

**Landscape Partnership Program**  
Texas Department of Transportation  
October 2007

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## Introduction

The vision of the Texas Department of Transportation (TxDOT) is to provide transportation systems and alternatives that are comfortable, safe, durable, cost-effective, accessible, environmentally sensitive and aesthetically appealing. The Texas Transportation Commission actively supports sound landscape development of the right-of-way and encourages cooperative landscape development projects. The commission recognizes that the long term success of landscape development is contingent upon local community involvement.

To promote the cooperative landscape development of our highway system, the commission created the Landscape Partnership Program. This brochure is an informational guide to assist communities in developing cost sharing projects.

The Landscape Partnership Program was originally established in February 2007. The program is operated under the rules and definitions pertaining to Public Participation Programs, Section 2.67 of Title 43, Texas Administrative Code. These regulations are included in this brochure for your information.

As the regulations represent administrative law, each potential Landscape Partnership Program project must be governed by these regulations.

## Program Overview

The Landscape Partnership Program allows local governments, civic organizations, or private businesses, an opportunity to support the aesthetic improvement of the state highway system by providing the project development, establishment and maintenance of landscaping the state highway system.

Certain criteria must be considered before a project site is selected. For example, the project must not interfere with the safety of the traveling public and the project site must not be slated for roadway construction in the short term. For a project to be authorized, site specific considerations must be evaluated to ensure compliance with TxDOT policy and procedure.

The TxDOT District Office in which the project is located will be the point of contact for the project. Any questions about project specifics or eligibility should be directed to the local TxDOT district engineer or designee. A list of these district offices is included in this document.

The project design must follow TxDOT policy and be appropriate for the particular location. The project plan shall be provided by the local government or donor and approved by TxDOT.

The following Frequently Asked Questions will provide more information. For further information contact the local TxDOT District Office or the Design Division, Landscape Section at TxDOT Headquarters in Austin.

## Frequently Asked Questions

### Which routes are eligible?

Routes must be on the designated permanent state highway system under the jurisdiction of the Texas Department of Transportation; appropriate examples include interstate highways, US highways, state highways, state spurs, state loops, farm-to-market and ranch-to-market roads, business routes and recreational roads. City streets and county roads are not eligible for participation in the program.

Contact the local TxDOT District Office with any question about location.

To qualify a particular route as a potential site for work under the Landscape Partnership Program, the route must meet the following requirements as well:

**Future Construction:** The route should not be scheduled for future highway construction that would destroy or alter the proposed landscape development. The department must retain the right to make necessary highway improvements to the state highway system that might preclude some locations from work under this program. Check with your local department district office about the possibility of future construction.

**Right-of-Way and Safety Considerations:** Each site must meet reasonable requirements relating to the area available to perform landscape improvements. These restrictions are to protect the safety of the traveling public by providing a recovery area for vehicles leaving the paved surface. They are also necessary to prevent plant material from being removed when necessary improvement to drainage channels or utility construction occurs. Although each project must be considered individually, generally the following criteria shall apply:

- Minimum clear distance of 15 feet from the edge of the travelway to the nearest shrub.
- Minimum clear distance of 30 feet from the edge of the travelway to the nearest tree whose mature caliper will be 4 inches or greater.
- Adherence to acceptable sight distance considerations.

### Who should submit the application?

Any local government, civic organization, or private business may participate in the program.

### Are there any prohibited design features?

Yes, there are. The following items cannot be included within a Landscape Partnership Program project:

- Flagpoles or pennant poles
- Fountains or other water features
- Statuary, sculpture, or other art objects
- logos or other advertising
- Full-width or "Lawn-type" irrigation systems. Only irrigation systems that are designed to provide water to tree and shrub groups are permitted.

The local TxDOT District Office will offer advice about any design feature that may be in question.

In addition, projects should incorporate environmentally beneficial landscaping principles - the utilization of techniques that complement and enhance the local environment and seek to minimize the adverse effects that the landscaping will have on it. In particular, this means using regionally native plants and employing landscaping practices and technologies that conserve water and prevent pollution.

**Is traffic control required?**

Yes, necessary traffic control is the responsibility of the local government or donor. The local TxDOT district office will offer advice about appropriate barricades, signs and traffic handling devices necessary to protect the safety of the traveling public. No entry to any controlled access will be allowed from the mainlanes.

**Is a donation required?**

A donation is not required for projects with local governments. TxDOT will negotiate a reasonable donation amount with private entities.

**Is there a particular time frame for the project?**

Yes. The project agreement shall be for a period of not less than two years. The agreement can be renewed after two years.

**Will the local government or donor receive recognition for participating?**

Yes. The donor can erect a sign that identifies this project as a cooperative landscape project. The sign must conform to the details shown on page 31 of this document and the current Texas Manual on Uniform Traffic Control Devices.

**What is the application procedure?**

Contact the local TxDOT district engineer, or designee, responsible for the area in which the project is to be located. Any questions concerning possible project locations, design concepts and submittal responsibilities should be directed to the district engineer or designee. TxDOT will assess the project and determine the acceptability of the proposed project location, the design concept and clarify who will be responsible for submitting the formal application and coordinating the project. Appropriate insurance forms should be submitted to the district. The district will retain all insurance forms.

**How long does it take to begin installation?**

Before final approval, TxDOT and the Local Government or donor must have negotiated the project to the extent that all work activities are documented and the donor or Local Government has accepted the draft agreement. Time to complete this phase varies.

For general information about the Landscape Partnership Program, you may also contact the Landscape Design Section of the Design Division in Austin at the following address:

Design Division  
Landscape Design Section  
Texas Department of Transportation  
125 East 11th Street  
Austin, TX 78701-2483

County \_\_\_\_\_  
Location \_\_\_\_\_

STATE OF TEXAS     §  
COUNTY OF TRAVIS   §

**LANDSCAPE PARTNERSHIP PROGRAM  
FOR GOVERNMENTAL ENTITIES**

**THIS AGREEMENT IS MADE BY AND BETWEEN** the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State" or "TxDOT," and the \_\_\_\_\_, Texas acting by and through its duly authorized officials as evidenced by Resolution or Ordinance, dated \_\_\_\_\_, which is attached to and made part of this contract, hereinafter called the "Local Government."

**WITNESSETH**

**WHEREAS**, Transportation Code, Chapter 201 and Transportation Code, Chapter 221 authorizes the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

**WHEREAS**, Title 43, Texas Administrative Code, §§2.67, Landscape Partnership Program, allows private businesses, civic organizations, and local governments an opportunity to support the aesthetic improvement of the state highway system by donating the project development, establishment, and maintenance of a landscaped section of the state highway system upon approval of the State.

**WHEREAS**, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as landscape development, hereinafter called the "Project"; and,

**WHEREAS**, the State has determined that such participation is in the best interest of the citizens of the State; and

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

**AGREEMENT**

**ARTICLE 1. TIME PERIOD**

- A. This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed and shall terminate on **[INSERT A SPECIFIC DATE THAT IS NO MORE THAN 5 YEARS AWAY]** or unless terminated in accordance with Article 10. This agreement may be renewed in writing by mutual agreement of the parties for two additional five year terms after the expiration of the initial term of the contract.
- B. At the end of the agreement, the Local Government shall restore the State's property to that of its previous condition unless mutually agreed otherwise. The cost of restoring the property shall be borne by the Local Government and meet standards in accordance with Article 7.

**ARTICLE 2. PROJECT**

- A. The Local Government agrees to perform the landscape work described in Attachment A, Landscape Plan, which consists of project design plans, sketches, drawings, notes, estimates, and specifications as required by the State, and in Attachment B, Work Responsibilities. The project design plan shall be subject to the review and satisfactory approval by the State prior to installation. No modification to the approved design may be made without the prior written approval of TxDOT's local District Engineer or the Director of the Design Division.
- B. Unless otherwise specifically stated in Attachment B, the State may supervise and inspect all work performed and provide such engineering inspection services as may be required to ensure that the project is accomplished in accordance with Attachment A.
- C. The Local Government agrees to maintain the landscaping to the State's satisfaction for the period of this agreement in accordance with Attachment C, Project Work Schedule.
- D. The Local Government shall provide, erect, and maintain to the satisfaction of the State any barricades, signs, and traffic handling devices necessary to protect the safety of the traveling public while performing any work on the project.
- E. All aspects of the project shall be carried out in compliance with applicable federal and state laws and regulations. The project shall be designed in accordance with Attachment A and with TxDOT's latest policies, procedures, standards, and guidelines. The Local Government shall award and manage all construction work.

- F. It is expressly understood that the State does not purport hereby to grant any right, claim, title or easement in or upon this State property.

**ARTICLE 3. PROJECT FUNDING**

- A. The Local Government is responsible for 100% of the cost of designing, constructing and maintaining the landscape project. State funds shall not be made available to contribute to the design, construction, or maintenance of this project under any circumstances.
- B. Any costs incurred by the State for repairs to the State Property, for removal of debris or any other necessary restoration work as a result of the project shall be billed to the Local Government at cost. The Local Government shall make full and complete payment to the State within thirty (30) days from receipt of State's written notification.

**ARTICLE 4. REPRESENTATIONS AND WARRANTIES**

- A. The Local Government represents and warrants that it has unrestricted and full use of any materials and items described in Attachment A and that by signing this agreement it relinquishes and transfers all rights and interest in and use to the State.
- B. The Local Government acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

**ARTICLE 5. MAINTENANCE**

Upon completion of the installation of the Project, the Local Government will assume responsibility for the maintenance of the completed Project.

**ARTICLE 6. RIGHT OF ACCESS**

- A. The State shall permit the Local Government access to the site to perform any activities required to execute the work. The Local Government shall provide for all necessary right of way needed for performance of the work on sites not owned or to be acquired by the State.
- B. Ingress and egress shall be allowed at all times for Federal and Highway Administration personnel and state employees and equipment when highway maintenance operations are necessary and for inspection purposes.
- C. This agreement does not give the Local Government any right to display or permit any other party to display literature, memorabilia, artifacts, or anything else in or around the landscape project, with the exception of the project itself. The Local Government shall follow all current TxDOT rules, policies, procedures, and regulations, which may be modified by TxDOT at any time without notice.

**ARTICLE 7. CONDITION OF THE PROPERTY**

- A. The Local Government shall construct the landscape project in strict conformity to the design as approved by the State. The Local Government shall not deposit any waste products on the premises and shall remove any materials and debris from the premises at the end of the construction of the landscape project. Construction of the landscape project shall pose no danger or interfere to the traveling public. The State may halt construction of the landscape project at any time if, in its sole judgment, construction is posing a danger to the traveling public.
- B. The Local Government shall avoid damage on or outside the State property. At the State's request, the Local Government shall, at its own expense, restore or repair damage occurring on or outside State property, including but not limited to roadway and drainage structures, overhead signs, signs, traffic signals, pavement markings, and pavement to a condition equal to that existing before the project, and restore the natural and cultural environment in accordance with federal and state laws, including landscaping and historical features.

**ARTICLE 8. UTILITIES**

- A. If the required right of way encroaches upon existing utilities and the proposed project requires their adjustment, removal or relocation, the Local Government shall be responsible for determining the scope of utility work and notify the appropriate utility company to schedule adjustments.
- B. The Local Government shall be responsible for the adjustment, removal or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies and procedures. This includes, but is not limited to: 43 TAC §15.55 relating to Construction Cost Participation; 43 TAC §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities; and, 43 TAC§ 21.31 et seq. relating to Utility Accommodation. The Local Government shall be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the project, unless this work is provided by the owners of the utility facilities per agreement or per all applicable statutes or rules.

**ARTICLE 9. SIGNAGE**

- A. A sign may be erected at the project site that announces participation in the program. The sign shall be four feet by four feet and shall conform to the current *Texas Manual on Uniform Traffic Control Devices*. The Local Government must maintain the sign for the duration of the project and pay for all associated costs.
- B. All signs shall be approved by the State before installation.
- C. This agreement does not give the Local Government any right to display or permit any other party to display literature, memorabilia, artifacts, or anything else in or around the landscape project, with the exception of the project itself. The Local Government shall follow all current TxDOT rules, polices, procedures, and regulations, which may be modified by the State at any time without notice.

**ARTICLE 10. TERMINATION**

- A. This agreement may be terminated by: mutual written agreement and consent of both parties; the State upon the Local Government's violation of contract terms or failure to fulfill the obligations of this agreement; or the State if it determines that the performance of the project is not in the best interest of the State.
- B. If the Local Government fails to maintain the project in accordance with Attachment C, Maintenance Schedule, the project shall be subject to removal at the State's discretion and at the Local Government's expense.
- C. If the project is not installed within one year of the date of execution of this agreement, this agreement shall be terminated.

In the event the Project is not completed, the State shall seek reimbursement from the Local Government for repairs to the State Property, for removal of debris or any other necessary restoration work as a result of the project. The State shall bill the Local Government at cost and the Local Government shall make full and complete payment to the State within thirty (30) days from receipt of State's written notification.

**ARTICLE 11. NOTICES**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:	
<hr/> <hr/> <hr/> <hr/>	Mail To:  District Engineer Texas Department of Transportation  <hr/> <hr/>	Deliver To:  District Engineer Texas Department of Transportation  <hr/> <hr/>

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. 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 such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**ARTICLE 12. SOLE AGREEMENT**

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

**ARTICLE 13. AMENDMENTS**

By mutual written consent of the parties, this contract may be amended prior to its expiration.

**ARTICLE 14. EMPLOYEES NOT TO BENEFIT**

Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

**ARTICLE 15. DISPUTES**

In the event of disputes as to obligations under the agreement, the State's decision shall otherwise be final and binding.



## **ARTICLE 16. ORDER OF DOCUMENT PRECEDENCE**

In the event of any conflict among the elements of this agreement, they should prevail in this order

- A. This Agreement,
- B. Attachment A, Landscape Plan,
- C. The current edition of the Design Division's Landscape Partnership Program Guidelines,
- D. Attachment B, Work Responsibilities,
- E. Attachment C, Project Work Schedule.

## **ARTICLE 17. CONFIDENTIALITY**

The Local Government shall not disclose information obtained from the State under this contract without the express written consent of the State.

## **ARTICLE 18. ASSIGNMENTS OR SUBCONTRACTS**

The Local Government shall not assign or otherwise transfer their obligations under this agreement except with prior written consent of TxDOT. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this contract. A copy of the subcontract must be sent to TxDOT immediately following execution.

## **ARTICLE 19. INDEMNIFICATION**

- A. Errors, Omissions, Negligent Acts.** To the extent permitted by law, the Local Government shall indemnify and save harmless the State and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, which are performed under this contract and which are caused by or result from error, omission, or act of the Local Government, its agent, or any person employed by the Local Government.
- B. Attorney Fees.** The Local Government shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees, which may be incurred by the State in litigation or otherwise resisting a claim or liabilities that may be imposed on the State as a result of error, omission, or act of the Local Government, its agents, or its employees.

## **ARTICLE 20. COMPLIANCE WITH LAWS**

The Local Government performance shall be in compliance with all federal, state, and local laws, ordinances, and regulations including but not limited to:

- ◆ the Endangered Species Act of 1973, 16 USC Section 1531 et seq., and the regulations there as amended;
- ◆ TxDOT erosion and sedimentation control standards and TxDOT Vegetation and Management Standards, which may in any way regulate or control the activity; and
- ◆ all state and federal environmental laws and any conditions required by the State to protect the environment.

## **ARTICLE 21. STATE AUDITOR**

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

## **ARTICLE 22. INSURANCE**

If the Local Government or its subcontractors shall perform work on the State's right of way, the Local Government or its subcontractors shall maintain insurance on file with the Contract Services Section of the Office of General Counsel of the Texas Department of Transportation in the amount specified on Texas Department of Transportation Form 20.102 or Form 1560, Certificate of Insurance, as required by the State. No other proof of insurance is acceptable to the State. The Local Government or its subcontractors certifies that it shall keep current insurance on file with that office for the duration of the contract period. If insurance lapses during the contract period, the Local Government or its subcontractors must stop work until a new certificate of insurance is provided.

## **ARTICLE 23. SIGNATORY WARRANTY**

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

**IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT** have executed duplicate counterparts to effectuate this agreement.

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

\_\_\_\_\_, P. E.  
Mark A. Marek, Director of Design Division

Date \_\_\_\_\_

**THE LOCAL GOVERNMENT**

Name of the Local Government \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

Typed or Printed Name and Title \_\_\_\_\_

\_\_\_\_\_

**Attachments**

- A. Landscape Plan**
- B. Work Responsibilities**
- C. Project Work Schedule**

**Attachment A  
Landscape Plan**

**Attachment B  
Work Responsibilities**

**Attachment C  
Project Work Schedule**

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LANDSCAPE PARTNERSHIP PROGRAM  
FOR PRIVATE ENTITIES**

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," or "TxDOT" and \_\_\_\_\_, having its principal place of business in \_\_\_\_\_, hereinafter called the "Donor."

**WITNESSETH**

**WHEREAS**, Transportation Code, Chapter 201 and Transportation Code, Chapter 221 authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

**WHEREAS**, Title 43, Texas Administrative Code, §§2.67, Landscape Partnership Program, allows private businesses, civic organizations, and local governments an opportunity to support the aesthetic improvement of the state highway system by donating the project development, establishment, and maintenance of a landscaped section of the state highway system upon approval of the State.

**WHEREAS**, the Donor has requested that the State allow participation in the Landscape Partnership Program;

**WHEREAS**, the State has determined that such participation is in the best interest of the citizens of the State; and

**WHEREAS**, the Commission, by Minute Order No. \_\_\_\_\_, has authorized the State to accept the donation.

**NOW, THEREFORE**, in consideration of the agreements of the parties hereto, to be respectively kept and performed by them as described below, it is agreed as follows:

**A G R E E M E N T**

**ARTICLE 1. TERM**

- A. This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed and shall expire on **[INSERT A SPECIFIC DATE THAT IS NO MORE THAN 5 YEARS AWAY]** or unless terminated in accordance with Article 11.
- B. This agreement may be renewed for up to two additional terms of 5 years each upon mutual written agreement of the parties. The agreement may be amended upon renewal by mutual written agreement of the parties if it is determined that the amendment of its provisions will benefit the State. The Donor shall provide the State a written request to renew the agreement at least thirty (30) days prior to the expiration date of the agreement. No more than two renewal periods shall be considered.
- C. At the end of the agreement, the Donor shall restore the State's property to that of its previous condition unless mutually agreed otherwise. The cost of restoring the property shall be borne by the Donor and meet the standards in accordance with Article 5.

**ARTICLE 2. PROJECT**

- A. The Donor agrees to perform the landscape work described in Attachment A, Landscape Plan, which consists of project design plans, sketches, drawings, notes, estimates, and specifications as required by the State, and in Attachment B, Work Responsibilities. The project design plan shall be subject to the review and satisfactory approval by the State prior to installation. No modification to the approved design may be made without the prior written approval of TxDOT's local District Engineer or the Director of the Design Division.
- B. Unless otherwise specifically stated in Attachment B, the State may supervise and inspect all work performed and provide such engineering inspection services as may be required to ensure that the project is accomplished in accordance with Attachment A.
- C. The Donor agrees to maintain the landscaping to the State's satisfaction for a period of no more than two years in accordance with Attachment C, Project Work Schedule.
- D. The Donor shall provide, erect, and maintain to the satisfaction of the State any barricades, signs, and traffic handling devices necessary to protect the safety of the traveling public while performing any work on the project.
- E. All aspects of the project shall be carried out in compliance with applicable federal and state laws and

regulations. The project shall be designed in accordance with Attachment A and with TxDOT's latest policies, procedures, standards, and guidelines. The Donor shall award and manage all construction work.

- F. It is expressly understood that the State does not purport hereby to grant any right, claim, title or easement in or upon this State property.

### **ARTICLE 3. PROJECT FUNDING**

- A. The estimated value of the donation is \$ \_\_\_\_\_ for the initial construction of the project and an estimated \$ \_\_\_\_\_ for maintenance of the project for two years plus an estimated \$ \_\_\_\_\_.
- B. The funding arrangement and payment schedule shall be in accordance with Attachment D, Payment Schedule. The Donor is responsible for 100% of the cost of designing, constructing, and maintaining the landscape project. State funds shall not be made available to contribute to the design, construction, or maintenance of this project under any circumstances.
- C. Any costs incurred by the State for repairs to the State property, for the removal of debris, or any other necessary restoration work as a result of the project shall be billed to the Donor at cost. The Donor shall make full and complete payment to the State within thirty (30) days from receipt of State's written notification.

### **ARTICLE 4. RIGHT OF ACCESS**

- A. The State shall permit the Donor or its authorized representative access to the site to perform any activities required to execute the work. If the project is on a controlled access highway, any access to the highway by the Donor to perform its responsibilities, whether construction work or maintenance, must be from frontage roads, nearby adjacent private property, nearby adjacent roads and streets, or trails along or near the right of way line, without access from the main lanes or ramps. The Donor shall provide for all necessary right of way needed for performance of the work on sites not owned or to be acquired by the State.
- B. Ingress and egress shall be allowed at all times for Federal and Highway Administration personnel and state employees and equipment when highway maintenance operations are necessary and for inspection purposes.
- C. This agreement does not give the Donor any right to display or permit any other party to display literature, memorabilia, artifacts, or anything else in or around the landscape project, with the exception of the project itself. The Donor shall follow all current TxDOT rules, polices, procedures, and regulations, which may be modified by TxDOT at any time without notice.

### **ARTICLE 5. CONDITION OF THE PROPERTY**

- A. The Donor shall construct the landscape project in strict conformity to the design as approved by TxDOT. The Donor shall not deposit any waste products on the premises and shall remove any materials and debris from the premises at the end of the construction of the landscape project. Construction of the landscape project shall pose no danger to the traveling public and shall not interfere. TxDOT may halt construction of the landscape project at any time if, in its sole judgment, construction is posing a danger to the traveling public.
- B. The Donor shall avoid damage on or outside the State property. At the State's request, the Donor shall, at its own expense, restore or repair damage occurring on or outside State property, including but not limited to roadway and drainage structures, overhead signs, signs, traffic signals, pavement markings, and pavement to a condition equal to that existing before the project, and restore the natural and cultural environment in accordance with federal and state laws, including landscaping and historical features.

### **ARTICLE 6. UTILITIES**

- A. If the required right of way encroaches upon existing utilities and the proposed project requires their adjustment, removal or relocation, the Donor shall be responsible for determining the scope of utility work and notify the appropriate utility company to schedule adjustments.
- B. The Donor shall be responsible for the adjustment, removal or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies and procedures. This includes, but is not limited to: 43 TAC §15.55 relating to Construction Cost Participation; 43 TAC §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities; and, 43 TAC §21.31 et seq. relating to Utility Accommodation. The Donor shall be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the project, unless this work is provided by the owners of the utility facilities per agreement or per all applicable statutes or rules.

### **ARTICLE 7. SIGNAGE**

- A. A sign may be erected at the project site that announces participation in the program. The sign shall be four feet by four feet and shall conform to the current Texas Manual on Uniform Traffic Control Devices. The donor must maintain the sign for the duration of the project and pay for all associated costs.
- B. All signs shall be approved by the State before installation.
- C. This agreement does not give the Donor any right to display or permit any other party to display literature, memorabilia, artifacts, or anything else in or around the landscape project, with the exception of the project itself. The Donor shall follow all current TxDOT rules, polices, procedures, and regulations, which may be modified by TxDOT at any time without notice.

**ARTICLE 8. REPRESENTATIONS AND WARRANTIES**

- A. The Donor represents and warrants that it has unrestricted and full use of any materials and items described in Attachment A and that by signing this agreement it relinquishes and transfers all rights and interest in and use to the State.
- B. The State does not approve and is not responsible for any representations made by the Donor for tax purposes.
- C. The Donor acknowledges that it is not an agent, servant, nor employee of the State, and it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the project.

**ARTICLE 9. SUCCESSORS AND ASSIGNS**

The State and the Donor each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

**ARTICLE 10. EMPLOYEES NOT TO BENEFIT**

Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

**ARTICLE 11. TERMINATION**

- A. This agreement may be terminated by: mutual written agreement and consent of both parties; the State upon the Donor’s violation of contract terms or failure to fulfill the obligations of this agreement; or the State if it determines that the performance of the project is not in the best interest of the State.
- B. If the Donor fails to maintain the project in accordance with Attachment C, Project Work Schedule, the project shall be subject to removal at the State’s discretion and at the Donor’s expense.
- C. If the project is not installed within one year of the date of execution of this agreement, this agreement shall be terminated.

In the event the Project is not completed, the State shall seek reimbursement from the Donor for repairs to the State Property, for removal of debris or any other necessary restoration work as a result of the project. The State shall bill the Donor at cost, and the Donor shall make full and complete payment to the State within thirty (30) days from receipt of State’s written notification.

**ARTICLE 12. NOTICES**

All notices to either party by the other party required under this agreement shall be delivered personally or sent by U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

Donor:  _____  _____	State:  Texas Department of Transportation Attn: Mark Marek, Design Division Director 125 E. 11th Street Austin, Texas 78701
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and shall be deemed to be received by the addressee on the date so delivered or deposited in the mail, unless otherwise agreed to. Either party may change the above address by sending written notice of such change to the other in the manner provided herein.

**ARTICLE 13. SOLE AGREEMENT**

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Donor and the State, the latest agreement shall take precedence over the other agreements in matters related to the project.

**ARTICLE 14. DISPUTES**

In the event of disputes as to obligations under the agreement, the State’s decision shall otherwise be final and binding.



**ARTICLE 15. ORDER OF DOCUMENT PRECEDENCE**

In the event of any conflict among the elements of this agreement, they should prevail in this order

- A. This Agreement
- B. Attachment A, Landscape Plan
- C. Attachment B, Work Responsibilities
- D. The current edition of the Design Division's Landscape Partnership Program Guidelines
- E. Attachment C, Project Work Schedule
- F. Attachment D, Payment Schedule.

**ARTICLE 16. ASSIGNMENT**

The Donor shall not assign or otherwise transfer their obligations under this agreement except with prior written consent of TxDOT. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this contract. A copy of the subcontract must be sent to TxDOT immediately following execution.

**ARTICLE 17. AMENDMENT**

Any changes to the agreement shall be enacted by written amendment.

**ARTICLE 18. STATE AUDITOR**

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

**ARTICLE 19. CONFIDENTIALITY**

The Donor shall not disclose information obtained from the State under this contract without the express written consent of the State.

**ARTICLE 20. INSURANCE**

If the Donor or its representative shall perform work on the State's right of way, the Donor or its representative shall maintain insurance on file with the Contract Services Section of the Office of General Counsel of the Texas Department of Transportation in the amount specified on Texas Department of Transportation Form 20.102 or Form 1560, Certificate of Insurance, as required by the State. No other proof of insurance is acceptable to the State. The Donor or its representative certifies that it shall keep current insurance on file with that office for the duration of the contract period. If insurance lapses during the contract period, the Donor or its representative must stop work until a new certificate of insurance is provided.

**ARTICLE 21. INDEMNIFICATION**

- A. Errors, Omissions, Negligent Acts.** To the extent permitted by law, the Donor shall indemnify and save harmless the State and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, which are performed under this contract and which are caused by or result from error, omission, or act of the Donor, its agent, or any person employed by the Donor.
- B. Attorney Fees.** The Donor shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees, which may be incurred by the State in litigation or otherwise resisting a claim or liabilities that may be imposed on the State as a result of error, omission, or act of the Donor, its agents, or its employees.

**ARTICLE 22. COMPLIANCE WITH LAWS**

The Donor's performance shall be in compliance with all federal, state, and local laws, ordinances, and regulations including but not limited to:

- ◆ the Endangered Species Act of 1973, 16 USC Section 1531 et seq., and the regulations there as amended;
- ◆ TxDOT erosion and sedimentation control standards and TxDOT Vegetation and Management Standards, which may in any way regulate or control the activity; and
- ◆ all state and federal environmental laws and any conditions required by the State to protect the environment.

**ARTICLE 23. SIGNATORY WARRANTY**

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

**IN TESTIMONY WHEREOF**, the State and the Donor have executed duplicate counterparts of this agreement.

**THE STATE**

Executed for the Executive Director and approved by the Texas Transportation Commission for the purpose and effect of carrying out the orders, established policies, or work programs approved and authorized by the Texas Transportation Commission.

**Texas Department of Transportation**

BY: \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED SIGNATURE

Mark A. Marek  
Director of Design Division

\_\_\_\_\_  
TYPED OR PRINTED NAME AND TITLE

\_\_\_\_\_  
DATE:

**THE DONOR**

The undersigned signatory warrants that he or she is an official representative of the organization making the donation described and is authorized to make the donation and to enter into this agreement on behalf of the organization.

**Name of Donor**

BY: \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
TYPED OR PRINTED NAME AND TITLE

\_\_\_\_\_  
DATE:

**Attachments**

- D. Landscape Plan**
- E. Work Responsibilities**
- F. Project Work Schedule**
- G. Payment Schedule**

**ATTACHMENT A**  
**Landscape Plan**

**ATTACHMENT B**  
**Work Responsibilities**

**ATTACHMENT C**  
**Project Work Schedule**

**ATTACHMENT D**  
**Payment Schedule**

# Title 43. TRANSPORTATION

## Part I. TEXAS DEPARTMENT OF TRANSPORTATION

### Chapter 2. ENVIRONMENTAL POLICY

#### Subchapter D. PUBLIC PARTICIPATION PROGRAMS

##### Section 2.67 Landscape Partnership Program

**(a) Purpose.** The Landscape Partnership Program (program) allows private businesses, civic organizations, and local governments an opportunity to support the aesthetic improvement of the state highway system by donating the project development, establishment, and maintenance of a landscaped section of the state highway system. This section sets forth policies and procedures governing the program.

**(b) Participation.**

- (1) Eligible entities. A local government or a private business or civic organization may develop, establish, and maintain the landscape of a section of the state highway system upon approval of the district engineer. A private business or civic organization is eligible to participate:
  - (A) as a donor through the local government by providing donations to the local government; or
  - (B) as a nongovernmental donor by providing donations directly to the department.
- (2) Compliance with other rules. The department will process a donation under paragraph (1)(B) of this subsection in accordance with the requirements of Chapter 1, Subchapter G of this title (relating to Donations). If a provision of this section conflicts with a provision of Chapter 1, Subchapter G of this title, this section will prevail.
- (3) Sign. A sign may be erected at the project site, announcing participation in the program. The sign will be erected by the donor and will be maintained for the duration of the project agreement.

**(c) Application.**

- (1) A local government or donor that desires to participate or to continue to participate in the program shall submit an application to the district engineer of the district in which the project site is located.
- (2) The application shall be in the form prescribed by the department and shall at a minimum include:
  - (A) the date of application;
  - (B) the name, telephone number, and complete mailing address of the local government or donor;
  - (C) the highway section the local government or donor is interested in developing, establishing, and maintaining; and
  - (D) the project concept plan containing sketches, drawings, specifications, and descriptive text as may be required by the department to evaluate the project under required general, site, and design consideration, to determine the proposed design intent.

**(d) Conditions.** In order to participate in the program, each project must meet the department's approval under general, site, and design considerations.

- (1) General considerations. Normally, work on state highway right of way will be performed by state forces or under contracts awarded and administered by the department. Under this program, an exception will be granted to allow a local government or donor to perform work on state highway right of way if the project is approved by the district engineer.
- (2) Site considerations. For sites to be approved by the department, the following site conditions must be met. The site must:
  - (A) not be scheduled for future construction, as defined within the department's current unified transportation plan, that would conflict with the activities proposed on the project;
  - (B) contain sufficient right of way to reasonably permit planting and landscaping operations without conflicting with safety, geometric, and maintenance considerations;
  - (C) not contain overhead or underground utilities, driveways, pavement, sidewalks, or highway system fixtures including traffic signage or signalization that would conflict with the planting or landscaping operations proposed under the project; and
  - (D) not contain existing drainage conditions that will be obstructed or otherwise interfered with by the project.
- (3) Design considerations. For sites to be approved by the department, the following design considerations must be met.
  - (A) The project design, as shown on the project concept plan, must be acceptable to the department.
  - (B) Unless otherwise approved by the department, the project design may not include the following design elements:
    - (i) plant material or fixtures that, in the opinion of the department, require an intense level of continued establishment and maintenance in order to assure the effectiveness and function within the design;
    - (ii) flagpoles or pennant poles;
    - (iii) fountains or water features;
    - (iv) statuary, sculpture, or other art objects; and
    - (v) logos or other advertising.

**(e) General limiting conditions and eligibility.** Because of administrative, legislative, and financial constraints, the program shall be subject to the following terms.

- (1) The department will consider such factors as width of right of way, geometrics, congestion, sight distance, and maintenance requirements in determining the acceptability of any proposed project.
- (2) Signage for the program shall be four feet by four feet and shall conform to the current Texas Manual on Uniform Traffic Control Devices. All costs associated with signage shall be paid by the local government or donor.
- (3) Work under the program shall not be combined with any other landscape-related programs sponsored by the department.



**(f) Agreement.**

- (1) If the proposed project as submitted under subsection (c) of this section is approved by the department, the local government or donor shall enter into a written agreement with the department providing participation in the program. Work on any phase of the project may not begin until the agreement is fully executed by both parties.
- (2) The agreement shall be in the form prescribed by the department and shall at a minimum include the following terms.
  - (A) The project design plan shall consist of plans, sketches, drawings, notes, estimates, maintenance work schedules, and specifications as required by the department.
  - (B) Any changes to the agreement shall be enacted by written amendment.
  - (C) The parties shall not assign or otherwise transfer their obligations under this agreement, except with prior written consent of the other party.
  - (D) The project design plan shall be subject to the review and satisfactory approval by the department prior to installation.
  - (E) Violation or breach of contract terms shall be grounds for termination of the agreement by the department. In the event of disputes as to obligations under the agreement, the department's decision shall be final and binding.
  - (F) The local government or donor and its contractors, if any, shall to the extent provided by law, furnish certificates of insurance, guarantees of self insurance if appropriate, and indemnification as may be prescribed by the department.
  - (G) The local government or donor shall provide, erect, and maintain to the satisfaction of the department any barricades, signs, and traffic handling devices necessary to protect the safety of the traveling public while performing any work on the project.
  - (H) The agreement shall be for a period of not less than two years. If after two years, the local government or donor desires to continue the project, the agreement shall be subject to renewal.
- (3) A donation schedule, if applicable, shall be outlined in the agreement.

**(g) Modification/termination of agreement.** The agreement as cited in subsection (f) of this section may be modified in any manner at the sole discretion of the department.

- (1) If the project is not installed within one year, the agreement becomes void.
- (2) If the local government or donor fail to maintain the project according to the schedule outlined in the agreement, the project will be subject to removal at the department's discretion.

**TEXAS DEPARTMENT OF TRANSPORTATION  
District Offices**

**Abilene District Office**

4250 N. Clack  
Abilene, Texas 79604-0150  
Phone: (915)676-6802

**Amarillo District Office**

5715 Canyon Drive  
Amarillo, Texas 79105-2708  
Phone: (806)356-3200

**Atlanta District Office**

701 East Main  
Atlanta, Texas 75551-1210  
Phone: (903)796-2851

**Austin District Office**

7901 North IH 35  
Austin, Texas 78761-5426  
Phone: (512)832-7000

**Beaumont District Office**

8350 Eastex Freeway  
Beaumont, Texas 77704-3468  
Phone: (409)892-7311

**Brownwood District Office**

2495 Hwy. 183 North  
Brownwood, Texas 76802  
Phone: (915)643-0411

**Bryan District Office**

1300 N. Texas Avenue  
Bryan, Texas 77803-2760  
Phone: (979)778-9714

**Childress District Office**

7599 US 287  
Childress, Texas 79201-9705  
Phone: (940)937-7145

**Corpus Christi District Office**

1701 S. Padre Island Dr.  
Corpus Christi, Texas 78469-9907  
Phone: (361)808-2220

**Dallas District Office**

4777 East Hwy 80  
Mesquite, Texas 75150-6643  
Phone: (214)320-6100

**El Paso District Office**

13301 Gateway Blvd West  
El Paso, Texas 79928-5410  
Phone: (915)790-4374

**Fort Worth District Office**

2501 Southwest Loop  
Fort Worth, Texas 76115-0868  
Phone: (817)370-6500

**Houston District Office**

7721 Washington Blvd  
Houston, Texas 77251-1386  
Phone: (713)802-5002

**Laredo District Office**

1817 Bob Bullock Loop  
Laredo, Texas 78043  
Phone: (956)712-7400

## **District Offices (continued)**

### **Lubbock District Office**

135 Slaton Road  
Lubbock, Texas 79408-0771  
Phone: (806)745-4411

### **Lufkin District Office**

1805 N. Timberland Drive  
Lufkin, Texas 75901  
Phone: (936)633-4322

### **Odessa District Office**

3901 E. US Hwy. 80  
Odessa, Texas 79761  
Phone: (915)332-0501

### **Paris District Office**

1365 N. Main Street  
Paris, Texas 75460  
Phone: (903)737-9300

### **Pharr District Office**

600 West US 83  
Pharr, Texas 78577-1231  
Phone: (956)702-6100

### **San Angelo District Office**

4502 Knickerbocker Road  
San Angelo, Texas 76904  
Phone: (915)944-1501

### **San Antonio District Office**

4615 N W Loop 410  
San Antonio, Texas 78229-0928  
Phone: (210)615-1110

### **Tyler District Office**

2709 W. Front Street  
Tyler, Texas 75702-7712  
Phone: (903)510-9220

### **Waco District Office**

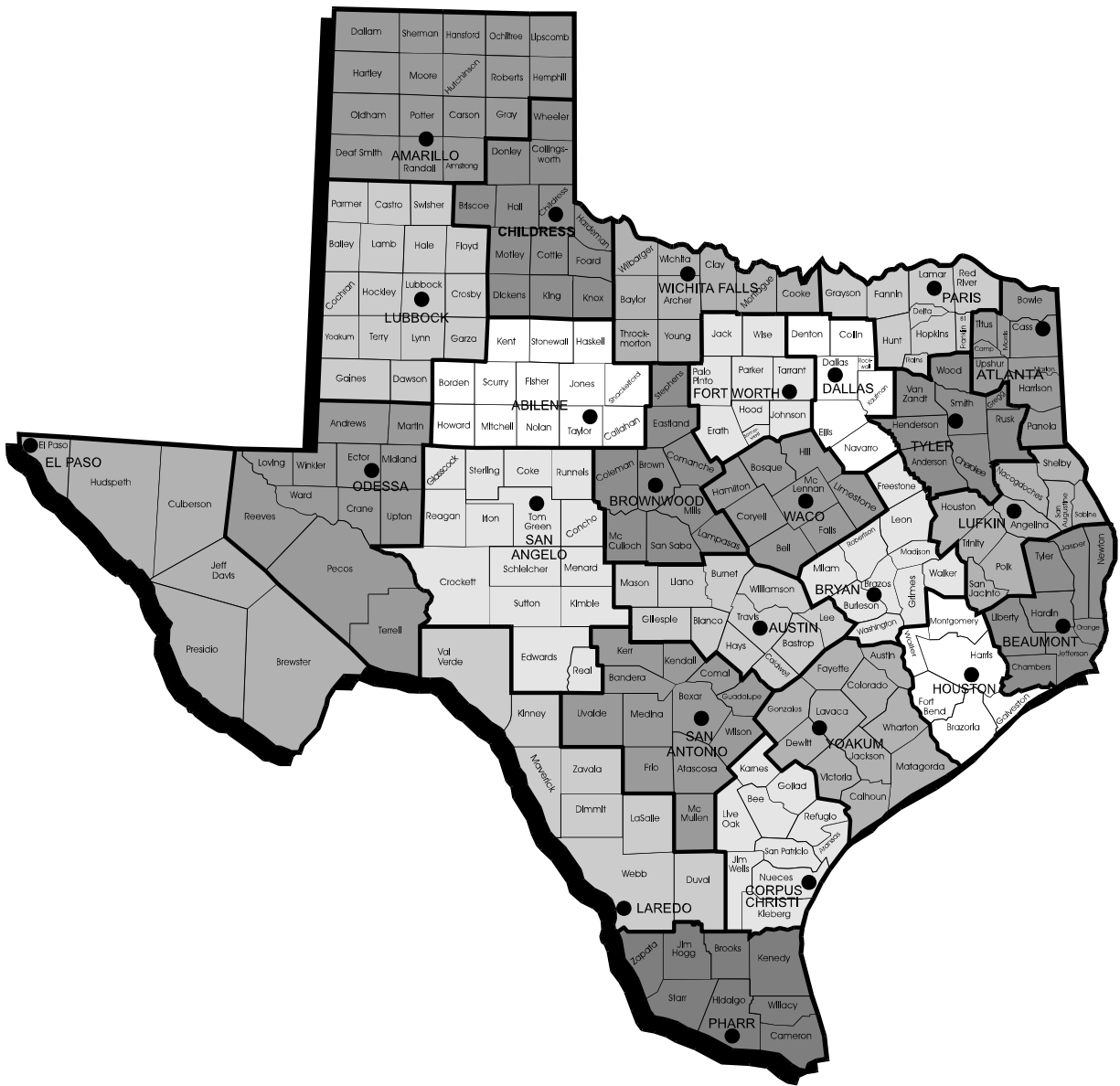
100 South Loop Drive  
Waco, Texas 76703-1010  
Phone: (254)867-2700

### **Wichita Falls District Office**

1601 Southwest Pkwy.  
Wichita Falls, Texas 76302-4906  
Phone: (940)720-7700

### **Yoakum District Office**

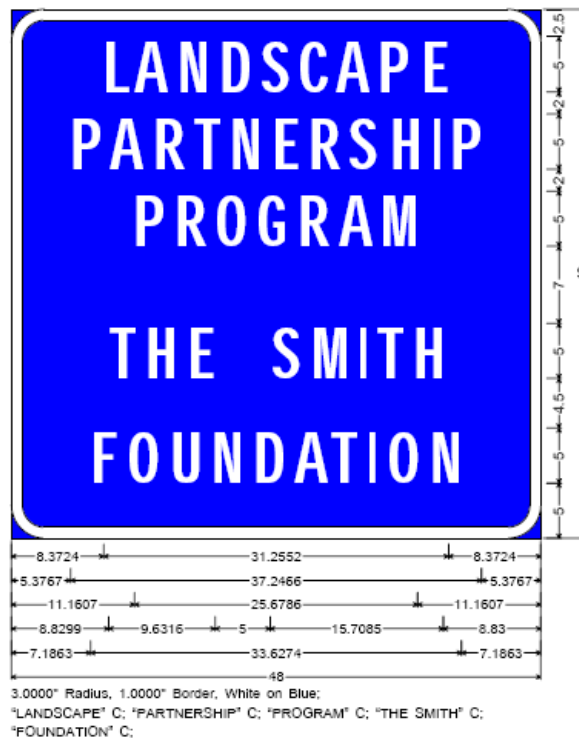
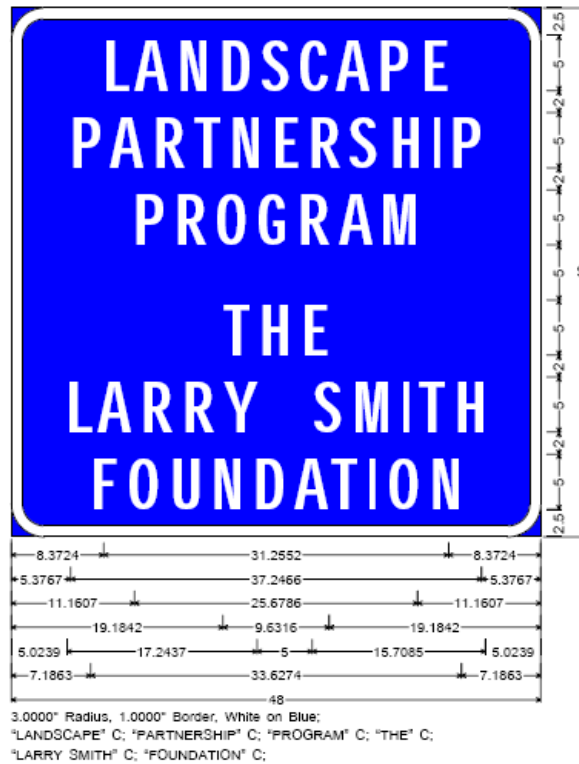
403 Huck Street  
Yoakum, Texas 77995-0757  
Phone: (361)293-4300



**TxDOT DISTRICT / COUNTY MAP**

## LANDSCAPE PARTNERSHIP PROGRAM SIGNAGE

The local government or donor may erect a sign conforming to one of the designs shown below. The sign shall measure 4'x4' and display white letters on a blue background. The sign must conform to the current Texas Manual on Uniform Traffic Control Devices.





# Application for Landscape Partnership Program

Form DES-312  
(5/2007)  
(GSD-EPC)  
Page 1 of 1

\_\_\_\_\_  
(Date of Application)

\_\_\_\_\_  
(Name of Authorized Representative)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address of Authorized Representative)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Name, Address and Phone of Contact Person if Different from Above)

I. Describe proposed project location description and attach detailed map.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

II. Provide detailed design plan of proposed landscape project (attach scale drawings, sketches, specifications and descriptive text). The design plan must be attached to this Application in order for the department to evaluate and process this application.

III. Estimate proposed project value (including installation & minimum two year maintenance) to be used for donation valuation purposes.) \$ \_\_\_\_\_

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed or Typed Name)

Mail this Application and Design Plan to: TEXAS DEPARTMENT OF TRANSPORTATION

Attention: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_