

**MEMORANDUM OF UNDERSTANDING
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF
TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM BY TRAVIS COUNTY**

This Memorandum of Understanding is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT")**, an agency of the State of Texas; and Travis County, a political subdivision of the State of Texas ("County").

Whereas, from time to time from the County receives federal funds from the Federal Highway Administration ("FHWA") through TxDOT to assist the County with the construction or design of projects partially or wholly funded through FHWA; and

Whereas, the County, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises ("DBEs"), as defined by 49 CFR 26 ("DBE Program"); and

Whereas, TxDOT has implemented a DBE Program that is approved by the Federal Highway Administration (FHWA) pursuant to 49 CFR part 26; and

Whereas, as a condition of receiving federal funds from FHWA through TxDOT, certain aspects of the County's procurement of construction and design services are subject to review and/or concurrence by TxDOT; and

Whereas, the County and TxDOT undertake substantially similar roadway construction projects and design projects and construct and design their respective projects using substantially the same pool of contractors; and

Whereas, the County desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and the County find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the County's adoption of the TxDOT DBE Program to meet the federal requirements;

Now, therefore, TxDOT and Travis County, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) The County is a sub-recipient of federal assistance for construction projects and design projects ("Construction and Design Projects") and, in accordance with 49 CFR § 26.21, must implement a federally approved DBE Program. The County receives its federal assistance through TxDOT. As a sub-recipient, the County has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as the County, adopt the DBE program, administered through TxDOT, and Travis County hereby chooses to adopt the TxDOT DBE Program.

(3) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the County to achieve its DBE participation in federally assisted Construction and Design Projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for the County and for TxDOT.

(5) The County and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by Travis County:

(a) The County will be responsible for project monitoring and data reporting to TxDOT. The County will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, if any, to the County.

(b) The County will recommend contract-specific DBE goals, if any, consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. The County's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. The County and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues.

(c) TxDOT will cooperate with the County in an effort to meet the timing and other requirements of the County projects.

(d) The County will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its Construction and Design Projects and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT construction projects or design projects also will be eligible to participate on the County construction projects or design projects subject to the DBE Program, unless otherwise prohibited from bidding on a the County project under applicable law or a the County Procurement Policy. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program.

(f) The County will conduct investigations and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort, Commercially Useful Function, etc. The County and TxDOT will work together to achieve a mutually acceptable determination, however, TxDOT will retain final decision-making authority on those issues.

(g) The County will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding the County's administration of the DBE Program through TxDOT.

(h) The County will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.

(i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. the County and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the Travis County area.

(j) The County will submit DBE semi-annual progress reports to TxDOT.

(k) The County will participate in TxDOT sponsored training classes to include topics on DBE

Annual Goals, DBE Goal Setting for Construction Projects and Design Projects, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the County projects in the DBE Education and Outreach Programs.

(6) In the event there is a disagreement between TxDOT and the County about the implementation of the TxDOT DBE Program by the County, the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible. If the parties are not able to resolve any material disagreement to the satisfaction of all parties, either party may terminate this Memorandum of Understanding by written notice to the other party and FHWA.

(7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this Memorandum of Understanding is terminated for any reason, the County will be allowed reasonable time in which to seek approval for a DBE Program without being deemed non-compliant with 49 CFR Part 26 or with an approved DBE Program.

(9) This Memorandum of Understanding applies only to projects for which Travis County is a sub-recipient of federal funds through TxDOT. The County may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds through TxDOT and which are not subject to the TxDOT DBE Program. The County may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs.

(10) The following attachments to this Memorandum of Understanding ("MOU") are incorporated as if fully set out herein for all purposes: Attachment A - FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973); Attachment B - SPECIAL PROVISION 000-461; Attachment C - Comprehensive Development Agreement (CDA) DBE Provisions (with TxDOT's DBE Program attached) and Attachment D - 49 CFR §26.13 (contractual assurances). In the case of any conflict between the SPECIAL PROVISION and CDA DBE Provisions and TxDOT's DBE Program, the provisions of the first two documents shall prevail in regard to CDAs only.

(11)

(a) Any notice required or permitted to be given under this Memorandum of Understanding shall be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

COUNTY:

Cyd Grimes, C.P.M. (or successor)
Travis County Purchasing Agent

Hand Delivery:

314 W. 11th St., Ste. 400
Austin, Texas 78701

Registered or Certified Mail (Return receipt requested):

P. O. Box 1748
Austin, Texas 78767

TEXAS DEPARTMENT OF TRANSPORTATION
Michael W. Behrens, P.E.
Executive Director
Address: 125 E. 11th Street
Austin, Texas 78701

(b) Notice by personal delivery or hand delivery shall be deemed effective immediately upon delivery, provided notice is given as required by Paragraph (a) hereof. Notice by registered or certified mail shall be deemed effective three (3) days after deposit in a U.S. mailbox or U.S. Post Office, provided notice is given as required by Paragraph (a) hereof.

(c) Either party hereto may change its address by giving notice as provided herein.

(12) This Memorandum of Understanding may be modified or amended only by written instrument, signed by both Travis County and the Texas Department of Transportation and dated subsequent to the date(s) of this MOU. Except as otherwise authorized by the Travis County Commissioners Court, no official, employee, agent, or representative of Travis County has any authority, either express or implied, to modify or amend this MOU.

(13) The provisions of this MOU are severable. If any clause, sentence, provision, paragraph, or article of this MOU, or the application of this MOU to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not impair, invalidate, nullify, or otherwise affect the remainder of this MOU, but the effect thereof shall be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or article to other persons or circumstances shall not be affected; provided, however, the County and TxDOT may mutually agree to terminate this Memorandum of Understanding.

(14)

(a) Words of any gender in this MOU shall be construed to include the other, and words in either number shall be construed to include the other, unless the context in this MOU clearly requires otherwise.

(b) When any period of time is stated in this MOU, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday, or national holiday, these days shall be omitted from the computation. All hours stated in this MOU are stated in Central Standard Time or in Central Daylight Savings Time, as applicable.

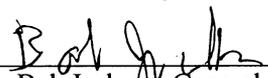
(15) This Memorandum of Understanding shall not be construed in any way as a waiver by Travis County of any immunities from suit or liability that the County may have by operation of law, and Travis County hereby retains all of its affirmative defenses.

EXECUTED by TxDOT and the County, acting through each duly authorized official and effective on the latest date signed.

APPROVED AS TO FORM:

By: 
Tamara Armstrong
Assistant County Attorney
Travis County

Date: 4/19/07

By: 
Bob Jackson, General Counsel
Texas Department of Transportation

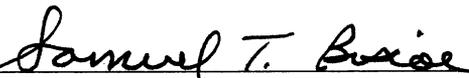
Date: 5/23/07

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

TRAVIS COUNTY

By: 
Michael W. Behrens, P.E.
Executive Director

By: 
Samuel T. Biscoe
Travis County Judge

Date: 5-24-07

Date: 5-8-07

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