

**CITY OF LAGO VISTA, TEXAS**

**RESOLUTION NO. 16-1666**

**A RESOLUTION OF THE CITY OF LAGO VISTA, TEXAS, ADOPTING THE TEXAS DEPARTMENT OF TRANSPORTATION'S FEDERALLY APPROVED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM AND AUTHORIZING THE CITY'S AUTHORIZED RESPONSIBLE PERSON IN CHARGE (RPIC) AND CITY'S LOCAL GOVERNMENT PROJECTS PROCEDURES QUALIFIED PERSON (QP) IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE AFOREMENTIONED PROGRAM.**

**WHEREAS**, the City Council of the City of Lago Vista ("City Council") finds it to be in the public interest, and necessary for the public health, safety and welfare to participate in a federal program providing funding to local governments for certain transportation improvements; and

**WHEREAS**, the City desires, through the Lago Vista Middle School Safe Routes to School Project CSJ # 0914-04-301, to construct safe, accessible and welcoming pedestrian and traffic improvements within and adjacent to the Lago Vista Middle School campus; and;

**WHEREAS**, the Disadvantaged Business Enterprise Program Memorandum of Understanding will enable the City to memorialize the obligations, expectations and rights to each party has to meet the federal requirements; and

**WHEREAS**, the City desires to appoint certain City staff in official positions of authority related to Project CSJ # 0914-04-301.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF LAGO VISTA, TEXAS:**


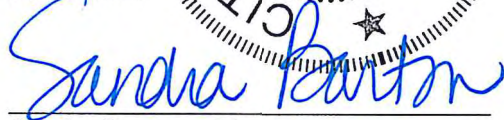
1. That the City adopts the Texas Department of Transportation's Federally Approved Disadvantaged Business Enterprise Program; and,
2. That the City Council directs and designates the City Manager as the City's Authorized Representative and Responsible Person In Charge (RPIC) to act in all matters in connection with this Program.

3. That the City Council directs and designates the City Engineer as the City's Local Government Projects Procedures Qualified Person (QP) to act in all matters in connection with this Program.
4. That it be further resolved that the City Council directs City staff to cooperate fully with the Texas Transportation Commission, Texas Department of Transportation, and Federal Highway Administration as necessary to complete Project CSJ # 0914-04-301.
5. That it be further resolved that the meeting at which this Resolution was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**AND, IT IS SO RESOLVED**

**PASSED & APPROVED this, the 17<sup>th</sup> day of November, 2016.**

ATTEST:

  
  
Sandra Barton, City Secretary

  
Dale Mitchell, Mayor

On a motion by Councilwoman Smith, seconded by Councilman Sullivan, the above and foregoing instrument was passed and approved.



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

This Memorandum of Understanding (MOU) is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT)**, an agency of the State of Texas; and the [City of Lago Vista](#), a political subdivision of the State of Texas.

**Whereas**, from time to time the [City of Lago Vista](#) receives federal funds from the Federal Highway Administration (FHWA) through TxDOT to assist the [City of Lago Vista](#) with the construction and design of projects partially or wholly funded through FHWA; and

**Whereas**, the [City of Lago Vista](#), 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 Disadvantaged Business Enterprise Program (DBE Program) that is approved by the FHWA pursuant to 49 CFR part 26; and

**Whereas**, certain aspects of the [City of Lago Vista](#)'s procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and

**Whereas**, the [City of Lago Vista](#) 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 [City of Lago Vista](#) desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

**Whereas**, TxDOT and the [City of Lago Vista](#) find it appropriate to enter into this MOU to memorialize the obligations, expectations and rights each has as related to the [City of Lago Vista](#)'s adoption of the TxDOT DBE's Program to meet the federal requirements;

**Now therefore be it resolved, TxDOT and the [City of Lago Vista](#), 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 [City of Lago Vista](#) is a sub-recipient of federal assistance for construction projects and design projects and, in accordance with 49 CFR § 26.21, must comply with a federally approved DBE Program. The [City of Lago Vista](#) receives its federal assistance through TxDOT. As a sub-recipient, the [City of Lago Vista](#) 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 [City of Lago Vista](#) adopt the DBE program, administered through TxDOT, and the [City of Lago Vista](#) by its prescribed protocol adopted the TxDOT DBE Program as of the date when adoption occurred.
- (3) This MOU evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the [City of Lago Vista](#) 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 City of Lago Vista and for TxDOT.
- (5) The City of Lago Vista and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the City of Lago Vista:
- (a) The City of Lago Vista will be responsible for project monitoring and data reporting to TxDOT. The City of Lago Vista 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, to the City of Lago Vista.
  - (b) The City of Lago Vista will recommend contract-specific DBE goals 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 City of Lago Vista'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 City of Lago Vista and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority regarding DBE goals.
  - (c) TxDOT will cooperate with the City of Lago Vista in an effort to meet the timing and other requirements of the City of Lago Vista's project.
  - (d) The City of Lago Vista will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its projects that use federal funds 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 City of Lago Vista's construction projects or design projects subject to the DBE Program. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program (TUCP).
  - (f) The City of Lago Vista will conduct reviews 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 (GFE), Commercially Useful Function (CUF), etc. the City of Lago Vista and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues and reserves the right to perform compliance reviews. The City of Lago Vista shall provide TxDOT with a listing of sanctions that will be assessed against contractors for violation of federal DBE regulations and its procedures for investigation of violations and assessment of sanctions for documented violations. The City of Lago Vista will require contractors for its FHWA federally assisted projects to use the attached forms as follows:

Attachment 1 – Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form SMS 4901

Attachment 2 – DBE Monthly Progress Report Form SMS 4903

Attachment 3 – DBE Final Report Form SMS 4904

Attachment 4 – Prompt Payment Certification Form (Federal-air Projects) 2177

(g) The [City of Lago Vista](#) will designate a liaison office to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding the [City of Lago Vista's](#) administration of the DBE Program through TxDOT.

(h) The [City of Lago Vista](#) 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 [City of Lago Vista](#) and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the [City of Lago Vista](#) area.

(j) The [City of Lago Vista](#) will submit DBE semi-annual progress reports to TxDOT.

(k) The [City of Lago Vista](#) will participate in TxDOT sponsored training classes to include topics on Title VI of the Civil Rights Act of 1964, 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 [City of Lago Vista](#) projects in the DBE Education and Outreach Programs.

(l) The Executive Director (City Manager) of the [City of Lago Vista](#) will implement all federal requirements, including those stated in Attachments A through F, which are incorporated as though fully set out herein for all purposes.

(m) In accordance with 23 CFR 200.1 the [City of Lago Vista](#) shall develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities; develop a program to conduct Title VI review of program areas; and conduct annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels. TxDOT, in accordance with federal law, may conduct compliance reviews by TxDOT's Office of Civil Rights (OCR).

(n) The [City of Lago Vista](#) will comply with 49 CFR 26.29 as stated in Attachment F.

(6) In the event there is a disagreement between TxDOT and [City of Lago Vista](#) about the implementation of the TxDOT DBE Program by the [City of Lago Vista](#) 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 in consultation with FHWA. Non-compliance by the [City of Lago Vista](#) can result in restitution of federal funds to TxDOT and withholding of further federal

funds upon consultation with FHWA.

- (7) This MOU 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 MOU is terminated for any reason, the City of Lago Vista will be allowed reasonable time in which to seek approval from FHWA for an alternative DBE Program, without being deemed non-compliant with 49 CFR Part 26.
- (9) This MOU applies only to projects for which the City of Lago Vista is a sub-recipient of federal funds through TxDOT. The City of Lago Vista 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 City of Lago Vista may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs for its non-federally funded projects.
- (10) The following attachments to this MOU are also 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 – LOCAL GOVERNMENT / RMA / NON-STANDARD CONTRACTS

Attachment C – 49 CFR §26.13 (contractual assurances)

Attachment D – DBE Program Compliance Guidance for Local Government Agencies

Attachment E – FHWA Form 1273

Attachment F – Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program with attachments as follows:

Attachment F1 – DBE Regulations: 49 CFR Part 26

Attachment F2 – DBE Special Provisions 000-1966

Attachment F3 – TxDOT's Organizational Chart

Attachment F4 – Measurement and Payment Special Provision 009-007

Attachment F5 – Texas Unified Certification Program (TUCP) DBE directory example and website address to the directory

Attachment F6 – DBE Goal Methodology

Attachment F7 – DBE Bidder Certification

Attachment F8 – DBE Joint Check Approval Form

Attachment F9 – TUCP Standard Operating Procedures (SOP)

Attachment F10 – TUCP Memorandum of Agreement (MOA)

Attachment F11 – Forms list

- (11) The following procedure shall be observed by the parties in regard to any notifications:

- (a) Any notice required or permitted to be given under this MOU 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:

City of Lago Vista  
Gary Graham / Melissa Byrne Vossmer  
City Engineer / City Manager

Hand Delivery:

5803 Thunderbird, Lago Vista, TX 78645

Registered or Certified Mail (Return receipt requested):

P.O. Box 4727, Lago Vista, TX 78645

TEXAS DEPARTMENT OF TRANSPORTATION

DBE Liaison  
Office of Civil Rights  
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 MOU may be modified or amended only by written instrument, signed by both the City of Lago Vista and the TxDOT and dated subsequent to the effective date(s) of this MOU. Except as authorized by the respective parties, no official, employee, agent, or representative of the parties 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 City of Lago Vista and TxDOT may mutually agree to terminate this MOU.
- (14) The following provisions apply in regard to construction of this MOU:
- (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, or state or county 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 MOU shall not be construed in any way as a waiver by the parties of any immunity from suit or liability that parties may have by operation of law, and the parties hereby retain all of their respective affirmative defenses.

**EXECUTED in duplicate originals by TxDOT and City of Lago Vista, acting through each duly authorized official and effective on the latest date signed.**

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

TEXAS DEPARTMENT OF TRANSPORTATION

City of Lago Vista

By: \_\_\_\_\_  
James M. Bass  
Executive Director

By: Dale Mitchell  
Dale Mitchell  
Mayor

Date: \_\_\_\_\_

Date: November 18, 2016



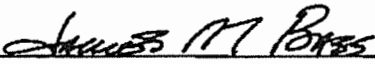
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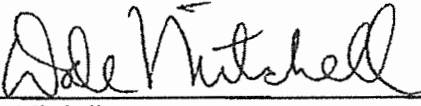
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TEXAS DEPARTMENT OF TRANSPORTATION

City of Lago Vista

By:   
James M. Bass  
Executive Director

By:   
Dale Mitchell  
Mayor

Date: 2/21/17

Date: 12-02-2016