



RESOLUTION NO. 2017-088

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS APPROVING THE TERMS AND CONDITIONS OF A MEMORANDUM OF UNDERSTANDING REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, from time to time the City of Farmers Branch (“City”) receives federal funds from the Federal Highway Administration (FHWA) through TxDOT to assist with the construction and design of projects partially or wholly funded through FHWA; and

WHEREAS, City, as a sub-recipient of federal funds, is required by 49 CFE 26, to implement a program for disadvantaged business enterprises (DBEs), as defined by 49 CFE 26 (DBE Program); and

WHEREAS, TxDOT has implemented a Disadvantaged Business Enterprise Program (DBE Program) that is approved by the FHWA pursuant to 49 CFE part 26; and

WHEREAS, certain aspects of City’s procurement of construction and design services are subject to review and/or concurrence by TxDOT is a condition of receiving federal funds from FHWA through TxDOT; and

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

WHEREAS, TxDOT and City find it appropriate to enter into an MOU to memorialize the obligations, expectations and rights each have related to City’s adoption of the TxDOT DBE’s Program to meet the federal requirements; and

WHEREAS, the City Council has been presented with a proposed Memorandum of Understanding (“MOU”) Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise Program (the “MOU”), being further described in Exhibit “A” attached hereto; and

WHEREAS, upon full review and consideration of the MOU, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the MOU on behalf of the City;

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

SECTION 1. The terms, provisions, and conditions of the Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise Program, a copy of which is attached hereto as Exhibit “A”, be and the same are hereby approved.

SECTION 2. The City Manager is hereby authorized to execute the MOU on behalf of the City, and any amendments or other instruments related thereto.

SECTION 3. This Resolution shall become effective immediately upon its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 1ST DAY OF AUGUST, 2017.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Robert C. Dye, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(PGS:7-18-17:102.87996)

Resolution No. 2017-088

Exhibit "A"

**Memorandum of Understanding Regarding the Adoption of the
Texas Department of Transportation's Federally-Approved
Disadvantaged Business Enterprise Program**



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

This Memorandum of Understanding (MOU) is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT)**, an agency of the State of Texas; and CITY OF FARMERS BRANCH, TEXAS, a political subdivision of the State of Texas.

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

Whereas, CITY OF FARMERS BRANCH, TEXAS, 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 CITY OF FARMERS BRANCH, TEXAS'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, CITY OF FARMERS BRANCH, TEXAS 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, CITY OF FARMERS BRANCH, TEXAS desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and CITY OF FARMERS BRANCH, TEXAS find it appropriate to enter into this MOU to memorialize the obligations, expectations and rights each has as related to CITY OF FARMERS BRANCH, TEXAS's adoption of the TxDOT DBE's Program to meet the federal requirements;

Now, therefore, TxDOT and CITY OF FARMERS BRANCH, TEXAS, 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) CITY OF FARMERS BRANCH, TEXAS 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 FARMERS BRANCH, TEXAS receives its federal assistance through TxDOT. As a sub-recipient, CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS, adopt the DBE program, administered through TxDOT, and CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS and for TxDOT.

(5) CITY OF FARMERS BRANCH, TEXAS and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by CITY OF FARMERS BRANCH, TEXAS :

(a) CITY OF FARMERS BRANCH, TEXAS will be responsible for project monitoring and data reporting to TxDOT. CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS .

(b) CITY OF FARMERS BRANCH, TEXAS 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. CITY OF FARMERS BRANCH, TEXAS '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. CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS in an effort to meet the timing and other requirements of CITY OF FARMERS BRANCH, TEXAS projects.

(d) CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS 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) CITY OF FARMERS BRANCH, TEXAS 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. CITY OF FARMERS BRANCH, TEXAS 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. CITY OF FARMERS BRANCH, TEXAS 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. CITY OF FARMERS BRANCH, TEXAS 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) CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS's administration of the DBE Program through TxDOT.

(h) CITY OF FARMERS BRANCH, TEXAS 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.

CITY OF FARMERS BRANCH, TEXAS and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in CITY OF FARMERS BRANCH, TEXAS area.

(j) CITY OF FARMERS BRANCH, TEXAS will submit DBE semi-annual progress reports to TxDOT.

(k) CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS projects in the DBE Education and Outreach Programs.

(l) The Executive Director of CITY OF FARMERS BRANCH, TEXAS 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, CITY OF FARMERS BRANCH, TEXAS 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) CITY OF FARMERS BRANCH, TEXAS 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 FARMERS BRANCH, TEXAS about the implementation of the TxDOT DBE Program by CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS 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, CITY OF FARMERS BRANCH, TEXAS 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 CITY OF FARMERS BRANCH, TEXAS is a sub-recipient of federal funds through TxDOT. CITY OF FARMERS BRANCH, TEXAS 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. CITY OF FARMERS BRANCH, TEXAS 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 FARMERS BRANCH, TEXAS

MARC BENTLEY
DIRECTOR OF PUBLIC WORKS

Hand Delivery:

13000 WILLIAM DODSON PARKWAY, FARMERS BRANCH, TX 75234

Registered or Certified Mail (Return receipt requested):

13000 WILLIAM DODSON PARKWAY, FARMERS BRANCH, TX 75234

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

CITY OF FARMERS BRANCH, TEXAS 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,

CITY OF FARMERS BRANCH, TEXAS 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 FARMERS BRANCH, TEXAS, 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 FARMERS BRANCH, TEXAS

By: _____
James M. Bass
Executive Director

By: _____
Charles Cox
City Manager

Date: _____

Date: _____