payments are due and payable within thirty (30) days after the date of the invoice. Payments not made when due shall accrue interest in accordance with Section 2251.025 of the Texas Government Code.

VII. THE TERM OF THIS AGREEMENT

This Agreement begins on the Effective Date and ends twenty-four months thereafter (the “Initial Term”), unless sooner terminated under the provisions of this Agreement, or extended by the parties. This Agreement will be automatically extended on a month-to-month basis after the expiration of the Initial Term, provided however, that the Client may stop any automatic renewal by providing Televon with thirty days’ prior written notice of termination.

VIII. TERMINATION

1) This contract may be terminated:
   a) By the written agreement of both Televon and Client;
   b) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement issued under this Agreement, as provided in Section XVII;
   c) By Client, after providing thirty days’ notice of non-renewal as provided in Section VII above; or
   d) By Client in accordance with the provisions of Subsection 3) below.

2) If the Client terminates this Agreement pursuant to Section VIII 1) b) or Section VIII 1) d), Televon shall not be entitled to any fees or reimbursable expenses other than the fees owed to Televon for the services provided on or before the date of termination.

3) Any provision in this Agreement to the contrary notwithstanding, if in any fiscal year the Client fails to appropriate sufficient funds to pay its obligations under this Agreement for the following fiscal year, then the Client may terminate this Agreement in the last fiscal year for which it has funds sufficient to pay its obligations under this Agreement. Client must notify Televon at least 30 days in advance if it believes that sufficient funds will or have not been appropriated for the following fiscal year.

IX. SURVIVAL

1) Except as provided in Section VIII 2) above, if a Recommendation is made by Televon prior to the termination of this Agreement, but the Acceptance Period for that Recommendation has not expired at the time of termination, then for each such Recommendation, the Acceptance Period will continue in effect and the Client will continue to be obligated to (i) provide Information required by Televon during the Acceptance Period, and (ii) if the Recommendation is implemented (or deemed implemented pursuant to Section V1) a) (ii)) during the Acceptance Period, provide Information and make the payments required by this Agreement during the Optimization Period.

2) Except as provided in Section VIII 2), if an Optimization Change is implemented prior to the termination of this Agreement, but the Optimization Period has not expired at the time of termination, then with regard to each such Optimization Change, the Client will continue to be obligated to (i) provide Information required by Televon during the Optimization Period, and (ii) make the payments required by this Agreement during the Optimization Period.

3) The Client’s obligation to pay any other amount to Televon due and owing under this Agreement at the time of termination, including fees which have been billed but not paid, shall survive termination.
X. INDEMNIFICATION

TELEVON HEREBY AGREES TO INDEMNIFY AND HOLD THE CLIENT AND ITS EMPLOYEES, AGENTS, OFFICERS AND MEMBERS OF ITS GOVERNING BODY HARMLESS FROM CLAIMS, DEMANDS, COSTS, DAMAGES AND CAUSES OF ACTION ARISING DIRECTLY FROM THE NEGLIGENCE OF TELEVON OR ITS EMPLOYEES IN FURNISHING SERVICES UNDER THIS AGREEMENT.

XI. FORCE MAJEURE

If either party shall be wholly or partially prevented from the performance of any contractual obligation or duty by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed.

XII. NO BOYCOTT

Televon does not boycott Israel and will not do so during the Term of this Agreement.

XIII. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed by both parties hereto that the Client is contracting with Televon as an independent contractor. Nothing in this Agreement is intended to create an employer/employee relationship, or a partnership, joint venture or joint enterprise between the parties.

XIV. NOTICE

1) All notices given in connection with this Agreement must be in writing.

2) Except as expressly provided in Section XVI with regard to notice of default, notice may be sent by any commercially reasonable method, including by email, hand delivery, facsimile, and U.S. mail. Notices sent by hand delivery through a national courier service will be deemed delivered when delivery has been signed for as evidenced by the courier’s records. Notices sent by certified mail, return receipt requested, will be deemed delivered, whether or not actually received, when deposited in the U.S. mail, if properly addressed to the receiving party, with copy of the notice sent concurrently by email. Notice given in any other manner will be deemed delivered when and if actually received.

3) Either party may change its address for notice by giving the other party notice of the change in the manner provided for notice in this Section. The requirement for the use of the new address will go into effect 14 days after the notice is delivered or deemed delivered.

Address for Notice:

Client: City of Brownsville

1001 E Elizabeth St
Brownsville, TX 78520

Attn.: Roxanna Moreno
Email:roxanna.moreno@cob.us
Phone: 956-548-1055 Ext 2134

Televon:

1624 Market St.
#202-91418
Denver, CO 80202

Attn: Michael Breier, President & CEO
Email: mbreier@televon.com
Phone: 724-325-1660
XV. DEFAULT
The occurrence of any of the following events shall constitute a Default by the Client of the terms of this Agreement:

1) Any payment due from Client is delinquent for more than forty-five (45) days (provided that interest will accrue on any payment not made within 30 days after it is due, as provided by Chapter 2251 of the Texas Government Code);

2) Client purports to rescind authorization for Televon to access Client’s technology accounts, disables or denies online access, or fails to provide copies of invoices or other Information required by Televon for the monthly monitoring of account activity in violation of the terms of this Agreement;

3) Client becomes insolvent, a Receiver is appointed for the Client, or a voluntary or involuntary petition in bankruptcy is filed by or against the Client; or

4) Client violates any other provision of this Agreement.

XVI. ADDITIONAL PROVISIONS REGARDING DEFAULT

1) Notice of Default. Written notice of Default shall be provided via U.S. Postal Service Certified Mail, Return Receipt Requested, to the address for notice described above. Notice of default shall be deemed delivered three (3) days after deposit in the U.S. mail, whether or not actually received.

2) Cure of Default. Client shall have 15 days after delivery or deemed delivery of written notice of Default to cure said default.

3) Remedies for Default.

   a) Televon Default. If Televon is in material default under this Agreement, and does not cure the default within the cure period, Client will have the right to terminate this Agreement as its sole and exclusive remedy.

   b) Client Default. If Client is in default under this Agreement and does not cure the default within the cure period, Televon will have (i) all rights and remedies provided by this Agreement and at law or equity, (ii) the right to terminate this Agreement, and (iii) the right to accelerate payments as provided in c) below. All such rights are cumulative and not exclusive.

   c) Acceleration. If Client fails to cure a default under this Agreement within the cure period, Televon may terminate this Agreement and notify Client that the remaining fees payable under this Agreement will be estimated for the remainder of the 24 month billing period during which fees will be assessed (as described in Section III) using the most recent Supplier invoice data available, and the total amount of the remaining fees shall be immediately due and payable in full. The payments to be accelerated will include any fees based on estimated savings as described in Section V.

4. Mediation. The parties agree to mediate any dispute arising in connection with this Agreement in good faith, prior to filing suit.

5. Attorney’s Fees. If suit is filed to enforce rights under this Agreement, the party prevailing in the litigation will be entitled to its reasonable attorney’s fees and court costs.

XVII. JURISDICTION
This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

XVIII. VENUE
The parties agree that venue for any dispute arising under this Agreement shall be in courts of competent jurisdiction in Cameron County, Texas.
XIX. CONFIDENTIALITY OF INFORMATION AND SECURITY

a) Client will notify Televon of any information that Client considers confidential. Televon shall keep such information confidential to the extent required by law and will comply fully with the laws and regulations of the State of Texas, or any applicable federal law.

b) Televon will notify Client of any information that Televon deems confidential or proprietary, and Client will keep such information confidential and will not provide the information to others without Televon’s written consent, unless Client is required to disclose such information by court order or by a decision by the Texas Attorney General after request for a decision is made by the Client.

XX. INTEGRATION, MODIFICATIONS, AND AMENDMENTS

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the parties concerning the subject matter. This Agreement may not be amended, nor shall any waiver, modification, consent or discharge be effective, except by a written instrument executed by the parties hereto.

XXI. SEVERABILITY

In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, then to the extent that doing so does not negate the benefit of the bargain between the parties, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement, and the Agreement shall be interpreted or reformed to accomplish as closely as possible the original intent of the parties, but in a manner that is not void, invalid or unenforceable. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

XXII. AUTHORITY

Each person signing below on behalf of a party to this Agreement represents that the Agreement has been duly authorized by that party, and the signatory is duly authorized to sign this Agreement on behalf of that party.

Client: City of Brownsville

By
Noel Bernal
Name
City Manager
Title
Date

Televon:

By
Michael Breier
Name
President & CEO
Title
Date
Schedule A: Services to be Provided

Telefon will provide the following to the Client:

1) Review the Client’s technology service billing to ensure the Client is obtaining accurate pricing, including taxes (both exempt and non-exempt);

2) Provide a comparison of rates being offered in the area and/or to local governments/companies of similar size;

3) Ensure the Client is receiving all applicable government discounts; ensure that all active lines being billed are for active Client employees;

4) Review the services being provided to the Client to ensure the Client is on the most advantageous plan based on usage;

5) Continuously identify new promotional offers which the Client could utilize;

6) Active management of Client service accounts to ensure continued optimization;

7) Continuously evaluate no-usage accounts, devices and services;

8) Bill error identification and resolution of such errors on the Client’s behalf;

9) Monthly proactive overage protection analysis.

10) Help desk services that may include, but are not limited to:
    • Add or delete devices;
    • Change plans on existing devices;
    • Order new hardware and accessories;
    • Open and manage trouble tickets with the provider;
    • Add account users; and,
    • Change passwords.

11) Assistance with determining Client’s Projected Technology Costs for budgeting and appropriation purposes
TECHNOLOGY MANAGEMENT SERVICE AGREEMENT (TIPS)

This Agreement (the “Agreement”) is entered into between Plenteous Consulting, LLC, a Colorado limited liability company, d/b/a Televon Consulting Services, (“Televon”) with principal offices at 1624 Market St, #202-19418, Denver, CO 80202 and City of Brownsville (the “Client”) with principal office at 1001 E. Elizabeth, Brownsville, TX 78520.

RECITALS

A. Televon assesses technology systems, identifies ways to save costs or improve the system, and makes recommendations for changes to the system to accomplish such improvement and/or cost savings;

B. Televon charges fees for its services as a percentage of the amounts saved by its client as a result of Televon’s services, with the base line being the clients’ budget for technology services in effect on the Effective Date as more described herein;

C. Client routinely appropriates and budgets funds to pay for technology costs each fiscal year, and wishes to utilize Televon’s services to reduce the costs and improve the system and to establish its budget for technology services in accordance with the terms of this Agreement;

D. Client desires to purchase Telephone and Communications Data Systems and Solutions by utilizing the TIPS awarded contract with Televon pursuant to TIPS contract 180304 Telephone and Communications Data Systems and Solutions, and

E. Client’s governing body has determined that it is in the best interest of the Client to contract with Televon to provide its services and has authorized that unexpended funds appropriated for the payment of technology costs be re-appropriated and budgeted for the payment of Televon’s services due under the terms of this Agreement;

For good and valuable consideration, the Recitals set forth above, which are incorporated into the body of this Agreement, and the mutual benefits and obligations of the parties hereto, the parties agree as follows;

I. DEFINITIONS

Whenever used in this Agreement, the following terminologies shall have the following meanings:

• Supplier: vendor that provides technology (or related) services, goods and/or devices.

• Recommendation: a written recommended course of action by Televon to Client to reduce Client’s costs relating to Client’s Technology System, which may include Client’s anticipated savings or cost reductions if Client follows such recommendation and the approximate cost to Client to realize such savings or cost reduction by following such Recommendation.

• Optimization Change: a change to Client’s Technology System having a benefit of lowering Client’s costs resulting from a Recommendation or realized as a result of Televon’s instigation, negotiation, and/or efforts in its performance of this Agreement.

• Operational Change: a change to Client’s Technology System with the primary purpose of supporting Client’s operational needs that may also have a secondary benefit of lowering Client’s costs.

• Account Access: access to Client’s Supplier online account information for the purposes of bill review, reporting and usage analysis.

• Information: equipment records, invoices, contracts and other related information, as well as written authorization for Televon to receive all such records and information directly from Suppliers.

• System: the Client’s technology services and systems, including data, software, landline and cellular.

• Acceptance Period: the period beginning on the date on which Televon submits a Recommendation to Client and ending on the date that is 24 months thereafter.
• **Effective Date:** The date on which this Agreement has been executed by both parties.
• **Term:** means the Initial Term of this Agreement and all extensions thereof as described in Section VII.
• **Optimization Period:** The period beginning on the date on which a Recommendation is implemented or deemed implemented as described in Section V 1) a) (ii), and ending on the date that is 24 months thereafter, as applicable.
• **Projected Technology Costs:** the Client’s projected costs for technology services and fees earned under this Agreement for a specified fiscal year or other specified duration.

II. **TELEVON SERVICES**

1) Client hereby retains Televon to perform consulting services related to Client’s System during the Term as described in this Agreement.

2) Televon will (a) assess and continuously monitor the Client’s System, usage patterns and billing to identify opportunities for Optimization Changes and Operational Changes; (b) make Recommendations to Client for identified Optimization and Operational Changes; (c) manage the implementation of Optimization and Operational Changes to the System, and (d) provide first tier support to Client’s designated staff regarding the System, as more fully outlined in Schedule A. The Recommendations may include alternate methods, systems, services, equipment, Suppliers, plans or other suggestions for improvement or cost savings.

3) Prior to the end of each fiscal year, Televon will calculate Client’s Projected Technology Costs for the following fiscal year and provide that information to Client to assist Client in budgeting and appropriating sufficient funds for the following fiscal year.

4) All changes to the Client’s System are subject to Client approval. Any Recommendation independently acted upon directly or indirectly by the Client within the Acceptance Period shall be deemed to be accepted by Client.

5) Televon and Client agree that once an Optimization Change is implemented during the Acceptance Period, regardless of who implements it, Televon’s full fee for the Optimization Period is earned. In addition, if the Client is deemed to have accepted Televon’s Recommendation through the Client’s independent activity as described above in 3), then upon implementation of the Recommendation, Televon will be entitled to, and will be deemed to have earned, Televon’s full fee for the Optimization Period.

III. **CALCULATION OF SAVINGS**

Savings will be determined based on the reduction in the cost of technology services realized by Client during the Optimization Period as a result of Recommendations for Optimization Changes that are accepted by Client and implemented. For each Optimization Change that is implemented, the savings will be measured by comparing the cost of the affected services after implementation on a month-to-month basis during the Optimization Period. Savings for Data Services will be based on speeds that are most similar to existing services. If the information required to be provided by the Client under this Agreement is not timely furnished, Televon will estimate the savings to the Client as described in Section V 1) (a) (ii) below. The parties agree that the calculation of savings described in this Section IV is a reasonable and equitable method for measuring the value of Televon’s services to Client, and compensating Televon for those services.

IV. **CLIENT OBLIGATIONS**

1) The Client agrees to provide Televon with Account Access throughout the Term of this Agreement, and all Acceptance Periods and Optimization Periods, and pre-authorizes and pre-approves Televon to identify and pursue, on Client’s behalf, possible refunds or credits due from Suppliers’ billing errors or other causes.

2) Client agrees to promptly provide Televon with the Information required by Televon during the Term of this Agreement, and during Acceptance Periods and Optimization Periods.
3) Client agrees to perform its obligations under this Agreement in a timely manner.

4) Client agrees that in each fiscal year, unexpended funds in the budget for technology expenses resulting from savings shall be used for the payment of fees to Televon under this Agreement, with the understanding that such funds constitute current revenues for the year in which this Agreement was entered into and/or a fund in the immediate control of the Client that is available for such payments. Client further agrees to take such action as may be necessary or appropriate to make these unexpended funds available for the purpose of payment to Televon, including, if required, by using its best efforts to appropriate or reappropriate the funds for such purpose.

5) Client agrees to use its best efforts each fiscal year to appropriate and budget funds for the following fiscal year which are sufficient to cover the Projected Technology Costs.

V. FEES

1) The fees payable to Televon for services rendered under this Agreement on both landline (data, conference, office voice, etc.) and cellular services, will be determined as follows:

   a) Televon shall be paid a fee in the amount of 45% of actual or estimated savings calculated over the Optimization Period. The fee is earned at the time of implementation of an Optimization Change recommended by Televon. The fee will be based on actual savings or estimated savings in accordance with the following provisions:

      (i) If the Client provides the Information required by Televon during the Term, the Acceptance Period(s), and the Optimization Period(s) in accordance with this Agreement, then Televon’s fee will be determined based on forty-five percent (45%) of all actual savings realized by Client from each Optimization Change commencing on the date of each implementation and continuing for the each Optimization Period. After the expiration of the Optimization Period, the fee for such Optimization Change will drop to zero percent (0%).

      (ii) If the Client does NOT provide, or continue to provide, the required Information during the Term, the Acceptance Period(s), and the Optimization Period(s) in accordance with this Agreement, then Televon’s fee will be forty-five percent (45%) of the estimated savings resulting from each Optimization Change, commencing on the earlier of the date of implementation or the date the Information is no longer provided, as applicable, and continuing for a period of twenty-four (24) months thereafter. If a Recommendation is made and the Client ceases to provide Information, so that Televon is unable to determine whether implementation has occurred, the parties agree that the Recommendation will be deemed implemented on the date the Information ceases to be provided and that Televon will have the right to assess its fees based on estimated savings as liquidated damages. After the termination of the twenty-four month period the fee for such Optimization Change will drop to zero percent (0%). Savings for Data Services will be based on speeds which are most similar to existing services. The Client’s technology expenses existing prior to the Recommendation will be estimated based on the Client’s average usage and billing during the three months prior to the Recommendation, if the relevant Information is not made available to Televon.

   b) In addition to the fee based on savings or estimated savings described above, Televon will be paid a one-time fee of forty-five percent (45%) of each refund or credit or other consideration realized based upon Televon’s identification of billing errors or other causes.

   c) Televon and Client agree that, except in cases where Client cancels Supplier services, any increases or decreases in costs resulting from Operational Changes are excluded and do not impact Televon’s fees. Canceling Supplier services for operational reasons based on a Recommendation will terminate any
remaining fees to Televon for said services. Televon and Client further agree that the designation of what is deemed an Operational Change will be mutually agreed upon by Client and Televon.

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2) All payments are due and payable within thirty (30) days after the date of the invoice. Payments not made when due shall accrue interest in accordance with Section 2251.025 of the Texas Government Code.

VII. THE TERM OF THIS AGREEMENT

This Agreement begins on the Effective Date and ends twenty-four months thereafter (the "Initial Term"), unless sooner terminated under the provisions of this Agreement, or extended by the parties. This Agreement will be automatically extended on a month-to-month basis after the expiration of the Initial Term, provided however, that the Client may stop any automatic renewal by providing Televon with thirty days’ prior written notice of termination.

VIII. TERMINATION

1) This contract may be terminated:
   a) By the written agreement of both Televon and Client;
   b) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement issued under this Agreement, as provided in Section XVII;
   c) By Client, after providing thirty days’ notice of non-renewal as provided in Section VII above; or
   d) By Client in accordance with the provisions of Subsection 3) below.

2) If the Client terminates this Agreement pursuant to Section VIII 1) b) or Section VIII 1) d), Televon shall not be entitled to any fees or reimbursable expenses other than the fees owed to Televon for the services provided on or before the date of termination.

3) Any provision in this Agreement to the contrary notwithstanding, if in any fiscal year the Client fails to appropriate sufficient funds to pay its obligations under this Agreement for the following fiscal year, then the Client may terminate this Agreement in the last fiscal year for which it has funds sufficient to pay its obligations under this Agreement. Client must notify Televon at least 30 days in advance if it believes that sufficient funds will or have not been appropriated for the following fiscal year.

IX. SURVIVAL

1) Except as provided in Section VIII 2) above, if a Recommendation is made by Televon prior to the termination of this Agreement, but the Acceptance Period for that Recommendation has not expired at the time of termination, then for each such Recommendation, the Acceptance Period will continue in effect and the Client will continue to be obligated to (i) provide Information required by Televon during the Acceptance Period, and (ii) if the Recommendation is implemented (or deemed implemented pursuant to Section VI) a) (ii)) during the Acceptance Period, provide Information and make the payments required by this Agreement during the Optimization Period.

2) Except as provided in Section VIII 2), if an Optimization Change is implemented prior to the termination of this Agreement, but the Optimization Period has not expired at the time of termination, then with regard to each such Optimization Change, the Client will continue to be obligated to (i) provide Information required by Televon during the Optimization Period, and (ii) make the payments required by this Agreement during the Optimization Period.

3) The Client’s obligation to pay any other amount to Televon due and owing under this Agreement at the time of termination, including fees which have been billed but not paid, shall survive termination.
X. INDEMNIFICATION

TELEVON HEREBY AGREES TO INDEMNIFY AND HOLD THE CLIENT AND ITS EMPLOYEES, AGENTS, OFFICERS AND MEMBERS OF ITS GOVERNING BODY HARMLESS FROM CLAIMS, DEMANDS, COSTS, DAMAGES AND CAUSES OF ACTION ARISING DIRECTLY FROM THE NEGLIGENCE OF TELEVON OR ITS EMPLOYEES IN FURNISHING SERVICES UNDER THIS AGREEMENT.

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If either party shall be wholly or partially prevented from the performance of any contractual obligation or duty by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed.

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Televon does not boycott Israel and will not do so during the Term of this Agreement.

XIII. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed by both parties hereto that the Client is contracting with Televon as an independent contractor. Nothing in this Agreement is intended to create an employer/employee relationship, or a partnership, joint venture or joint enterprise between the parties.

XIV. NOTICE

1) All notices given in connection with this Agreement must be in writing.

2) Except as expressly provided in Section XVI with regard to notice of default, notice may be sent by any commercially reasonable method, including by email, hand delivery, facsimile, and U.S. mail. Notices sent by hand delivery through a national courier service will be deemed delivered when delivery has been signed for as evidenced by the courier's records. Notices sent by certified mail, return receipt requested, will be deemed delivered, whether or not actually received, when deposited in the U.S. mail, if properly addressed to the receiving party, with copy of the notice sent concurrently by email. Notice given in any other manner will be deemed delivered when and if actually received.

3) Either party may change its address for notice by giving the other party notice of the change in the manner provided for notice in this Section. The requirement for the use of the new address will go into effect 14 days after the notice is delivered or deemed delivered.

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Client: City of Brownsville
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Brownville, TX 78520

Attn.: Roxanna Moreno
Email: roxanna.moreno@cob.us
Phone: 956-548-1055 Ext 2134

Televon:
1624 Market St.
#202-91418
Denver, CO 80202

Attn: Michael Breier, President & CEO
Email: mbreier@televon.com
Phone: 724-325-1660
XV. DEFAULT

The occurrence of any of the following events shall constitute a Default by the Client of the terms of this Agreement:

1) Any payment due from Client is delinquent for more than forty-five (45) days (provided that interest will accrue on any payment not made within 30 days after it is due, as provided by Chapter 2251 of the Texas Government Code);

2) Client purports to rescind authorization for Televon to access Client’s technology accounts, disables or denies online access, or fails to provide copies of invoices or other Information required by Televon for the monthly monitoring of account activity in violation of the terms of this Agreement;

3) Client becomes insolvent, a Receiver is appointed for the Client, or a voluntary or involuntary petition in bankruptcy is filed by or against the Client; or

4) Client violates any other provision of this Agreement.

XVI. ADDITIONAL PROVISIONS REGARDING DEFAULT

1) Notice of Default. Written notice of Default shall be provided via U.S. Postal Service Certified Mail, Return Receipt Requested, to the address for notice described above. Notice of default shall be deemed delivered three (3) days after deposit in the U.S. mail, whether or not actually received.

2) Cure of Default. Client shall have 15 days after delivery or deemed delivery of written notice of Default to cure said default.

3) Remedies for Default.

   a) Televon Default. If Televon is in material default under this Agreement, and does not cure the default within the cure period, Client will have the right to terminate this Agreement as its sole and exclusive remedy.

   b) Client Default. If Client is in default under this Agreement and does not cure the default within the cure period, Televon will have (i) all rights and remedies provided by this Agreement and at law or equity, (ii) the right to terminate this Agreement, and (iii) the right to accelerate payments as provided in c) below. All such rights are cumulative and not exclusive.

   c) Acceleration. If Client fails to cure a default under this Agreement within the cure period, Televon may terminate this Agreement and notify Client that the remaining fees payable under this Agreement will be estimated for the remainder of the 24 month billing period during which fees will be assessed (as described in Section III) using the most recent Supplier invoice data available, and the total amount of the remaining fees shall be immediately due and payable in full. The payments to be accelerated will include any fees based on estimated savings as described in Section V.

4. Mediation. The parties agree to mediate any dispute arising in connection with this Agreement in good faith, prior to filing suit.

5. Attorney’s Fees. If suit is filed to enforce rights under this Agreement, the party prevailing in the litigation will be entitled to its reasonable attorney’s fees and court costs.

XVII. JURISDICTION

This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

XVIII. VENUE

The parties agree that venue for any dispute arising under this Agreement shall be in courts of competent jurisdiction in Cameron County, Texas.
XIX. CONFIDENTIALITY OF INFORMATION AND SECURITY

a) Client will notify Televon of any information that Client considers confidential. Televon shall keep such information confidential to the extent required by law and will comply fully with the laws and regulations of the State of Texas, or any applicable federal law.

b) Televon will notify Client of any information that Televon deems confidential or proprietary, and Client will keep such information confidential and will not provide the information to others without Televon’s written consent, unless Client is required to disclose such information by court order or by a decision by the Texas Attorney General after request for a decision is made by the Client.

XX. INTEGRATION, MODIFICATIONS, AND AMENDMENTS

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the parties concerning the subject matter. This Agreement may not be amended, nor shall any waiver, modification, consent or discharge be effective, except by a written instrument executed by the parties hereto.

XXI. SEVERABILITY

In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, then to the extent that doing so does not negate the benefit of the bargain between the parties, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement, and the Agreement shall be interpreted or reformed to accomplish as closely as possible the original intent of the parties, but in a manner that is not void, invalid or unenforceable. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

XXII. AUTHORITY

Each person signing below on behalf of a party to this Agreement represents that the Agreement has been duly authorized by that party, and the signatory is duly authorized to sign this Agreement on behalf of that party.

Client: City of Brownsville

By

Noel Bernal

Name

City Manager

Title

Date

Telefon:

By

Michael Breier

Name

President & CEO

Title

Date

"Approved as to Form and Legality
This 28th day of May 2020
Title
Office of the Brownsville City Attorney"
Schedule A: Services to be Provided

Televon will provide the following to the Client:

1) Review the Client’s technology service billing to ensure the Client is obtaining accurate pricing, including taxes (both exempt and non-exempt);

2) Provide a comparison of rates being offered in the area and/or to local governments/companies of similar size;

3) Ensure the Client is receiving all applicable government discounts; ensure that all active lines being billed are for active Client employees;

4) Review the services being provided to the Client to ensure the Client is on the most advantageous plan based on usage;

5) Continuously identify new promotional offers which the Client could utilize;

6) Active management of Client service accounts to ensure continued optimization;

7) Continuously evaluate no-usage accounts, devices and services;

8) Bill error identification and resolution of such errors on the Client’s behalf;

9) Monthly proactive overage protection analysis.

10) Help desk services that may include, but are not limited to:
    - Add or delete devices;
    - Change plans on existing devices;
    - Order new hardware and accessories;
    - Open and manage trouble tickets with the provider;
    - Add account users; and,
    - Change passwords.

11) Assistance with determining Client’s Projected Technology Costs for budgeting and appropriation purposes