



**CITY OF HUTCHINS
CITY COUNCIL MEETING
AGENDA**

**Monday, October 21, 2024 at 6:30 PM
Hutchins Community Center, 500 W. Hickman St., Hutchins**

Pursuant to Section 551 of the Texas Government Code, notice is hereby given of a Regular Meeting of the Hutchins City Council to be held on Monday, October 21, 2024 at 6:30 p.m. located at Hutchins Community Center, 500 W. Hickman St., Hutchins, at which time the following items will be discussed and considered.

City Council Members

Mayor Mario Vasquez
Mayor Pro Tem Steve Nichols
Councilmember Brenda Campbell
Councilmember Dominic Didehbani
Councilmember Raymond Elmore
Councilmember Demarcus Odom

A. CALL TO ORDER AND ANNOUNCE A QUORUM PRESENT

1. Roll Call by Mayor and announce a quorum.

B. INVOCATION AND PLEDGE OF ALLEGIANCE

- C. CITIZEN COMMENTS** - *This agenda item provides an opportunity for citizens to address the City Council on any matter that is not posted on the agenda. Anyone wishing to address the City Council should complete a Citizen Comments Form and submit it to the City Secretary prior to the start of the City Council meeting. There is a three (3) minute time limit for each citizen to speak. However, in accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decision at this time.*

D. PRESENTATIONS

2. Annual Financial Audit Report Presented by: Louis Breedlove, Brooks Watson CPA
3. Proclamation in recognition of Municipal Court Week

- E. REGULAR AGENDA** - *As authorized by Section 551.071 of the Texas Government Code, the City Council reserves the right to convene in Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.*

4. Discuss and consider RESOLUTION R2024-10-1217 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE ADVANCED FUNDING AGREEMENT (AFA) WITH TXDOT FOR TXDOT GREEN RIBBON PROJECT LANDSCAPING IMPROVEMENT OF I-45 CITY OF HUTCHINS BEAUTIFICATION PROJECT. Presented by: Mamun Yusuf, Director of Public Works

- [5.](#) Discuss and consider Resolution R2024-10-1218 OF THE CITY OF HUTCHINS, TEXAS, AUTHORIZING THE EXECUTION OF A CONGREGATE MEALS AGREEMENT WITH THE VISITING NURSES ASSOCIATION OF TEXAS FOR THE TIME PERIOD OF OCTOBER 1, 2024, THROUGH SEPTEMBER 30, 2025; APPROVING A PRICE PER MEAL INCREASE; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by Wanda Randle
- [6.](#) Discuss and consider Resolution R2024-10-1219 OF THE CITY OF HUTCHINS, TEXAS, AUTHORIZING THE EXECUTION OF A CONGREGATE MEALS AGREEMENT WITH THE CHOCOLATE MINT FOUNDATION OF TEXAS FOR THE TIME PERIOD OF OCTOBER 1, 2024, THROUGH SEPTEMBER 30, 2025; APPROVING A PRICE PER MEAL INCREASE; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by Wanda Randle
- [7.](#) Discuss and consider Resolution R2024-10-1220 OF THE CITY OF HUTCHINS, TEXAS, RATIFYING THE EXECUTION OF A TITLE III FEDERAL SERVICE AGREEMENT WITH THE DALLAS AREA AGENCY ON AGING FOR THE TIME PERIOD OF OCTOBER 1, 2024, THROUGH SEPTEMBER 30, 2024.
- [8.](#) Discuss and consider a request for part-time/temporary support staff in Utility Billing. Presented by Maria Joyner, Director of Finance

F. ITEMS OF COMMUNITY INTEREST

9. City Council Meeting, Monday, November 4, 2024 at 6:30 p.m. Hutchins Community Center, 500 W. Hickman St., Hutchins

Parks and Recreation Board Meeting, Tuesday, November 5, 2024 at 6:30 p.m. Hutchins Community Center, 500 W. Hickman St., Hutchins.

Keep Hutchins Beautiful Board Meeting, Tuesday, November 11, 2024 at 6:00 p.m., City Hall Council Chamber, 321 N. Main St., Hutchins.

Atwell Public Library Board Meeting, Tuesday, November 19, 2024 at 6:30 p.m. City Hall Council Chamber, 321 N. Main St., Hutchins.

Planning and Zoning Commission Meeting, Thursday, November 21, 2024, at 6:00 p.m. City Hall Council Chamber, 321 N. Main St., Hutchins

Early Voting By Personal Appearance: Hutchins City Hall – Council Chamber, 321 N. Main St., or at any of the Dallas County Elections early voting branch polling places listed on their website at www.dallascountyvotes.org.

Monday-Friday, October 21 – 25, 2024, from 8:00 a.m. to 5:00 p.m.

Saturday, October 26, 2024, from 7:00 a.m. to 7:00 p.m.

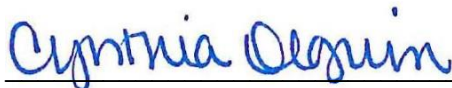
Sunday, October 27, 2024, from 12:00 p.m. to 6:00 p.m.

Monday-Thursday, October 28th – November 1st, 2024, from 7:00 a.m. to 7:00 p.m.

G. ADJOURN

CERTIFICATION

I certify that a copy of the October 21, 2024, agenda of items to be considered by the Hutchins City Council was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website www.cityofhutchins.org, in accordance with Chapter 551 of the Texas Government Code. Posted on Friday, October 18, 2024 before 6:30 p.m.



Cynthia Olguin
City Secretary



ACCESSIBILITY STATEMENT

The meeting location is wheelchair accessible from the front door. Request for special services must be received at least 48 hours in advance of scheduled meeting. For assistance, please call the office of the City Secretary at 972-225-6121 or email the City Secretary at colguin@cityofhutchins.org



STAFF REPORT

MEETING DATE:	October 21, 2024
MEETING TYPE:	City Council
SUBMITTED BY:	Maria Joyner
AGENDA CAPTION:	Annual Financial Audit Report Presented by: Louis Breedlove, Brooks Watson CPA

Background Information

The Year-End 2023 Annual Financial Audit presentation summarizes the city's financial health clearly and concisely. The presentation emphasizes the significance of transparency, accountability, and informed decision-making, all essential for the entity's and its stakeholders' betterment. In addition, the City Administration has carefully examined the audit report, financial statements, and management letter. At the same time, staff members have addressed any concerns the auditors may have had regarding internal controls or other issues mentioned in current and previous management letters.

Budget Implications

N/A

Legal Review

N/A

Staff Recommendation

No action is required.

Supporting Documentation and Attachments

Supporting documentation will be provided by Brooks Watson CPA during the meeting.

PROCLAMATION
City of Hutchins
IN RECOGNITION OF MUNICIPAL COURTS WEEK

RECOGNIZING THE IMPORTANCE OF MUNICIPAL COURTS, THE RULE OF LAW, AND THE FAIR AND IMPARTIAL ADMINISTRATION OF JUSTICE

WHEREAS, municipal courts play a significant role in preserving public safety and promoting quality of life in Texas;

WHEREAS, more people come in contact with municipal courts than all other Texas courts combined and public impression of the Texas judicial system is largely dependent upon the public's experience in municipal court;

WHEREAS, state law authorizes a municipality to either appoint or elect a municipal judge for a term of office, the Hutchins Municipal Court is a state court and its judges are members of the state judiciary;

WHEREAS, the procedures for the Hutchins Municipal Court operations are set forth in the Texas Code of Criminal Procedure and other laws of the State of Texas;

WHEREAS, the City of Hutchins is committed to the notion that our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us and that judges and court personnel should comply with the law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

WHEREAS, the City of Hutchins Municipal Judges are not policy makers for the City of Hutchins but are bound by the law and the Canons of Judicial Conduct and are required to make decisions independent of the governing body of the City Council, city officials, and employees;

WHEREAS, the City Council recognizes that the Constitution and laws of the State of Texas contain procedural safeguards in criminal cases for all defendants, including indigent defendants, and supports the City of Hutchins Municipal Court in complying with such legal requirements.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS THAT THE WEEK OF NOVEMBER 4, 2024 IS HEREBY RECOGNIZED AS MUNICIPAL COURTS WEEK IN RECOGNITION OF THE FAIR AND IMPARTIAL JUSTICE OFFERED TO OUR CITIZENS BY THE MUNICIPAL COURT OF HUTCHINS.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Hutchins to be affixed this 21st day of October 2024.

Mario Vasquez, Mayor



STAFF REPORT

MEETING DATE:	October 21, 2024
MEETING TYPE:	City Council
SUBMITTED BY:	Mamun Yusuf
AGENDA CAPTION:	Discuss and consider RESOLUTION R2024-10-1217 OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE ADVANCED FUNDING AGREEMENT (AFA) WITH TXDOT FOR TXDOT GREEN RIBBON PROJECT LANDSCAPING IMPROVEMENT OF I-45 CITY OF HUTCHINS BEAUTIFICATION PROJECT. Presented by: Mamun Yusuf, Director of Public Works

Background Information

City of Hutchins has been awarded TXDOT Green Ribbon Program Project funds in the not to exceed amount of \$266,007 for landscaping improvement on IH-45 from W. Palestine to E. Dowdy Ferry Road.

Budget Implications

\$266,007.00

Operational Impact

N/A

Legal Review

N/A

Staff Recommendation

Staff recommends approving resolution R2024-10-1217

Supporting Documentation and Attachments



4777 E. US. HWY 80 | Mesquite, Texas 75150

214.320.6200

txdot.gov

09 May 2024

Robert McWayne
Director of Public Works
321 N. Main Street
Hutchins, Tx 75141
Dallas County

Green Ribbon Funding FY 2025

Dear Robert McWayne,

The Texas Department of Transportation (TxDOT) Dallas District has approved Green Ribbon Program funding for the **City of Hutchins** proposed landscape improvements on **IH 45 and E. Palestine Street**. The funds will be available in the 2025 fiscal year (September 2024 through August 2025) in the amount of **\$266,007 which includes 5% Construction Management for LG**. Direct State Cost will not be charged, but costs over the cumulative projects award for bid items or for items not covered under Green Ribbon Program funding, will be the City's responsibility.

This selection is preliminary, pending a signed Advance Funding Agreement, Landscape Maintenance Agreement, and city acknowledgement to Texas Department of Transportation (TxDOT) requirements for Green Ribbon Funded projects.

The design has been conditionally approved. Final design approval will be determined upon verification that all design follows TxDOT's Roadway Design Standard and Green Ribbon Program criteria.

If you should have any questions, please contact Anthony Diep at Anthony.Diep@txdot.gov or (214) 320-6205

Respectfully submitted,

DocuSigned by:

A handwritten signature in black ink that reads "JEFFREY BUSH".

345B765EB03F406...

Jeff Bush, P.E

Director of Operations

TxDOT:				Federal Highway Administration:	
CCSJ #	0092-02-149	AFA ID	Z00010785	CFDA No.	20.205
AFA CSJs	0092-02-149			CFDA Title	Highway Planning and Construction
District #	18	Code Chart 64#	20200		
Project Name	IH 45 from W of Palestine St. to E of Dowdy Ferry Rd.			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT For Green Ribbon Program On-System

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **City of Hutchins**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

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 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 Texas Transportation Commission passed Minute Order Number **116522** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **landscape development**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **21st day of October, 2024**, which is attached to and made a part of this Agreement as Attachment C, Resolution, Ordinance, or Commissioners Court Order (Attachment C). A map showing the Project location appears in Attachment A, Location Map Showing Project (Attachment A), which is attached to and made a part of this Agreement.

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Project Name	IH 45 from W of Palestine St. to E of Dowdy Ferry Rd.			AFA Not Used For Research & Development	

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed 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:

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

An asterisk next to the party responsible for specific work in the above table indicates that the associated specific work is not anticipated as part of the Project and is therefore not included in the budget; however, the party indicated will be responsible for that specific work if that work is not the subject of another agreement and the State determines that the specific work has become necessary to successful completion of the Project.

2. Period of the 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 the Project is completed or unless terminated as provided below.

3. Scope of Work

The scope of work for the Project consists of the construction of Landscape activities to include planting and irrigation on IH 45 from West of Palestine to East of Dowdy Ferry Road, as shown in Attachment A, Location Map.

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment B, Project Budget (Attachment B) which is attached to and made a part of this Agreement.

- A. If the 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

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Transportation” and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment B shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. 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 B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government.
- F. The budget in Attachment B 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.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State’s written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to

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- 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. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment B. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the 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 the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
- Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as

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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.

- R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is 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; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

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

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any

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cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

9. Environmental Assessment and Mitigation

Development of a transportation 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. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the 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

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

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In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

12. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the 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. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, 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 635, Subpart B.

13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was

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on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

14. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

15. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the 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 the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

16. Notices

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:

Local Government:	State:
City of Hutchins ATTN: Director of Public Works 321 N. Main Street Hutchins, TX 75141	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

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.

17. Legal Construction

If 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

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

TxDOT:				Federal Highway Administration:	
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District #	18	Code Chart 64#	20200		
Project Name	IH 45 from W of Palestine St. to E of Dowdy Ferry Rd.			AFA Not Used For Research & Development	

19. Ownership of Documents

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

20. Compliance with Laws

The parties to this Agreement 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, the Local Government shall furnish the State with satisfactory proof of this compliance.

21. 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.

22. Cost Principles

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

23. 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.

24. 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.

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25. 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

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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.

26. 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:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- 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).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- 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.

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- 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.).

27. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the 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. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The 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. The 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 the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not*

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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.

28. Debarment Certifications

If federal funds are used, 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, the 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 subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the 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.

29. Lobbying Certification

If federal funds are used, 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 the 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 shall be included in the award documents for all sub-awards at all tiers (including subcontracts,

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subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. 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.

30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- 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. The Local Government agrees that it shall:
 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 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://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform;> and
 3. Report the total compensation and names of its top five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 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 by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance

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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 the Project remains open for federal funding expenditures, the 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 the Project has been formally closed out and no charges have been incurred within the current fiscal year.

TxDOT:				Federal Highway Administration:		Section E, Item4.
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32. 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.

THE STATE OF TEXAS Signature Kenneth Stewart Typed or Printed Name Director of Contract Services Typed or Printed Title Date	THE LOCAL GOVERNMENT Signature Mamun Yusuf Typed or Printed Name Director of Public Works Typed or Printed Title Date
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TxDOT:				Federal Highway Administration:		Section E, Item4.
CCSJ #	0092-02-149	AFA ID	Z00010785	CFDA No.	20.205	
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ATTACHMENT A

LOCATION MAP SHOWING PROJECT



TxDOT:				Federal Highway Administration:		Section E, Item4.
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ATTACHMENT B PROJECT BUDGET

Construction cost allocation will be based on 80% Federal funding and 20% State funding until the Federal and State funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of project cost and overruns.

DESCRIPTION	TOTAL ESTIMATED COST	FEDERAL PARTICIPATION		STATE PARTICIPATION		LOCAL PARTICIPATION	
		%	Cost	%	Cost		Cost
Construction (by Local)	\$266,007.00	80%	\$212,805.60	20%	\$53,201.40	0%	\$0
Subtotal	\$266,007.00		\$212,805.60		\$53,201.40		\$0
Direct State Cost – Env	\$3,325.09	0%	\$0	100%	\$3,325.09	0%	\$0
Direct State Cost – Eng.	\$3,325.09	0%	\$0	100%	\$3,325.09	0%	\$0
Direct State Cost – ROW	\$3,325.09	0%	\$0	100%	\$3,325.09	0%	\$0
Direct State Cost – UTL	\$3,325.09	0%	\$0	100%	\$3,325.09	0%	\$0
Direct State Cost – CNST	\$13,300.36	0%	\$0	100%	\$13,300.36	0%	\$0
Subtotal	\$26,600.70		\$0		\$26,600.70		\$0
Indirect State Cost – 5.29%	\$14,071.77	0%	\$0	100%	\$14,071.77		\$0
TOTAL	\$306,679.47		\$212,805.60		\$93,873.87		\$0

Initial Payment by the Local Government to the State: \$0.00

Payment by the Local Government to the State before Construction: \$0.00

Estimated total payment by the Local Government to the State: \$0.00

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

**CITY OF HUTCHINS, TEXAS
RESOLUTION NO. R2024-10-1217**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, APPROVING AN ADVANCE FUNDING AGREEMENT (“AFA”) WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR TX DOT GREEN RIBBON PROGRAM PROJECT LANDSCAPING IMPROVEMENTS OF I-45 CITY OF HUTCHINS BEAUTIFICATION PROJECT WHICH CONSISTS OF THE INTERSTATE HIGHWAY 45 FROM W. PALESTINE TO E. DOWDY FERRY ROAD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Texas Department of Transportation's Green Ribbon Program was established to allocate funds for landscaping activities including planting and establishment of trees and plants on the state highway system; and

WHEREAS, TXDOT requires recipients of Green Ribbon Program funds to enter into an AFA prior to distribution of funds; and

WHEREAS, the City of Hutchins has been awarded Green Ribbon Program Project funds for landscaping improvements on IH 45 from W. Palestine to E. Dowdy Ferry Road; and

WHEREAS, the City of Hutchins is authorized to enter into an AFA with TXDOT for the Green Ribbon Program;

WHEREAS, the City Council believes it to be in the best interest of the citizens of Hutchins to approve an AFA with TXDOT for Green Ribbon Project funding for the landscape improvements described above.

WHEREAS, Title 43, Texas Administrative Code, Chapter 11, Green Ribbon Program, allows local governments, by the execution of written agreements, to provide money, property or services for the aesthetic improvements on the state highway system; and

WHEREAS, Rider 15 of House Bill1 of the 86th Legislature, expands the Green Ribbon Project, a public-private partnership initiative, to enhance the appearance of public highways by incorporating in the design and improvement of public highways the planting of trees and shrubs emphasizing natural beauty and greenspace, integrating public art, and highlighting cultural uniqueness of neighborhoods, to other areas of the state; and

WHEREAS, The Texas Transportation Commission passed Minute Order Number 115814 authorizing the State to undertake and complete a highway improvement or other transportation project generally described as landscaping development. The portion of the project work covered by the Agreement is identified in, Scope of Work; and

WHEREAS, all legal and statutory prerequisites for the adoption of this Resolution have been met, including but not limited to the Open Meetings Act; and

WHEREAS, the City of Hutchins City Council deems the adoption of this Resolution to be in the best interests of the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS, THAT:

SECTION 1. All matters stated hereinabove are found to be true and correct and are incorporated herein by reference.

SECTION 2. The City Council approves and authorized entering into the Advance Funding Agreement (AFA) with TxDOT.

SECTION 3. The City Administrator or Mayor of the City of Hutchins, Texas is hereby authorized to execute the Advance Funding Agreement, which is attached hereto and incorporated herein, and to exercise the rights and duties of the City thereunder in order to receive funding through the Green Ribbon Program for landscaping improvements at the intersection of Highway 45 from W. Palestine to E. Dowdy Ferry Road

SECTION 4. This Resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide

DULY PASSED by the City Council of the City of Hutchins, Texas on this 21st day of October 2024.

APPROVED:

Mario Vasquez, Mayor

ATTEST:

Cynthia Olguin, City Secretary



STAFF REPORT

MEETING DATE:	October 21, 2024
MEETING TYPE:	City Council
SUBMITTED BY:	Wanda Randle
AGENDA CAPTION:	Discuss and consider Resolution R2024-10-1218 OF THE CITY OF HUTCHINS, TEXAS, AUTHORIZING THE EXECUTION OF A CONGREGATE MEALS AGREEMENT WITH THE VISITING NURSES ASSOCIATION OF TEXAS FOR THE TIME PERIOD OF OCTOBER 1, 2024, THROUGH SEPTEMBER 30, 2025; APPROVING A PRICE PER MEAL INCREASE; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by Wanda Randle

Background Information

Over the past 20 plus years, the City of Hutchins has offered a Congregate Meal to Dallas County Senior Citizens. The Congregate Meal Program, also known as the Senior Meal Program, is a daily lunch program that ensures a free and nutritious meal for seniors ages 60 and older. The program is sponsored in part by the City of Hutchins and Dallas Area Agency on Aging. Lunch is served Monday - Friday beginning at 11:30 am while food supply lasts or until all eligible participants have received a qualified meal.

VNA Meals is the provider of our hot, nutritious, freshly prepared meals five days a week. These meals contribute to the overall health and well-being of participating seniors, including those with chronic illnesses that are affected by diet, such as diabetes and heart disease, and frail seniors.

VNA is requesting that the City of Hutchins review and consider extending the Agreement that shall become effective on October 1, 2024, and remain in effect through September 30, 2025, unless terminated earlier by the parties.

Budget Implications

The cost per meal effective October 1st, 2024, is \$4.34. The City of Hutchins is reimbursed at a rate of \$12.60 per meal by DAAA Title 3 Federal Funding.

Operational Impact

NA

Legal Review

NA

Staff Recommendation

We recommend moving forward with this agreement

Supporting Documentation and Attachments

VNA Contract

CITY OF HUTCHINS, TEXAS
RESOLUTION NO. R2024-10-1218

A RESOLUTION OF THE CITY OF HUTCHINS, TEXAS, AUTHORIZING THE EXECUTION OF A CONGREGATE MEALS AGREEMENT WITH THE VISITING NURSES ASSOCIATION OF TEXAS FOR THE TIME PERIOD OF OCTOBER 1, 2024 THROUGH SEPTEMBER 30, 2025; APPROVING A PRICE PER MEAL INCREASE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Hutchins, Texas desires to enter into an Interlocal Agreement with Visiting Nurses Association (**VNA**) for Meal Services ("Agreement"); and

WHEREAS, pursuant to said Agreement, VNA will perform, on behalf of the City, congregate meal food preparation; and

WHEREAS, pursuant to said Agreement, VNA the cost per meal will remain **\$4.34** per meal effective **October 1st 2024**; and

WHEREAS, pursuant to said Agreement, VNA will appoint a Certified Dietician to complete all menus on behalf of the City of Hutchins, congregate meal food service; and

WHEREAS, all VNA menus will comply with the Dietary Reference Intakes (DRI) requirements set forth by the Texas Department of Aging and Disability Services. Compliance with the standards will be met through utilizing the Computer Nutrient Analysis Software standards with Competition Hospitality Suite software; and

WHEREAS, the City Council for the City of Hutchins, Texas has reviewed the Interlocal Agreement and has determined it to be in the best interest of the City of Hutchins to enter said Agreement for Congregate Meal Services

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS:

SECTION 1. The City Council authorizes Mayor Vasquez to sign the Congregate Meal Agreement, attached hereto and incorporated as Exhibit A.

SECTION 2. The Agreement is effective from October 1, 2024, through September 30, 2025 unless otherwise stated in the Agreement.

SECTION 3. This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS ON THIS THE 21st DAY OF OCTOBER 2024.

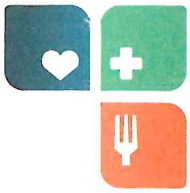
APPROVED:

MARIO VASQUEZ, MAYOR

ATTEST:

CYNTHIA OLGUIN, CITY SECRETARY

EXHIBIT "A"
INTERLOCAL AGREEMENT FOR CONGREGATE MEAL SERVICES AGREEMENT
BETWEEN THE CITY OF HUTCHINS AND VNA FOR THE PERIOD OF OCTOBER 1ST, 2024
THROUGH SEPTEMBER 30TH 2025.



Visiting Nurse Association

Meals on Wheels
Hospice & Palliative Care

Section E, Item5.

RECEIVED

SEP 23 2024

CITY OF HUTCHINS

September 17, 2024

Mario Vasquez, Mayor
City of Hutchins
P.O. Box 500
Hutchins, Texas 75141

Dear Mayor Vasquez,

Enclosed is the Amendment to Congregate Meals Agreement between the City of Hutchins and The Visiting Nurse Association of Texas extending the term from October 1, 2024, through September 30, 2025. These have been executed on behalf of our organization. Please note that the price per meal has been increased from \$4.13 to \$4.34 due to the increase in food costs. It is my understanding that this has been discussed with your staff. If you approve, please sign the enclosed amendment, and email a fully executed amendment to Cecelia Ramirez at cecelia.ramirez@vnatexas.org.

Thank you.

Sincerely,

Katherine Krause
President and CEO

Enclosures

c: (w/o enclosures)
Megan Vick, Director of Production, Distribution & Facilities Management

AMENDMENT TO
CONGREGATE MEALS AGREEMENT

This Amendment is made to the Congregate Meals Agreement (the "Agreement") made between the City of Hutchins, a Texas municipality, (hereinafter referred to as the "City") and The Visiting Nurse Association of Texas (hereinafter referred to as "VNA") effective the 1st day of October 2009.

In consideration of the price per meal being increased to \$4.34 to which the parties hereby agree, and all other terms and conditions of the Agreement continuing in effect, the City and VNA agree to extend the term of the Agreement from October 1, 2024, until and through September 30, 2025.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Agreement on the respective dates set forth below.

FOR: THE VISITING NURSE ASSOCIATION OF TEXAS

BY: Katherine Krause
Signature

Katherine Krause
Printed Name

ITS: President and CEO

DATE: September 17, 2024

FOR: CITY OF HUTCHINS, TEXAS

BY: _____
Signature

Mario Vasquez
Printed Name

ITS: Mayor, City of Hutchins
Title

DATE: _____



STAFF REPORT

MEETING DATE:	October 21, 2024
MEETING TYPE:	City Council
SUBMITTED BY:	Wanda Randle
AGENDA CAPTION:	Discuss and consider Resolution R2024-10-1219 OF THE CITY OF HUTCHINS, TEXAS, AUTHORIZING THE EXECUTION OF A CONGREGATE MEALS AGREEMENT WITH THE CHOCOLATE MINT FOUNDATION OF TEXAS FOR THE TIME PERIOD OF OCTOBER 1, 2024, THROUGH SEPTEMBER 30, 2025; APPROVING A PRICE PER MEAL INCREASE; AND PROVIDING FOR AN EFFECTIVE DATE. Presented by Wanda Randle

Background Information

Over the past 20 plus years, the City of Hutchins has offered a Congregate Meal to Dallas County Senior Citizens. The Congregate Meal Program, also known as the Senior Meal Program, is a daily lunch program that ensures a free and nutritious meal for seniors ages 60 and older. The program is sponsored in part by the City of Hutchins and Dallas Area Agency on Aging. Lunch is served Monday - Friday beginning at 11:30 am while food supply lasts or until all eligible participants have received a qualified meal.

The Mint Foundation ‘ Chocolate Mint” Meals is the provider of our hot, nutritious, freshly prepared meals five days a week. These meals contribute to the overall health and well-being of participating seniors, including those with chronic illnesses that are affected by diet, such as diabetes and heart disease, and frail seniors.

The Mint Foundation is requesting that the City of Hutchins review and consider extending the Agreement that shall become effective on October 1, 2024, and remain in effect through September 30, 2025, unless terminated earlier by the parties.

Budget Implications

The cost per meal effective October 1st, 2024, is 5.75. The City of Hutchins is reimbursed at a rate of \$12.60 per meal by DAAA Title 3 Federal Funding

Operational Impact

NA

Legal Review

NA

Staff Recommendation

We recommend moving forward with this agreement

Supporting Documentation and Attachments

The Mint Foundation Contract

CITY OF HUTCHINS, TEXAS
RESOLUTION NO. R2024-10-1219

A RESOLUTION OF THE CITY OF HUTCHINS, TEXAS, AUTHORIZING THE EXECUTION OF A CONGREGATE MEALS AGREEMENT WITH THE CHOCOLATE MINT FOUNDATION OF TEXAS FOR THE TIME PERIOD OF OCTOBER 1, 2024, THROUGH SEPTEMBER 30, 2025; APPROVING A PRICE PER MEAL INCREASE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Hutchins, Texas desires to enter into an Interlocal Agreement with Visiting Nurses Association (**THE CHOCOLATE MINT FOUNDATION**) for Meal Services ("Agreement"); and

WHEREAS, pursuant to said Agreement, THE CHOCOLATE MINT FOUNDATION will perform, on behalf of the City, congregate meal food preparation; and

WHEREAS, pursuant to said Agreement, THE CHOCOLATE MINT FOUNDATION the cost per meal will remain **\$5.75** per meal effective **October 1st, 2024**; and

WHEREAS, pursuant to said Agreement, THE CHOCOLATE MINT FOUNDATION will appoint a Certified Dietician to complete all menus on behalf of the City of Hutchins, congregate meal food service; and

WHEREAS, all THE CHOCOLATE MINT FOUNDATION menus will comply with the Dietary Reference Intakes (DRI) requirements set forth by the Texas Department of Aging and Disability Services. Compliance with the standards will be met through utilizing the Computer Nutrient Analysis Software standards with Competition Hospitality Suite software; and

WHEREAS, the City Council for the City of Hutchins, Texas has reviewed the Interlocal Agreement and has determined it to be in the best interest of the City of Hutchins to enter said Agreement for Congregate Meal Services

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS:

SECTION 1. The City Council authorizes Mayor Vasquez to sign the Congregate Meal Agreement, attached hereto and incorporated as Exhibit A.

SECTION 2. The Agreement is effective from October 1, 2024, through September 30, 2025 unless otherwise stated in the Agreement.

SECTION 3. This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS ON THIS THE 21TH DAY OF OCTOBER 2024.

APPROVED:

MARIO VASQUEZ, MAYOR

ATTEST:

CYNTHIA OLGUIN, CITY SECRETARY

EXHIBIT "A"

**INTERLOCAL AGREEMENT FOR CONGREGATE MEAL SERVICES AGREEMENT
BETWEEN THE CITY OF HUTCHINS AND The Chocolate Mint Foundation FOR THE
PERIOD OF OCTOBER 1ST, 2024 THROUGH SEPTEMBER 30TH 2025.**

FOOD SERVICE CONTRACT AGREEMENT

This Agreement is made by and between the City of Hutchins, Texas, a Type A general law municipality (hereinafter referred to as the "City") and **The Chocolate Mint Foundation**, (hereinafter referred to as the "Provider") for **Meal Services**, (hereinafter referred to as the "Project"), the City and the Provider hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

THE CONTRACT

The Contract between the City and the Provider, of which this Agreement is a part, consists of the Contract Documents.

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, any other amendments hereto executed by the parties hereafter, together with the following (if any): **None**.

ARTICLE 2: TERM

The contract shall commence on **October 1, 2024** and continue through **September 30, 2025**. Any price increase before the completion of the term, must be justified and documentation submitted. Both parties must be in agreement to any price increases.

ARTICLE 3: PAYMENT

Provider shall be reimbursed \$5.75 per meal delivered. Provider shall be paid per invoice. Payment terms are Net 10 calendar days. Provider shall only bill for the stated number of meals ordered each day plus any additional supplies ordered and transportation cost.

ARTICLE 4: NOTICE

All notices required by this Contract shall be in writing and addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery.

CITY:

City of Hutchins
City Manager
321 N. Main St
Hutchins, TX 75141

PROVIDER:

The Chocolate Mint Foundation
Jammy Green
1604 Falcon Drive
Desoto, TX 75115

ARTICLE 5: TERMINATION

Termination Without Cause – Either party may terminate this contract at any time upon thirty (30) days prior written notice to the other of the intention to terminate this Contract.

Termination With Cause – In the event either party breaches a material provision of this contract, the non-breaching party shall give the other party notice of such cause. In the event the cause is not remedied within ten (10) days the other party shall have the right to terminate the contract upon expiration of the remedy period.

ARTICLE 6: SCOPE OF SERVICE

General

Provider shall furnish meals for the City of Hutchins. The Provider shall maintain food preparation facilities in a sanitary condition at all times, employ and train food service employees, use standard food cost control methods, maintaining the operation at a high standard, do all buying and record-keeping, including payrolls. Provider agrees to furnish all labor, equipment supplies and foodstuffs, except as provided herein.

Food preparation facilities must be properly registered and inspected. Copies of the inspection reports must be forwarded to the City within three (3) days of receipt. The provider must maintain recipe files for all menu items for inspection by Dallas Area Agency on Aging (DAAA) or by either city.

All statutes, guidelines, laws, standards, and regulations regarding food service and senior meals must be followed. This includes current and any future changes.

Provider agrees that all employees must have a valid food handler's certificate (or that there will be on-site a Food Service Manager) from the Health Department and that all costs associated with obtaining such certificate shall be borne by Vendor.

Locations

All meals shall be prepared and delivered by Provider to the site location listed below.

City of Hutchins 500 W. Hickman Street, Hutchins, TX 75141

Meal Schedule

City requests 35 meals daily, Monday-Friday. Please notify provider 48 hours in advance if the number of meals increase.

Food must be delivered by 10:30 AM and no earlier than 10:00 AM.

Food must be delivered in foil pans.

Lunch is provided and served daily at 12:00 PM, with the exception of designated holidays.

Holidays include:	New Year's Day	Labor Day
	Martin Luther King Birthday	Thanksgiving (Thursday/Friday)
	Good Friday	Christmas Day
	Memorial Day	July 4th

Floating 1 – Day (To be designated by City w/ 30 days notice)

Food Quality Standards

Food used in the preparation of meals shall meet the following minimum standards.

1. Canned fruits and vegetables shall be USDA Grade A or Fancy.
2. Fresh fruit and vegetables shall be U.S. Fancy, U.S. No. 1 or better.
3. Eggs and dairy products shall be USDA Grade A or better. Low fat milk shall be used and delivered in individual ½ pint servings. Shelf Stable milk acceptable.
4. Pork shall be No. 1 and tender with a minimum of fat.
5. Poultry shall be USDA Grade A. Serving portion shall provide 2.5 oz. cooked meat. If chicken quarters are served the pan must contain 50% white meat and 50% dark meat.
6. Ground beef shall be USDA Grade Utility or better with a maximum fat content of 20% and a maximum textured vegetable protein content of 7%. Roast beef shall have no more than 7% filler.
7. Menu options will excluded Shellfish (Lobster, Shrimp, Crab) due to documented allergies amongst the City of Hutchins Senior participants.
8. Dessert options not cooked and prepared by the provider will have a best by or expiration date clearly attached.

9. No salt or pepper shall be added to the food following its preparation. City shall provide iodized salt and black pepper for seasoning during food consumption.
10. All foods shall be prepared from Standardized Recipes to ensure consistent quality.
11. Provider shall preserve the nutritional value and safety of food when purchasing, receiving, preparing and delivering to the designated sites.
12. Provider shall ensure that meals are delivered to the meal sites at proper temperature: hot food shall be 140 degrees Fahrenheit or higher, cold food at 40 degrees Fahrenheit or lower and frozen food is to be at 32 degrees Fahrenheit or lower. Provider shall use proper transport equipment to maintain the necessary holding temperatures.
13. Meals shall consist of the following: 2.5 oz. cooked serving of protein obtained from the entrée, 2 1/2 cup serving of vegetables and or fruits, 1 serving of bread, 1 serving of margarine, and 1 1/2 pint serving of milk.
14. One-half cup serving of vegetable or fruit may be mixed with entrée or as part of the soup or salad.
15. Whole grain or enriched bread is an alternate for bread.
16. Provider shall provide condiments and "extras" suitable for elderly consumers.
17. Provider shall ensure that the overall appearance of the meals must meet or exceed commercial food service standards, including the food's color, odor and taste. Product specification of new menu items shall accompany the menu packet for review and approval by City.
18. The following are prohibited:
 - a. Dried beans, peas, or lentils in a half-cup serving or in combination with other foods, should be counted either as a meat alternative for entree or as a vegetable but not both.
 - b. Juice or fruit used as a desert, may not be counted toward the two servings of vegetable/fruit.
 - c. Juice is not acceptable as a desert.
 - d. Gelatin deserts must contain fruit. Fruits and vegetable in a gelatin may be counted only as 1/4 cup of the fruit/vegetable requirements.
 - e. No meal will include more than three high starch items.
 - f. Deviations from the standard menu pattern that are nutritionally adequate may be planned as necessary and appropriate, provided that there is the equivalent of standard serving sizes of at least five different food items and as long as RDA requirements are met. Such deviations will be allowed as follows:
 - i. Ethnic, cultural, and regional menus may deviate from the standard menu pattern once per week.
 - ii. Shelf stable emergency meals may deviate from the standard menu pattern as necessary during an emergency.
 - iii. Holiday meals may deviate from the standard menu pattern as necessary.

Inspection

City may inspect Provider's food service facilities, at any time, to determine compliance with this contract.

Menu

1. All meals should meet or exceed the one-third daily-recommended allowance for people age 60 or older.
2. The City will review and approve meal cycle.
3. All meals shall be served as planned. When substitutions are unavoidable, a written request shall be submitted to City for approval prior to implementation.
4. Menus shall be jointly reviewed and agreed upon monthly by City and Provider.

Reports

Provider shall submit a quarterly self-assessment to City. The self-assessment report shall address the following: consumer satisfaction, condition of transporting equipment, meal shortages, and deficiencies from previous reports, temperature or quality refusals of food and any other information requested by City.

Special Requests

City shall give Provider 48-hour notice when City desires a box lunch or (5) days for a holiday gift pack.

Provider Employees

Delivery staff must be in uniform or wearing company identification. Vehicles must be clearly marked.

Additional Contract Requirements

The provider must meet the broad spectrum of regulations and statutes appropriate to the conduct of the Nutrition Program for the Elderly as promulgated by the United States Department of Health and Human Services and administered by the Administration on Aging, the Texas Department of Aging and Disability Services and the Dallas Area Agency on Aging. Such items include Public Law 100-175 and Title III C-i of the Older Americans Act Amendments of 1987 as identified in the Rules and Regulations published in the Federal Register March 29, 1988 and signed June, 1988, by the Secretary of Health and Human Services, Office of Human Development Services. Copies of these may be obtained from the U.S. Government Printing Office or its local subsidiaries and branches.

The provider will provide a designated manager who will devote the necessary time and effort required to ensure the execution and maintenance of the contract. The designated manager and at least one employee responsible for meal production must be a Certified Food Service Manager **(or equivalent outside the State of Texas)**.

The provider will select, purchase, and prepare food following menus approved by **DAAA**.

All meals must be of the highest possible quality and appealing in appearance and taste.

The provider will assure that food-handling **(cooking & storage)** methods will maintain the quality and safety of foods.

The provider must meet local and State Health Regulations for food service sanitation in places where food is to be prepared. All kitchens where food is to be prepared will be inspected by the State Department of Health or County Health Departments. All planning, preparation, handling, and serving of meals must comply with applicable Texas Food Establishment Rules **(or equivalent outside the State of Texas)** and applicable requirements of Nutrition Service Requirements 84.5. This includes the maintenance by the provider of all applicable inspections and licenses for vendor facilities, equipment and personnel.

The provider will be responsible for all fees and licenses required to operate under this contract for the full duration of this contract.

The provider is required to keep full and accurate sales and procurement records related to purchases covered by the contract. All such records shall be maintained for a minimum of three (3) years after the end of the federal fiscal year to which they pertain. The vendor shall agree that authorized auditors and officials, upon request, shall have access to all such records for audit and review at a reasonable time and place, and may conduct on-site reviews of the food service, transportation, and handling operations.

The provider must use USDA cash for the purpose of purchasing U.S. Agricultural commodities and other foods of U.S. origin.

Daily Nutrition Requirements

Each meal served will contain at least one-third (1/3) of the current Dietary Reference Intakes for persons 60 years and older in accordance with the most recent edition of the Dietary Reference Intakes by the Food and Nutrition Board of the National Academy of Sciences-National Research Council.

Maintenance of optimal nutritional status through menu planning will be reflected by menus high in fiber and moderate in fat (**not to exceed 30 grams whenever feasible**), salt and simple sugar.

Dietary Nutrition Documentation

Documentation of nutritional adequacy must reflect, at a minimum, adequate provision of the following six nutrients: protein, calcium, iron, thiamin, vitamin A, and Vitamin C. Documentation must show that each meal provides at least 600 and not more than 1,000 calories (**the recommended level being between 750 and 850 calories**).

Methods of nutrient analysis documentation may be any one or a combination of the following:

- A computer (**or manual**) analysis based upon USDA Handbook Number 456, and Number 8 or Number 72.
- A nutrient standard method.
- A checklist methods or food group methods approved by the Texas Department of Aging and Disability Services.

All raw food used in the preparation of meals should be of the highest possible quality. All food will be prepared from standardized recipes, without added salt. Tested quality recipes, adjusted to yield the number of servings needed must be used to assure consistent and desirable quality and quantity. The provider will maintain recipe files for all menu items for inspection upon request by **DAAA**.

Daily Cleaning and Illness Reporting

Daily cleaning and sanitizing of serving utensils will be the responsibility of nutrition site personnel.

The provider will promptly initiate investigation by local health authorities of complaints involving two or more persons with symptoms of food borne illness within a similar time frame after consuming food at a nutrition site.

DAAA must be notified by the provider immediately of reports of food borne illness. The provider will promptly investigate reports of food adulterated by any foreign object. DAAA must be notified by the provider immediately of reports of adulterated food. The provider will ensure that site volunteers and staff who serve food receive training covering food

handling and sanitation practices. The provider must maintain a copy of the sign-in sheet for training.

ARTICLE 7: INDEMNITY

CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY PROVIDER FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE PROVIDER, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF PROVIDER UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF CITY, WITHOUT, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY PROVIDER TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF THE PROVIDER'S AS WELL AS THE CITY'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

ARTICLE 8: INSURANCE REQUIREMENTS

The Provider will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the City for its own benefit, including self-insurance. Provider shall provide City with proof of Workers Compensation and Employer's Liability insurance of at least one-hundred thousand dollars (\$100,000.00) per each accident or occurrence, as well as property damage insurance in the amount of three-hundred thousand dollars (\$300,000.00). Provider agrees the City will be named as an additional insured party on all insurance, be provided with a waived subrogation and certificates of insurance evidencing the insurance required in this Article. Provider shall not be liable for any losses except that which Provider would be legally liable and insurance shall not cover liability in connection with or arising out of the wrongful or negligent acts/omissions of the City. Both City and Provider waive rights of recovery from each other for property damage or loss of use thereof, however occurring. This waiver does not apply to bodily injury or death claims.

ARTICLE 9: MISCELLANEOUS

AMENDMENT

This Agreement may only be amended by the written mutual agreement of both parties.

REPRESENTATIONS AND WARRANTIES

Existence – Provider is a corporation and duly organized, validly existing, and in good standing under the laws of the State of Texas and is qualified to carry on its business in the State of Texas.

GOVERNING LAW AND VENUE

That this agreement is made subject to all applicable statutes, ordinances, and constitutional provisions in the State of Texas, and will be effective on the date of execution by the agreeing parties. Any litigation concerning the subject matter of this Agreement will be brought in a court of proper jurisdiction in Dallas County, Texas.

SEVERABILITY

If any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Contract will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Contract is determined to be invalid or

unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Contract and be deemed to be validated and enforceable.

INDEPENDENT CONTRACTOR

Each party to this Contract, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Provider is acting independently of its own free will, without direction from City.

NO WAIVER

The failure or delay of any party to enforce at any time or any period of time any of the provisions of this Contract shall not constitute a present or future waiver of such provisions nor the right of either party to enforce each and every provision. Furthermore, no term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of or excuse for any other, different or subsequent breach.

Executed in single or multiple originals, this 19th day of September, 2024

CITY OF HUTCHINS

The Chocolate Mint Foundation

Name of City Manager, City Manager

Jammy Green

ATTEST:

9/19/2024

Name of City Secretary, City Secretary

1604 Falcon Drive Desoto, TX 75115



STAFF REPORT

MEETING DATE:	October 21, 2024
MEETING TYPE:	City Council
SUBMITTED BY:	Wanda Randle
AGENDA CAPTION:	Discuss and consider Resolution R2024-10-1220 OF THE CITY OF HUTCHINS, TEXAS, RATIFYING THE EXECUTION OF A TITLE III FEDERAL SERVICE AGREEMENT WITH THE DALLAS AREA AGENCY ON AGING FOR THE TIME PERIOD OF OCTOBER 1, 2024, THROUGH SEPTEMBER 30, 2024.

Background Information

The Dallas Area Agency on Aging (DAAA), a project of the Community Council of Greater Dallas (CCGD), is the agency designated by the Texas Health and Human Services (HHS) as responsible for planning and developing a system of service delivery for persons 60 years of age and older residing in Dallas County. DAAA annually subcontracts federal and state funds to several local governments, private non-profit and private for-profit organizations to provide nutrition and social services to older individuals and their caregivers.

The City of Hutchins has assumed the role of subcontractor for over 20 years and currently receives funding to support the below services offered via the Hutchins Senior Center:

- Congregate Meals
- Home-delivered Meals
 - Instruction & Training
 - Mental Health Services

Service Recipients: Programs must be open to all person’s 60+. There is no means testing for participant eligibility. Membership in any specific private organization, group, association, or fraternal organization cannot be required for participation in services.

Although providers may not charge fees to participants, they are required to develop policies and procedures to elicit contributions from participants. Participants cannot be denied service based on unwillingness/inability to contribute to the cost of their services. “Program Income,” as these client contributions are called, must be budgeted, tracked, and used to expand the program. The provision of all services must comply with the Civil Rights Act of 1964 and with Section 504 of the Rehabilitation Act of 1973 as amended, related legislation, and the Americans with Disabilities Act.

DAAA is requesting that the City of Hutchins review and consider extending the Agreement that shall become effective on October 1, 2024, and remain in effect through September 30, 2025, unless terminated earlier by the parties.

Budget Implications

DAAA will pay the City of Hutchins on a unit rate basis for services rendered at a unit rate of \$12.60 for Title III units. Title III compensation for the provision of services shall not exceed \$113,652

Operational Impact

NA

Legal Review

NA

Staff Recommendation

Staff recommends approval of resolution.

Supporting Documentation and Attachments

1. R2024-10-1220 TITLE III Federal Funding Agreement FY25
2. DAAA Agreement

CITY OF HUTCHINS, TEXAS
RESOLUTION NO. R2024-10-1220

A RESOLUTION OF THE CITY OF HUTCHINS, TEXAS, RATIFYING THE EXECUTION OF A TITLE III FEDERAL SERVICE AGREEMENT WITH THE DALLAS AREA AGENCY ON AGING FOR THE TIME PERIOD OF OCTOBER 1, 2024, THROUGH SEPTEMBER 30, 2024.

WHEREAS, the City Council for the City of Hutchins, Texas desires to enter into an Interlocal Agreement with Dallas Area Agency on Aging (DAAA) for Title III Federal Services ("Agreement");

WHEREAS, pursuant to said Agreement, Dallas Area Agency on Aging will compensate the City of Hutchins on a unit rate basis for services rendered at a unit rate of **\$12.06** for Title III units;

WHEREAS, pursuant to said Agreement, Title III compensation for the provision of services to the City of Hutchins shall not exceed **\$111,530.88** for said agreement period;

WHEREAS, Dallas Area Agency on aging will provide the persons 60 years of age and older residing in Dallas County access to Congregate Meals, Home-delivered Meals, Instruction & Training, Mental Health Services; and

WHEREAS, the City Council for the City of Hutchins, Texas has reviewed the Interlocal Agreement and has determined it to be in the best interest of the City of Hutchins to enter said Agreement for Title III Federal Funding.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS:

SECTION 1. The City Council finds that City Administrator Lewis's signature on the Title III Federal Funding Agreement attached hereto and incorporated as Exhibit A is hereby ratified and the agreement is in all respect approved.

SECTION 2. The Agreement is effective from October 1, 2024, through September 30, 2025, unless otherwise stated in the Agreement.

SECTION 3. This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF HUTCHINS, TEXAS ON THE 21st DAY OF OCTOBER 2024.

APPROVED:

MARIO VASQUEZ, MAYOR

ATTEST:

CYNTHIA OLGUIN, CITY SECRETARY

EXHIBIT “A”

**INTERLOCAL AGREEMENT FOR TITLE III FEDERAL FUNDING BETWEEN THE
CITY OF HUTCHINS AND DALLAS AREA AGENCY ON AGING FOR THE PERIOD
OF OCTOBER 1ST, 2024 THROUGH SEPTEMBER 30TH, 2025.**

Community Council of Greater Dallas
Dallas Area Agency on Aging

FISCAL YEAR 2025 AGREEMENT AMENDMENT AND EXTENSION

Checklist - Please complete and/or sign the attached documents (including this sheet) and return to us via e-mail at your earliest convenience to remain in compliance with the state

- ☐ Cover Letter
- ☐ Fiscal Year 2024 Agreement Amendment and Extension
- ☐ Projections
- ☐ Budget Worksheet Calculation of the per Meal Unit Rate (CM and HDM only)
- ☐ Dietitian Statement and Certification (CM and HDM only)
- ☐ Dietitian Approved Meal Menus and Calendars for the current period (CM and HDM only)
- ☐ Certificate of Liability Insurance (Refer to notes below for requirements)
- ☐ Debarment Certification
- ☐ W-9 Form - Taxpayer Identification Number
- ☐ DUA Data Use Agreement Signature Page

In order for you to continue as a sub-recipient, you will need to add the **Community Council of Greater Dallas, 1341 W. Mockingbird Ln., Suite 1000W, Dallas, TX 75247**, as Additional Insured in the additional insured box or comment section. Please verify that your liability insurance coverage levels are adequate. Our current requirements for sub-recipient certificates of insurance are:

General liability coverage of at least:
\$2,000,000 General Aggregate
\$1,000,000 Products Completed Operations Aggregate
\$1,000,000 Occurrence
\$1,000,000 Personal Injury/Advertising Injury

In addition, we are looking for workers' compensation coverage with employer's liability limits of at least:
\$500,000 per occurrence bodily injury;
\$500,000 each employee occupational disease;
\$500,000 policy limit occupational disease

In addition, if you do not indicate on your certificate of liability insurance that you carry workers' compensation coverage, we have attached a form with a box to check that your company is an independent contractor and not an employee.

Please retain **One Copy** for your files, and return **One Copy** via e-mail to:

Sandra Luz, Manager, Contract Services

sluz@ccadvance.org

If you have any questions, please contact me at 469 233 2633

1341 W. Mockingbird Ln., Ste. 1000W
Dallas, TX 75247

www.ccgd.org

(214) 871-5065
Fax (214) 879-0742

August 29, 2024

Wanda Randle
Senior Center Director
City of Hutchins
500 W. Hickman,
Hutchins, Texas 75141

Dear Ms. Randle,

Attached please find the FY2025 Agreement Amendment and Extension, by and between the Dallas Area Agency on Aging, a program of Community Council of Greater Dallas and the City of Hutchins, containing the signature of Ms. Sharla Myers, Chief Executive Officer, and Ms. Doris Soler, Dallas Area Agency on Aging, Director. Once all documents are signed by the proper authority, keep one copy of your files and return one to me via e-mail.

Should you have any questions, please feel free to contact me on 469 233 2633.

Sincerely,

Sandra Luz

Sandra Luz
Manager, Contract Services

Attachments: FY2025 Agreement Amendment and Extension
FY2025 Projections
FY2025 Budget Worksheet Calculation of the per Meal Unit Rate
FY2025 Certification Regarding Debarment
FY2025 W-9 Form
FY2025 Data Use Agreement (DUA) Signature Page



FISCAL YEAR 2025 AGREEMENT AMENDMENT AND EXTENSION

This Fiscal Year 2025 Agreement Extension is made and entered into as an extension of the Fiscal Year 2024 Agreement for Title III Federal Services dated October 1, 2023, by and between the Dallas Area Agency on Aging, a program of Community Council of Greater Dallas, hereafter referred to as the DAAA, and **City of Hutchins**, hereinafter referred to as SUBRECIPIENT.

WITNESSETH

WHEREAS the SUBRECIPIENT and DAAA executed an Agreement dated October 17, 2023, for the provision of Title III Federal Services and,

WHEREAS, Section IV of that Agreement contemplated contract extensions for a specific period, subject to SUBRECIPIENT's satisfactory performance;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the SUBRECIPIENT and DAAA agree as follows:

Contract Term: This Agreement Extension shall become effective on October 1, 2024, and remain in effect through September 30, 2025, unless earlier terminated by the parties.

SUBRECIPIENT shall provide **Congregate Meals** to eligible participants. A unit of service is defined as **one meal**. The number of units of service under this project for this Agreement Extension period shall be approximately **9,200** meals. The number of unduplicated persons receiving services shall be approximately **55** eligible participants.

Compensation: DAAA will pay the SUBRECIPIENT on a **Congregate Meal** unit rate basis for services rendered at a unit rate of **\$12.60** for Title III units. Title III compensation for the provision of services shall not exceed **\$113,652.00**. The SUBRECIPIENT will provide a mandatory match of at least **\$11,906.40**. The unit rate for meals purchased with match funds shall be **\$13.92**.

Program Income: **Congregate Meals** units of service will be purchased with program income at a unit rate of **\$13.92** per unit. The goal for the program income shall be **\$2,505.60**.

The above figures are based on the attached documents; FY2025 Congregate Meal Budget Worksheet Calculation of The Per Meal Unit Rate and Service Projections FY2025.

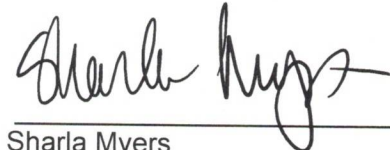
Coordination with Fiscal Year 2024 Agreement: This Fiscal Year 2025 Agreement Extension is an extension of those contractual provisions, attachments, assurances, etc. of the Fiscal Year 2024 Agreement, and those prior terms and conditions shall remain unchanged and in full force and effect unless otherwise stated herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as set forth below.

CITY OF HUTCHINS

COMMUNITY COUNCIL OF
GREATER DALLAS / DALLAS AREA
AGENCY ON AGING

Name / Title



Sharla Myers
Chief Executive Officer

Signature

08/26/2024
Date


Date

Doris Soler
Director of Dallas Area Agency on Aging

08/26/2024
Date

Meal Provider: Hutchins **Meal** **Program** **FY2025**

Proposed Service #1: Congregate meal	Projected FY2024 Final	FY2025 Performance Projections	Variance from Current Year Projected Performance	Explanation of Variance +/- 5%
Unduplicated Persons	55	55		
Services Units	7200	9,200		

Proposed Service #2:	Projected FY2024 Final	FY 2025 Performance Projections	Variance from Current Year Projected	Explanation of Variance +/- 5%
Unduplicated Persons				
Services Units				

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Provider Name: City of Hutchins

AAA Name: Area Agency on Aging of Dallas County

Congregate Meals

BUDGET WORKSHEET CALCULATION OF THE PER MEAL UNIT RATE

1. Total Budgeted Expenses for Contract Year

1. \$ 128,028.64

2. Total Number of Anticipated Meals to be Provided by Funding Source

HHS OAAA	<u>9,020</u>	Other Funds Eligible Meals	<u>0</u>	Other Sources 5	<u>0</u>
Program Income	<u>180</u>	Other Funds - Non-Eligible Meals	<u>0</u>	Other Sources 6	<u>0</u>

2. 9,200

3. Whole Unit Rate (Line 1 divided by Line 2)

3. \$ 13.92

Reimbursement Calculation

	HHS OAAA
4. Projected NSIP per Meal Value	<u>0.73</u>
5. Rate Less NSIP per Meal Value	<u>\$ 13.19</u>
6. Mandatory Local Match of 10%	<u>\$ 1.32</u>
** If Applicable, Match Reduction From the In-kind Match Certification form	<u>\$ -</u>
Required Cash Match	<u>\$ 1.32</u>
7. Proposed Meal Rate (Line 3 minus Line 6)	<u>\$ 12.60</u>

** If any portion of the required match is in-kind, you must complete an In-Kind Match Certification form.

By signing below, the provider acknowledges that all related records are subject to audit in accordance with contract requirements and all applicable federal and state laws.

City of Hutchins
Legal Name of Contracted Provider

Printed/Typed Name of Signer

Signature

Date

Area Agency on Aging of Dallas County
Name of Area Agency on Aging

Sharla Myers
Printed/Typed Name of Signer

Signature

August 1, 2024
Date

8/19/24 4:37 PM

Provider Name: City of Hutchins

AAA Name: Area Agency on Aging of Dallas County

Congregate Meals

BUDGET WORKSHEET CERTIFICATION

AS SIGNER OF THIS BUDGET WORKSHEET, I HEREBY CERTIFY THAT:

- **I have read the note below and the instructions applicable to this budget worksheet.**
- **I have reviewed this budget worksheet after its preparation.**
- **To the best of my knowledge and belief, this budget worksheet is true, correct and complete, and was prepared in accordance with the instructions applicable to this budget worksheet.**
- **This budget worksheet was prepared from the books and records of the contracted provider.**
- **I acknowledge that all books and records related to this rate setting process are subject to audit in accordance with contract requirements and all applicable federal and state laws.**

Note: The person legally responsible for the conduct of the contracted provider must sign this Budget Worksheet Certification. If a sole proprietor, the owner must sign the Budget Worksheet Certification. If a partnership, a partner must sign the Budget Worksheet Certification. If a corporation, the person authorized by the Board of Directors Resolution must sign the Budget Worksheet Certification. Misrepresentation of information contained in the budget worksheet may result in adverse action, up to and including contract termination. Furthermore, falsification of information in the budget worksheet may result in a referral for prosecution.

City of Hutchins

Name of Contracted Provider

Printed/Typed Name of Signer

Date

Signature

Signer Authority:

(check one)

☐

Sole Proprietor

☐

Association Officer

☐

Partner

☐

Board Member

☐

Corporate Officer

☐

Governmental Official

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS AND GRANTS

This certification is required by the Federal Regulations Implementing Executive Order 12549, Debarment and Suspension, 45 CFR Part 93, Government-wide Debarment and Suspension, for the Department of Agriculture (7 CFR Part 3017), Department of Labor (29 CFR Part 98), Department of Education (34 CFR Parts 85, 668, 682), Department of Health and Human Services (45 CFR Part 76).

In this certification "contractor/grantee" refers to both contractor/grantee and subcontractor/subgrantee; "contract/grant" refers to both contract/grant and subcontract/subgrant.

By signing and submitting this certification the potential contractor/grantee accepts the following terms:

1. The certification herein below is a material representation of fact upon which reliance was placed when this contract/grant was entered into. If it is later determined that the potential contractor/grantee knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the Department of Health and Human Services, United States Department of Agriculture or other federal department or agency, may pursue available remedies, including suspension and/or debarment.
2. The potential contractor/grantee shall provide immediate written notice to the person to which this certification is submitted if at any time the potential contractor/grantee learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The words "covered contract," "debarred," "suspended," "ineligible," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this certification have meanings based upon materials in the Definitions and Coverage sections of federal rules implementing Executive Order 12549. Usage is defined in the attachment.
4. The potential contractor/grantee agrees by submitting this certification that, should the proposed covered contract/grant be entered into, it shall not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department of Health and Human Services, United State Department of Agriculture or other federal department or agency, as applicable.

Do you have or do you anticipate having subcontractors/subgrantees under this proposed contract? YES NO

5. The potential contractor/grantee further agrees by submitting this certification that it will include this certification titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts and Grants" without modification in all covered subcontracts and in solicitations for covered subcontracts.
6. A contractor/grantee may rely upon a certification of a potential subcontractor/subgrantee that it is not debarred, suspended, ineligible, or voluntarily

excluded from the covered contract/grant, unless it knows that the certification is erroneous. A contractor/grantee must, at a minimum, obtain certifications from its covered subcontractors/subgrantees upon each subcontract's/subgrant's initiation and upon each renewal.

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

8. Except for contracts/grants authorized under paragraph 4 of these items, if a contractor/grantee in a covered contract/grant knowingly enters into a covered subcontract/subgrant with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the federal government, Department of Health and Human Services, United States Department of agriculture, or other federal department or agency, as applicable, may pursue available remedies, including suspension and/or debarment.

Indicate which statement applies to the covered potential contractor/grantee:

- _____ The potential contractor/grantee certifies, by submission of this certification, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract/grant by any federal department or agency or by the State of Texas.
- _____ The potential contractor/grantee is unable to certify to one or more of the terms in this certification. In this instance, the potential contractor/grantee must attach an explanation for each of the above terms to which he is unable to make certification. Attach the explanation(s) to this certification.

NAME OF POTENTIAL CONTRACTOR/GRANTEE:

VENDOR ID NO. / FEDERAL EMPLOYER'S ID NO.

Signature of Authorized Representative

Printed/Typed Name of Authorized Representative

Date

Title of Authorized Representative

Request for Taxpayer Identification Number and Certification

Section E, Item 7.

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-					
or									
Employer identification number									
				-					

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Date ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM**HHS CONTRACT NUMBER**539-11-0013-00001

The DUA between HHS and Community Council of Greater Dallas establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with THE CITY OF HUTCHINS (Subcontractor) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. Subcontractor acknowledges, understands and agrees to be bound by the same terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. Contractor and Subcontractor agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right, but not the obligation, to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

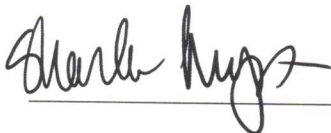
Contractor and Subcontractor assure HHS that any Breach as defined by the DUA that Subcontractor Discovers shall be reported to HHS by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by Subcontractor that constitutes a material breach or violation of the DUA or the Subcontractor's obligations, Contractor shall:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with Subcontractor, if feasible;
3. Notify HHS immediately upon Discovery of the pattern of activity or practice of Subcontractor that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate Subcontractor's contract or arrangement.

CONTRACTOR**SUBCONTRACTOR**

BY:



BY: _____

NAME:

____ Sharla Myers _____

NAME: _____

TITLE:

____ Chief Executive Officer _____

TITLE: _____

DATE

____ August 26, 2024 _____

DATE: _____, 2024

DATA USE AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES SYSTEM AND
COMMUNITY COUNCIL OF GREATER DALLAS

This Data Use Agreement (“DUA”) is effective as of the date of the Base Contract into which it is incorporated (“Effective Date”), by and between the Texas Health and Human Services System, which includes the Texas Health and Human Services Commission and the Department of State Health Services (“HHS”) and Contractor (the “Base Contract”).

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate access to, creation, receipt, maintenance, use, disclosure or transmission of Confidential Information with Contractor, and describe Contractor’s rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. This DUA also describes HHS’s remedies in the event of Contractor’s noncompliance with its obligations under this DUA. This DUA applies to both HHS business associates, as “business associate” is defined in the Health Insurance Portability and Accountability Act (HIPAA), and contractors who are not business associates, who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract. As a best practice, HHS requires its contractors to comply with the terms of this DUA to safeguard all types of Confidential Information.

As of the Effective Date of this DUA, if any provision of the Base Contract conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the following meanings:

“Authorized Purpose” means the specific purpose or purposes described in the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“Authorized User” means a person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom Contractor warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

“Breach” means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure or loss of Confidential Information other than as permitted by this DUA shall be presumed to be a Breach

unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.

“Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99
- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (PII) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (PHI) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (SPI) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

“Destroy”, “Destruction”, for Confidential Information, means:

(1) Paper, film, or other hard copy media have been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.

(2) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, "Guidelines for Media Sanitization," such that the Confidential Information cannot be retrieved.

“Discover, Discovery” means the first day on which a Breach becomes known to Contractor, or, by exercising reasonable diligence would have been known to Contractor.

“Legally Authorized Representative” of an individual, including as provided in 45 CFR 435.923 (authorized representative); 45 CFR 164.502(g)(1) (personal representative); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code § 166.164 (medical power of attorney); and Texas Estates Code § 22.031 (representative).

“Required by Law” means a mandate contained in law that compels an entity to use or disclose Confidential Information that is enforceable in a court of law, including court orders, warrants, subpoenas or investigative demands.

“Subcontractor” means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

“Workforce” means employees, volunteers, trainees or other persons whose performance of work is under the direct control of a party, whether or not they are paid by that party.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

Section 3.01 Obligations of Contractor Contractor

agrees that:

(A) With respect to PHI, Contractor shall:

(1) Make PHI available in a designated record set if requested by HHS, if Contractor maintains PHI in a designated record set, as defined in HIPAA.

(2) Provide to HHS data aggregation services related to the healthcare operations Contractor performs for HHS pursuant to the Base Contract, if requested by HHS, if Contractor provides data aggregation services as defined in HIPAA.

(3) Provide access to PHI to an individual who is requesting his or her own PHI, or such individual's Legally Authorized Representative, in compliance with the requirements of HIPAA.

(4) Make PHI available to HHS for amendment, and incorporate any amendments to PHI that HHS directs, in compliance with HIPAA.

(5) Document and make available to HHS, an accounting of disclosures in compliance with the requirements of HIPAA.

(6) If Contractor receives a request for access, amendment or accounting of PHI by any individual, promptly forward the request to HHS or, if forwarding the request would violate HIPAA, promptly notify HHS of the request and of Contractor's response. HHS will respond to all such requests, unless Contractor is Required by Law to respond or HHS has given prior written consent for Contractor to respond to and account for all such requests.

(B) With respect to ALL Confidential Information, Contractor shall:

(1) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as Required by Law. Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.

(2) Establish, implement and maintain appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, in accordance with applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession.

(3) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Base Contract. Contractor shall

produce, within three business days of a request by HHS, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.

(4) Obtain HHS's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce or Subcontractors of Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management and as permitted in Section 3.01(A)(3), above. Contractor shall produce evidence of completed training to HHS upon request. HHS, at its election, may assist Contractor in training and education on specific or unique HHS processes, systems and/or requirements. All of Contractor's Authorized Users, Workforce and Subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code Section 2054.519 by the Texas Department of Information Resources.

(5) Establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor shall maintain evidence of sanctions and produce it to HHS upon request.

(6) Obtain prior written approval of HHS, to disclose or provide access to any Confidential Information on the basis that such act is Required by Law, so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, Contractor shall refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief.

(7) Certify that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. Contractor and its Subcontractors shall maintain at all times an updated, complete, accurate list of Authorized Users and supply it to HHS upon request.

(8) Provide, and shall cause its Subcontractors and agents to provide, to HHS periodic written confirmation of compliance with controls and the terms and conditions of this DUA.

(9) Return to HHS or Destroy, at HHS's election and at Contractor's expense, all Confidential Information received from HHS or created or maintained by Contractor or any of Contractor's agents or Subcontractors on HHS's behalf upon the termination or expiration of this DUA, if reasonably feasible and permitted by law. Contractor shall certify in writing to HHS that all such Confidential Information has been Destroyed or returned to HHS, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor shall immediately notify HHS of the reasons such return or Destruction is not feasible and agree to extend the protections of this DUA to the Confidential Information for as long as Contractor maintains such Confidential Information.

(10) Complete and return with the Base Contract to HHS, attached as Attachment 2 to this DUA, the HHS Security and Privacy Initial Inquiry (SPI) at <https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>. The SPI identifies basic privacy and security controls with which Contractor must comply to protect Confidential Information. Contractor shall comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor's

security controls shall be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor shall update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and shall provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements.

(11) Comply with the HHS Acceptable Use Policy (AUP) and require each Subcontractor and Workforce member who has direct access to HHS Information Resources, as defined in the AUP, to execute an HHS Acceptable Use Agreement.

(12) Only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information *in motion* includes secure File Transfer Protocol (SFTP) or encryption at an appropriate level as required by rule, regulation or law. Confidential Information *at rest* requires encryption unless there is adequate administrative, technical, and physical security as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information shall be through secure systems. Contractor shall provide proof of system, media or device security and/or encryption to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit, or the Discovery of a Breach. HHS may also request production of proof of security at other times as necessary to satisfy state and federal monitoring requirements. Deidentification of Confidential Information in accordance with HIPAA de-identification standards is deemed secure.

(13) Designate and identify a person or persons, as Privacy Official and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor shall provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. Upon written notice from HHS, Contractor shall promptly remove and replace such official(s) if such official(s) is not performing the required functions.

(14) Make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, regulations or demands of a regulatory authority relating to Confidential Information. Contractor shall provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.

(15) Comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 17-12;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;

- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
- Family Educational Rights and Privacy Act
- Texas Business and Commerce Code, Chapter 521;
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that Contractor supports on behalf of HHS.

(16) Be permitted to use or disclose Confidential Information for the proper management and administration of Contractor or to carry out Contractor's legal responsibilities, except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, if:

- (a) Disclosure is Required by Law;
- (b) Contractor obtains reasonable assurances from the person to whom the information is disclosed that the person shall:
 - 1. Maintain the confidentiality of the Confidential Information in accordance with this DUA;
 - 2. Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the person; and
 - 3. Notify Contractor in accordance with Section 4.01 of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.

(C) With respect to ALL Confidential Information, Contractor shall NOT:

- (1) Attempt to re-identify or further identify Confidential Information that has been deidentified, or attempt to contact any persons whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS.
- (2) Engage in prohibited marketing or sale of Confidential Information.
- (3) Permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of HHS without requiring that Subcontractor first execute either the Form Subcontractor Agreement, Attachment 1, or Contractor's own Subcontractor agreement that ensures that the Subcontractor shall comply with the same safeguards and restrictions contained in this DUA for Confidential Information. Contractor is directly responsible for its Subcontractors' compliance with, and enforcement of, this DUA.

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS**Section 4.01. Cooperation and Financial Responsibility.**

(A) Contractor shall, at Contractor's expense, cooperate fully with HHS in investigating, mitigating to the extent practicable, and issuing notifications as directed by HHS, for any Breach of Confidential Information.

(B) Contractor shall make Confidential Information in Contractor's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach.

(C) Contractor's obligation begins at the Discovery of a Breach and continues as long as related activity continues, until all effects of the Breach are mitigated to HHS's satisfaction (the "incident response period").

Section 4.02. Initial Breach Notice.

For federal information *obtained from a federal system of records*, including Federal Tax Information and Social Security Administration Data (which includes Medicaid and other governmental benefit program Confidential Information), Contractor shall notify HHS of the Breach within the first consecutive clock hour of Discovery. The Base Contract shall specify whether Confidential Information is obtained from a federal system of records. For all other types of Confidential Information Contractor shall notify HHS of the Breach not more than 24 hours after Discovery, *or in a timeframe otherwise approved by HHS in writing*. Contractor shall initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for the Base Contract.

Contractor shall report all information reasonably available to Contractor about the Breach.

Contractor shall provide contact information to HHS for Contractor's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

Section 4.03 Third Business Day Notice: No later than 5 p.m. on the third business day after Discovery, or a time within which Discovery reasonably should have been made by Contractor of a Breach of Confidential Information, Contractor shall provide written notification to HHS of all reasonably available information about the Breach, and Contractor's investigation, including, to the extent known to Contractor:

- a. The date the Breach occurred;
- b. The date of Contractor's and, if applicable, Subcontractor's Discovery;
- c. A brief description of the Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);
- d. A brief description of Contractor's investigation and the status of the investigation;
- e. A description of the types and amount of Confidential Information involved;
- f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable, the Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method;
- g. Contractor's initial risk assessment of the Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

- h. Contractor's recommendation for HHS's approval as to the steps individuals and/or Contractor on behalf of individuals, should take to protect the individuals from potential harm, including Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an individual with special capacity or circumstances;
- i. The steps Contractor has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
- j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Breach;
- k. Identify, describe or estimate of the persons, Workforce, Subcontractor, or individuals and any law enforcement that may be involved in the Breach;
- l. A reasonable schedule for Contractor to provide regular updates regarding response to the Breach, but no less than every three (3) business days, or as otherwise directed by HHS in writing, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- m. Any reasonably available, pertinent information, documents or reports related to a Breach that HHS requests following Discovery.

Section 4.04. Investigation, Response and Mitigation.

- (A) Contractor shall immediately conduct a full and complete investigation, respond to the Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.
- (B) Contractor shall complete or participate in a risk assessment as directed by HHS following a Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) Contractor shall fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, persons and/or individuals about the Breach.
- (D) Contractor shall fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

Section 4.05. Breach Notification to Individuals and Reporting to Authorities.

- (A) HHS may direct Contractor to provide Breach notification to individuals, regulators or third-parties, as specified by HHS following a Breach.
- (B) Contractor must comply with all applicable legal and regulatory requirements in the time, manner and content of any notification to individuals, regulators or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required by Texas Business and Commerce Code, Chapter 521.053(b) and HIPAA. Notice letters will be in Contractor's name and on Contractor's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of Contractor's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.

- (C) Contractor shall provide HHS with draft notifications for HHS approval prior to distribution and copies of distributed and approved communications.
- (D) Contractor shall have the burden of demonstrating to the satisfaction of HHS that any required notification was timely made. If there are delays outside of Contractor's control, Contractor shall provide written documentation to HHS of the reasons for the delay.
- (E) If HHS directs Contractor to provide notifications, HHS shall, in the time and manner reasonably requested by Contractor, cooperate and assist with Contractor's information requests in order to make such notifications.

ARTICLE 5. GENERAL PROVISIONS

Section 5.01 Ownership of Confidential Information

Contractor acknowledges and agrees that the Confidential Information is and shall remain the property of HHS. Contractor agrees it acquires no title or rights to the Confidential Information.

Section 5.02 HHS Commitment and Obligations

HHS will not request Contractor to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

Section 5.03 HHS Right to Inspection

At any time upon reasonable notice to Contractor, or if HHS determines that Contractor has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of Contractor to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General, the Office of the Attorney General of Texas, the State Auditor's Office, outside consultants, legal counsel or other designee.

Section 5.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which Contractor executes the Base Contract and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended, this DUA is extended to run concurrent with the Base Contract.

(A) If HHS determines that Contractor has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require Contractor to submit to a corrective action plan, including a plan for monitoring and plan for reporting as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide Contractor with a reasonable period to cure the violation as determined by HHS; or
- (4) Terminate the DUA and Base Contract immediately and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to Contractor describing the violation and the action it intends to take.

(B) If neither termination nor cure is feasible, HHS shall report the violation to the applicable regulatory authorities.

(C) The duties of Contractor or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

Section 5.05 Injunctive Relief

(A) Contractor acknowledges and agrees that HHS may suffer irreparable injury if Contractor or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) Contractor further agrees that monetary damages may be inadequate to compensate HHS for Contractor's or its Subcontractor's failure to comply. Accordingly, Contractor agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

Section 5.06 Indemnification

Contractor shall indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of HHS' Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of Contractor's Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure. Upon demand, Contractor shall reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including costs of required notices, investigation, and mitigation of a Breach, fines or penalties imposed on an Indemnified Party by a regulatory authority, and reasonable attorneys' fees) which may be imposed upon any Indemnified Party to the extent caused by and which results from the Contractor's failure to meet any of its obligations under this DUA. Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

Section 5.07 Insurance

(A) In addition to any insurance required in the Base Contract, at HHS's option, HHS may require Contractor to maintain, at its expense, the special and/or custom first- and third-party insurance coverages, including without limitation data breach, cyber liability, crime theft and notification expense coverages, with policy limits sufficient to cover any liability arising under this DUA, naming the State of Texas, acting through HHS, as an additional named insured and loss payee, with primary and noncontributory status.

(B) Contractor shall provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

Section 5.08 Entirety of the Contract

This DUA is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising

under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

Section 5.09 Automatic Amendment and Interpretation

Upon the effective date of any amendment or issuance of additional regulations to any law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or Contractor remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and Contractor to comply with laws applicable to Confidential Information.

Section 5.10 Notices; Requests for Approval

All notices and requests for approval related to this DUA must be directed to the HHS Chief Privacy Officer at privacy@hhsc.state.tx.us.



STAFF REPORT

MEETING DATE:	October 21, 2024
MEETING TYPE:	City Council
SUBMITTED BY:	Maria Joyner, Director of Finance
AGENDA CAPTION:	Discuss and consider a request for part-time/temporary support staff in Utility Billing. Presented by Maria Joyner, Director of Finance

Background Information

Due to an unexpected staff absence beginning in mid-December, Finance will be experiencing a temporary staffing shortage. During this period, in order to ensure that the City team continues to operate smoothly and efficiently, we are requesting a temporary part-time employee. This position will assist with supporting the administrative functions of the Finance Department and provide entry-level work for utility billing while providing excellent customer service at the front desk of City Hall.

Budget Implications

The impact on the budget would be \$11,250 (plus FICA & Medicare). This would cover the cost of a part-time employee working 30 hours per week through January 31, 2025 or until the \$11,250 is expended.

Staff Recommendation

Staff recommends approval.