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AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Discussion and possible action to authorize the County Judge to execute an Interlocal Agreement between Hays County and the City of Woodcreek regarding Roadway Repair and Maintenance.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-MISCELLANEOUS	April 16, 2013	80,000.00

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: BILL HERZOG

REQUESTED BY	SPONSOR	CO-SPONSOR
ICONLEY	CONLEY	N/A

SUMMARY
County and City desire to provide safe and well maintained roads, streets, alleys and rights-of-way for the use and benefit of the public and future generations

**INTERLOCAL AGREEMENT FOR
ROADWAY REPAIR AND MAINTENANCE**

This Interlocal Agreement for Roadway Repair and Maintenance ("Agreement") is hereby entered into by and between the City of Woodcreek, Texas, a Type A general-law municipality, hereinafter referred to as the "City," and the County of Hays, a political subdivision of the State of Texas, hereinafter referred to as the "County".

**ARTICLE I.
RECITALS**

WHEREAS, County and City desire to provide safe and well maintained roads, streets, alleys and rights-of-way for the use and benefit of the public and future generations; and

WHEREAS, the County and the City desire to cooperate in the maintenance and repair of certain roads, streets, alleys and rights-of-way within the County and City; and

WHEREAS, the County and the City desire to allocate by mutual agreement the responsibilities for governmental functions and services which are or may become necessary in providing safe and well maintained roads, streets, alleys and rights-of-way that are of consistent quality of pavement along the whole length of roads that are part of the County or City Road System, even those County Roads that lie within the City limits (See Texas Attorney General Opinions WW-1401, H-1018 and H-1019); and

WHEREAS, the Interlocal Cooperation Act (Chapter 791, Texas Government Code) (the "Act") empowers the Parties to contract with each other in the performance of governmental functions; and

WHEREAS, road and street maintenance are governmental functions within the meaning of the Act; and

WHEREAS, the City and the County are "local governments" within the meaning of the Act; and

WHEREAS, the City and the County each itself has the authority under Texas law to perform such road and street maintenance, as required by the Act; and

WHEREAS, specifically section 791.032 permits, with the approval of the governing body of a municipality, a county to enter into an interlocal contract with the municipality to finance the construction, improvement, maintenance, or repair of streets or alleys in the municipality, including portions of the municipality's streets or alleys that are not an integral part of or a connecting link to other roads or highways; and

WHEREAS, section 251.012 of the Texas Transportation Code expressly allows a commissioners court of a county to spend county money to finance the construction, improvement, maintenance or repair of a street or alley; and further subsection (b)(3) permits that the county work may be done or financed by the county as an independent contractor with the municipality; and

WHEREAS, Hays County has budgeted funds sufficient for general maintenance of roads in the County Road System that lie inside the City limits; and

WHEREAS, the total expenditure of municipal funds under this Agreement is expected to be less than \$80,000, exempting the City from compliance with the competitive bid procedures of chapter 252 of the Local Government Code.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, both the City and the County agree as follows:

ARTICLE II. MAINTENANCE SERVICES

2.1 Definition.

The "Maintenance Services" to be provided by the County to the City hereunder are services, including, the maintenance and repair of asphalt and pavement of the streets and roads and corresponding maintenance and repair to the subsurface and surface of roads and streets as designated herein, as appropriate to Hays County and as specifically agreed by and between the City and the County, namely, those services specified herein.

2.2 Term.

a. Unless terminated as provided herein, the Initial Term of this Agreement will commence on the date of execution by the last party to sign the Agreement (hereinafter the "Effective Date"). The Initial Term shall be for one (1) year, commensurate with the fiscal year of the City. In the event that the City and County execute this Agreement after the beginning of the City's fiscal year, the Initial Term shall be from the Effective Date until the end of the City's fiscal year.

b. This Agreement shall automatically renew for succeeding one-year Renewal Terms, commensurate with the City's corresponding fiscal year, unless terminated by either party as provided for in Article IV.

2.3 Current Funds.

Funding from each party for the performance of this Agreement will be provided from current revenues available to the parties. Further, the City assures the County that funds are available (and, unless written notice is otherwise provided by the City, will continue to be available) to reimburse the County, as the City is obligated to do under the terms of this Agreement. After written notice from the City that no City funds are available or if this Agreement is terminated in a budget year, the City shall not be obligated to reimburse the County for the cost of any labor or materials related to any maintenance or repair of any County Road or City Road incurred by the County after its receipt of the written notice from the City, unless the project was already undertaken at the time of the written notice.

2.4 Maintenance Services.

a. County Road System Roadways. In regard to all roads within the City limits that are identified by the County as roads that are part of or integral to the County Road System (hereinafter "County Roads"), and as further identified as roads designated by the City of Woodcreek, the Parties agree as follows:

1. County shall be responsible for providing the labor and equipment required for maintenance and repair of County Roads.
2. City agrees to pay for all actual material costs related to the maintenance and repairs of County Roads.
3. City may request the maintenance and repair of specific County Roads, but County shall, with or without a request by City, (i) identify County Roads that are in need of maintenance and repair, (ii) provide 30 days prior written notice to City of maintenance and repair that County intends to perform on County Roads, and (iii) unless City objects to the maintenance and repair within ten (10) days of receiving notice under this Section, maintain and repair all County Roads in a similar fashion and to a similar quality as is customarily performed on other county roads within Hays County.
4. If City desires that a specific County Road be maintained, repaired, or upgraded to a higher quality or higher standard than is customarily performed by County on other county roads within Hays County, City may, at no expense to County, contract with a third party for the maintenance, repair, and/or upgrade of that specific County Road. In the alternative, the City may request the County to perform the maintenance, repair, and/or upgrade of that specific County Road to the specifications desired by City, if County has the resources available to perform to those specifications.
5. If City requests that County perform the maintenance, repair, and/or upgrade of a specific County Road under subsection 2.4(a).3 of this Agreement, County shall provide an estimate to City for the proposed work, and the parties shall follow the procedures set forth for City Roads, below. County's estimate under this section shall account for the cost of materials it would take to maintain, repair, and/or upgrade that specific County Road to the county standard, plus the reasonable cost of materials, labor, and equipment it would take to maintain, repair, and/or upgrade that specific County Road to a higher quality or higher standard than is customarily performed by County on other county roads within Hays County.

b. City Roadways. In regard to all roads within the City limits of that are NOT identified by County as roads that are part of or integral to the County Road System (hereinafter "City Roads"), the parties agree as follows:

1. County shall, at the request of City, provide City with a written estimate and proposed Start Date for the maintenance, repair, and/or upgrade of specific City Roads. The written estimate shall include reasonable compensation for County's labor, equipment, and material costs associated with the maintenance, repair, and/or upgrade of any specific City Road to the standards as specified by the City.
2. City shall, within thirty (30) days' receipt of a written estimate from County, request that County (i) perform the maintenance, repair, and/or upgrade of that specific City Road as estimated by County, or (ii) inform the County that the City desires to wait until a later date upon which the County can provide City with a new estimate and available start date for that specific City Road. City may, at any time, contract with a third party for the maintenance,

repair and/or upgrade of any City Road.

3. If City requests that County perform maintenance, repairs, and/or upgrades under subsection 2.4(a).3, above, County shall commence performance of the maintenance, repair, and/or upgrade within ten (10) days of the proposed Start Date cited in subsection 2.4(b).1, above. If City waits for a period longer than thirty (30) days to respond to County's written estimate, or if City requests that County act in accordance with 2.4(a).3, above, the written estimate provided by County shall be considered expired and void unless otherwise indicated or extended in writing by County.

ARTICLE III. PAYMENT

3.1 Payment.

All invoices related to Maintenance Services for County Roads and City Roads shall be provided by County on a monthly basis for all costs that are the obligation of the City of under this Agreement. The City shall pay said invoices no later than thirty (30) days after receipt.

ARTICLE IV. TERMINATION

4.1 Termination.

This Agreement may be terminated by either party, for any reason whatsoever, by providing sixty (60) days' written notice to the non-terminating party. If, upon providing or receiving notice of termination under this Section, County has begun performance of Maintenance Services or upgrade of any roadway under this Agreement, County shall complete the work on that specific roadway and City shall pay, as may be required by the terms of this Agreement, for the completion of work on that specific roadway before either party is released from the terms and obligations of this Agreement.

ARTICLE V. MISCELLANEOUS

5.1. Notice.

Any notice required or permitted to be given by either party under the terms of this Agreement shall be deemed given, whether or not received, three (3) days after it is deposited in the United States mail, postage prepaid, certified mail with return receipt requested, to the address for notice set forth below, or the last address for notice which the sender has for the recipient at the time the notice is sent, with a copy sent on the same day by facsimile, or on the date the notice is delivered if hand delivered, with a written acknowledgment of receipt obtained.

Addresses for notice are as follows, unless expressly changed by the parties in writing:

- a. Notices sent pursuant to this Agreement may be delivered or sent to the CITY at the following address:

Mr. John Sone
City Manager
41 Champions Circle
Woodcreek, TX 78676

- b. Notices sent pursuant to this Agreement may be delivered or sent to the COUNTY at the following address:

Commissioner Will Conley (or his successors in office)
P.O. Box 2085
Wimberley, Texas 78676

- c. To be effective, a copy of any notices sent to the COUNTY shall be sent to the Special Counsel's Office at the following address:

Mark Driscoll Kennedy (or his successors in office)
A.D.A. -- Special Counsel
Hays County, Texas
712 South Stagecoach Trl, Suite 2057
San Marcos, TX 78666

- d. To be effective, a copy of any notice sent to the CITY shall be sent to the CITY Attorney at the following address:

Roger Gordon (or his successors in office)
Roger Gordon Law
901 South MoPac Expressway, Bldg 1, Suite 3
Austin, TX 78746

5.2 Cooperation, Reservation of Rights.

The City and County agree to cooperate with each other, in good faith, at all times during the term hereof in order to achieve the purposes and intent of this Agreement. The Parties agree to do all acts and things and to execute and deliver such further written instruments, as may be from time to time reasonably required to carry out the purposes and the provisions of this Agreement. Nothing in this Agreement shall be construed to interfere with the City's and County's legal right to autonomously maintain and repair roads that have been identified as part of each entity's respective road system, particularly if the condition of said roads, in the Party's opinion, poses a safety or mobility concern.

5.3 Entire Agreement; Amendments.

This Agreement contains the entire agreement between the parties respecting the subject matter hereof, and supersedes all prior understandings and agreements between the parties regarding such matters. This Agreement may not be altered, amended, or modified except in writing signed by all parties to this Agreement. No official, agent, employee, or representative of either the County or the City has the authority to alter, amend, or modify the terms of this Agreement, except in accordance with express authority as may be respectively granted by either the County Commissioners Court or the City Council.

5.4 Interpretation.

The parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Interlocal Cooperation Act. All terms and provisions hereof are to be construed and interpreted consistently with that Act.

5.5 Severability.

Any clause, sentence, paragraph or article of this Agreement which is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion.

5.6 Applicable Laws.

This Agreement shall be construed in accordance with the laws of the State of Texas.

5.7 Authorization.

Each party hereto acknowledges and represents that this Agreement has been duly authorized by its respective governing body. This Agreement shall not become effective until approved by the City Council of the City and Hays County Commissioners Court and signed by both parties.

5.8 Indemnity.

The City agrees that it will, to the extent permitted by applicable law, save, protect, defend, and hold harmless the County from any and all suits, claims, or causes of action which may arise out of or in any manner be connected with the negligence, recklessness or intentional misconduct of City employees, agents, or servants in performing the City's obligations under the terms of this Agreement.

The County agrees that it will, to the extent permitted by applicable law, save, protect, defend, and hold harmless the City from any and all suits, claims or causes of action, or public liability which may arise out of or in any manner be connected with County operations or programs, and the negligence, recklessness or intentional misconduct of County employees, agents or servants in performing or failing to perform the County's obligations under the terms of this Agreement.

Nothing herein shall be deemed in any manner to constitute a waiver of any immunity or affirmative defense which may be asserted by the County or the City pursuant to law. Nor shall this provision be in any manner construed to create a cause of action for the benefit of any person not a party to this Agreement not otherwise existing at law.

5.9 Duplicate original counterparts; other similar agreements distinct.

This Agreement may be executed in duplicate original copies by the parties. Similar agreements by and between the City or County and other contracting entities may be made; each such separately executed version of this Agreement is and shall constitute a separate and distinct agreement between the City or County and the particular other County, but does not create obligations or rights as between contracting entities.

5.10 Alternative Dispute Resolution.

It shall be a prerequisite to either party seeking legal or equitable relief for any disputes arising under or related to this Agreement or the Maintenance Services that mediation be conducted. If they are unable to agree to a mediator and mediation process, the parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the Texas Civil Practice and Remedies Code, section 154.023. Unless both parties are satisfied with the results of any such mediation, it will not constitute a final and binding resolution of the dispute; provided, however, that any mutually agreed settlement reached in such mediation may be enforced by any court of competent jurisdiction. All communications within the scope of the mediation are and shall be confidential as

provided in said section 154.023 unless both parties agree in writing to waive confidentiality.

5.11 Non-waiver.

Any act of forbearance by either party will not constitute and will not have the effect of an amendment of this Agreement. The failure of either party to exercise any right under this Agreement under certain circumstances does not imply a waiver of such right under like circumstances later occurring.

5.12 Interpretation and Reliance.

No presumption will apply in favor of either Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provisions thereof.

EXECUTED THIS _____ day of _____, 2013.

HAYS COUNTY

By: _____
JUDGE BERT COBB, M.D.
HAYS COUNTY JUDGE

ATTEST:

LIZ Q. GONZALEZ, HAYS COUNTY CLERK

EXECUTED THIS _____ day of _____, 2013.

CITY OF WOODCREEK

By: _____
JOHN SONE, CITY MANAGER

ATTEST:

_____, CITY SECRETARY