

## **RIGHT OF WAY and REIMBURSEMENT AGREEMENT**

This Right of Way (“ROW”) and Reimbursement Agreement (the “Agreement”) is hereby made effective on or about June 18, 2013 between Hays County, a political subdivision of the State of Texas (“County”), 111 E. San Antonio Street, Suite 300, San Marcos, Texas, Mark Bleakley, the owner of real property located at the Northeast corner of McGregor Lane and Martin Road and Anne Shahan, the owner of real property located at the Southeast corner of McGregor Lane and Martin Road in Precinct 4 of Hays County, Texas (the “Landowners”). County and Landowners may be referred to collectively, as the “Parties”.

### **RECITALS**

**WHEREAS**, the County is currently making improvements to the intersection of McGregor and Martin Roads, including the improvement of a low water crossing near said intersection (“the Project”);

**WHEREAS**, the Landowners have already transferred title to property needed by the County for additional ROW associated with the Project;

**WHEREAS**, the Landowners are concerned about the slope of the ROW constructed by the County, erosion of the ROW, and reseeding measures taken to prevent erosion in the ROW;

**WHEREAS**, the slope of the drainage improvements has caused Mark Bleakley’s gated entrance and driveway that are located in close proximity to the Project to be inaccessible;

**WHEREAS**, Mark Bleakly is concerned about the cattle using the culvert constructed on his Property to cross onto his neighbor’s property;

**NOW, THEREFORE**, in consideration of the foregoing, the County and Landowners agree as follows:

### **ARTICLE 1 PURPOSE**

The purpose of this Agreement is to set forth the terms and conditions under which the County will prevent erosion on the Property and provide the Landowners with reasonable reimbursement.

### **ARTICLE 2 OBLIGATIONS OF THE LANDOWNERS**

**2.1** Mark Bleakley is willing to and shall move his gated entrance further down Martin Road and away from the Project to a mutually-agreed-upon location, granted that Mr. Bleakley is reimbursed for the reasonable costs of moving the gated entrance;

**2.2** Mark Bleakley agrees to utilize the Funds he receives under this Agreement to pay for Eligible Expenses and in compliance with all the terms and conditions specified in this Agreement.

**2.3** Mark Bleakley shall pursue the design and construction to completion of the design and construction work with commercially reasonable diligence.

**2.4** During the Term of this Agreement, Mark Bleakley shall provide to the County written reports outlining the status of the work.

**2.5** Mark Bleakley shall furnish the County with copies of all contracts it enters into for the design and construction of the work and all invoices for work to be paid or reimbursed with the Funds provided by this Agreement.

**2.6** Mark Bleakley may complete the gate entrance himself with his own contractors and will submit invoices for his expenditures (including expenses and reimbursement for time) to the County.

### **ARTICLE 3 OBLIGATIONS AND REIMBURSEMENT FROM THE COUNTY**

**3.1** The County agrees to re-seed the ROW area along Mr. Bleakley and Ms. Shahan's Property in conformity with the City of Austin Seeding for Erosion Control, Item No. 6045, seed mixture as agreed to in the ROW Purchase Agreement signed between the Parties. The County shall also monitor the re-seeding and vegetation growth in the ROW.

**3.2** The County shall pay for any and all damage on the Landowners' properties and costs incurred as a result of the erosion of the ROW, including, but not limited to, the cost of attorney, expert or consultant fees, loss of property due to the erosion, the cost to replace fences that are destroyed by any erosion issues in the ROW.

**3.3** The County shall reimburse Mr. Bleakley for the reasonable costs associated with moving the gated entrance and has agreed to install a new driveway that will grant access to Mr. Bleakley's gated entrance at the mutually-agreed-upon location on Martin Road.

**3.4** The County shall install a water gap on Mr. Bleakley's property that will prevent cattle from using the culvert installed in Barton Creek to cross onto the neighbor's property.

**3.5** At such time as Mr. Bleakley receives an invoice for services rendered for moving the gate entrance and installation of a new driveway, he may submit any such invoice to the County for payment. Within 30 days of the receipt of any such invoice, the County will remit payment for services identified in the invoice, to Mr. Bleakley, to the provider of the services or jointly to both, in the County's discretion. Under no circumstances will the County pay one-hundred percent (100%) of the total costs for any services in advance of such services being

performed and completed.

3.6 The Funds shall be drawn only from the account specifically designated by the County for the purposes of this Agreement and from no other accounts of the County.

#### ARTICLE 4 TERM AND TIME OF PERFORMANCE

4.1 The effective date of this agreement shall be the date last executed by the Parties, below (the "Effective Date").

#### ARTICLE 5 MISCELLANEOUS

5.1 Entire Agreement. This Agreement represents the entire and integrated agreement between the County and the Landowners and supersedes all prior negotiations, representations or arguments either written or oral. However, this agreement does not supersede or replace any engineering documents created by Halff & Associates for the Project or the ROW Purchase Agreement executed by the Parties.

5.2 Lawful Authority. The execution and performance of this Agreement by the County and Landowners have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and the Landowners in accordance with its terms.

5.3 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

5.4 Indemnification. It is understood and agreed between the Parties that the County and the Landowners, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE COUNTY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND THE LANDOWNERS AGREE TO INDEMNIFY, DEFEND AND HOLD THE COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES**

5.5 Conflict of Interest. The Landowners affirm that it has not made or agreed to make any valuable gift whether in the form of service, loan, thing or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of Landowners for receipt of the Funds within the two years preceding the execution of this Agreement. A campaign contribution as defined by the Election Code or the Hays County Code of Ordinances will not be considered as a valuable gift for the purposes of this Agreement.

**5.6** Construction. The captions and headings contained in this Agreement are solely for convenient reference and will not be deemed to affect the meaning or interpretation of any provision or paragraph hereof. All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. For the purposes of this Agreement, the term "will" is mandatory. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

**5.7** Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, ordinance or administrative executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have not legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

**5.8** No Waiver. No waiver by the County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

**5.9** Public Information Act. Hays County is governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under this Act.

**5.10** Additional Documents. The Landowners and the County covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

**5.11** Compliance with Laws. In performing this Agreement, the Landowners will comply with all local, state and federal laws.

**5.12** Counterparts. This Agreement has been executed by the parties in multiple originals or counterparts each having full force and effect.

**5.13** Dispute Resolution. a) Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Contract. If a controversy or claim should arise, the Parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any Party may request the other to meet within ten (10) days, at a mutually-agreed-upon time and place. The Parties shall, within ten (10) days after the Effective Date of this Contract, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes. Each of the Parties may change the designation of its Representative, but shall maintain at all times during the term of this Contract a designated Representative and shall ensure that the other Parties are notified of any change in the designation of its Representative.


b) Mediation. If the dispute has not been resolved within sixty (60) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. The Parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

c) Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon), any of the Parties may commence litigation to resolve the dispute in any Texas state court of competent jurisdiction, or in the United States District Court for the Western District of Texas to the extent said Court shall have jurisdiction over the matter.

EXECUTED in duplicate originals this 18 day of June, 2013.

Hays County:

By:


  
Judge Bert Cobb, M.D.  
Hays County Judge

Landowners

By:

  
Mark Bleakley

By:

  
Anne Shahan