

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 Caldwell County related to Right of Way acquisition on FM110 in Precinct 1.

ITEM TYPE

ACTION-ROADS

MEETING DATE

June 4, 2013

AMOUNT REQUIRED

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY

Ingalsbe

SPONSOR

INGALSBE

CO-SPONSOR

N/A

SUMMARY

Summary to be provided in Open Court

FILED:

08 06 13

HAYS COUNTY COMMISSIONERS' COURT

Resolution # 28205 VOL V PG 207

**FM 110 PROJECT
INTERLOCAL COOPERATION AGREEMENT
HAYS COUNTY AND CALDWELL COUNTY**

This Agreement is made and entered into by and between Hays County, Texas, ("Hays"), and Caldwell County, Texas, ("Caldwell"), hereinafter collectively referred to as the "Parties", upon the premises and for the consideration stated herein.

RECITALS

WHEREAS, Hays County has entered into a Pass-Through Financing Agreement with the Texas Department of Transportation ("TXDOT") for the new construction of FM 110, From SH 123 to Yarrington Road (the "Project") located within both Hays County and Caldwell County; and

WHEREAS, because expeditious completion of the Project will benefit the citizens of Hays County, Hays County is currently assisting TXDOT by acquiring the Project right-of-way and associated easements located in Caldwell County;

WHEREAS, Hays County can further expedite completion of the Project, and thus further benefit its citizens, by assisting with the acquisition of Project right-of-way and associated easements in Caldwell County;

WHEREAS, the Parties desire to cooperate in and establish their respective responsibilities for acquisition of the Project right-of-way and associated easements in Caldwell County; and

WHEREAS, the Parties intend to conform this Agreement in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.;

PROJECT DESCRIPTION

The "FM 110 Project" consists of proposed improvements for the approximate 11.3-mile corridor from SH 123 to IH 35 at Yarrington Road include construction of two travel lanes (one in each direction) with 10-foot shoulders with interchanges at SH 21 and the Union Pacific Railroad in the interim timeframe and the construction of two additional travel lanes and additional interchanges in the ultimate timeframe (to be determined).

Project Costs:

Interim: Construction: \$48.0 million

Design: \$5.3 million (does not include ultimate)

Right-of-Way (ROW) Acquisition: \$5.0 million (includes ultimate)

Utility Relocation: \$2.0 million (includes ultimate)

ROW and Utility Relocation Services: \$1.5 million (includes ultimate)

Ultimate: Construction: To be determined

AGREEMENTS

Now, therefore, the Parties agree as follows:

A. MANAGEMENT AND COORDINATION

1. Hays designates Jerry Borcharding, P.E. (or successor), Director of the Hays County Transportation Department ("Director"), to act on behalf of Hays with respect to the services to be performed under this Agreement. The Director shall have complete authority to interpret and define Hays' policies and decisions with respect to the services. The Director may designate other representatives to transmit instructions and receive information.

2. The Caldwell County Judge shall designate a person to act on behalf of Caldwell ("Caldwell Designee") with respect to the services to be performed under this Agreement. The Caldwell Designee will have complete authority to interpret and define Caldwell's policies and decisions with respect to the services. The Caldwell Designee may designate other representatives to transmit instructions and receive information. The Caldwell Designee shall be responsible for determining whether any approval or action by Caldwell under this Agreement can be made or taken by the Caldwell Designee or requires presentation to and/or a vote of the Caldwell County Commissioners Court, and Hays may rely and act on those determinations.

County Judge
Tom D. Bonn

B. SERVICES

1. Hays shall assist Caldwell by managing the process for acquisition of Project right-of-way and associated easements in Caldwell County. Caldwell agrees to provide assistance in negotiations with landowners in Caldwell County, when such assistance is requested by the Director. Such assistance shall be made via Caldwell's coordination with Hays' right-of-way negotiators.

2. The Parties agree to comply with applicable federal and state laws, regulations, and procedures in the acquisition of the necessary right-of way and associated easements for the Project, including all applicable TXDOT policies and procedures.

3. Hays will provide the following services to Caldwell with regard to the acquisition of Project right-of-way and associated easements in Caldwell County.

a. In coordination with Caldwell, Hays will attempt to obtain donations of as many parcels as reasonably possible.

b. For all parcels, Hays will obtain any necessary title commitments, appraisals, land plans, appraisal reviews, and other professional services pursuant to its standard contracts for professional services with title companies, appraisers, land planners, and other professionals.

c. Hays will prepare all necessary contracts and documents, including any closing documents not provided by the landowner or the title company, and coordinate the closing of all conveyances for all parcels.

d. Hays will manage relocation of utilities to provide clear right-of-way for construction of the Project on a timely basis

e. If condemnation of a parcel is necessary, Hays will provide a full copy of its file to the Caldwell County Attorney and will, to the extent reasonable and necessary for briefing and testimony, make available the Hays County right-of-way negotiator who negotiated with the condemnee on that parcel.

4. If Caldwell finds Hays deficient in providing any services, Caldwell shall immediately report the deficiencies either in person or by telephone conversation to the Director and the Right-of-Way Manager, with an additional written notice to be deposited in the U.S. Mail within 24 hours. The Director shall direct any appropriate remedial action.

C. FINANCIAL OBLIGATIONS

1. In consideration of the benefits to Hays County's citizens of expeditious completion of the Project, Hays shall bear the costs of the services its employees provide to Caldwell related to acquisition of right-of-way and associated easements in Caldwell County.

2. Hays shall bear the following costs related to acquisition of Project right-of-way and associated easements in Caldwell County:

a. Costs of professional services, including title commitments and services, appraisals and appraisal reviews, land plans and land planning services, expert witnesses, etc., at the rates provided by Hays' professional services contracts or other agreements for such services.

b. Actual acquisition costs, including purchase price for Project right-of-way and associated easements, title insurance, closing costs, damages and/or costs to cure, damages to or relocation or replacement costs for fences, improvements, utilities, etc.

3. As required by law, the party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party.

D. PARCELS PARTLY IN BOTH HAYS AND CALDWELL COUNTIES

1. If condemnation of a parcel located in both Hays and Caldwell is necessary, both Caldwell and Hays shall approve the institution of condemnation proceedings on a timely basis. Hays will prosecute condemnation actions for such parcels. If it is necessary to condemn a parcel located wholly within Caldwell County, Caldwell will condemn that parcel at Hays' expense and on a timely basis.

E. LIABILITY; MUTUAL INDEMNITY

The Parties agree that, to the extent allowed by Texas law, they are respectively responsible for their own proportionate share of any liability arising out of or in connection with the activities to be undertaken pursuant to this Agreement.

Hays agrees, to the fullest extent permitted by law, to indemnify and hold harmless Caldwell County, its officers, directors, employees and subcontractors against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Hays' negligent acts (and the negligent act of its employees) in connection with this Agreement.

Caldwell agrees, to the fullest extent permitted by law, to indemnify and hold harmless Hays County, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Caldwell's negligence and that of its employees, other contractors, or anyone for whom Caldwell is responsible or legally liable.

F. ACCESS TO PROJECT PROPERTY

The Parties acknowledge that it may be necessary for Caldwell and Hays, and their respective employees and professional consultants to enter onto real property in the Parties' respective jurisdictions to perform surveying and other professional services for the development of the Project. Therefore, the Parties agree to provide any necessary assistance, including the initiation and prosecution of legal proceedings, to secure the right of the Parties and their respective employees and consultants to enter onto such real property as is necessary in the development of the Project.

G. FORCE MAJEURE

In the event that the performance by any of the Parties of any of their obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act of conduct of any person or persons not a party or privy hereto, then the respective party shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereto.

H. NOTICE

Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

HAYS: Bert Cobb, M.D., Hays County Judge, 111 E. San Antonio St., Ste. 300
San Marcos, Texas 78666

COPY TO: Mark Kennedy (or successor), Hays County Criminal District Attorney, 712
South Stagecoach Trail, Suite 2057, San Marcos, Texas 78666

CALDWELL: County Judge Tom D. Bonn
110 South Main St.
COPY TO: Lockhart, TX, 78644


I. MISCELLANEOUS

1. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
2. This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein and supersedes all prior negotiations, agreements, representations and understandings, if any, between the Parties respecting the Project. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the Parties hereto. However, any consent, waiver, approval or authorization shall be effective, if signed by the party granting or making such consent, waiver, approval, or authorization. No official, representative, agent, or employee of either county has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the county's commissioners court.

3. This Agreement takes effect upon the complete execution of the Agreement by the Parties and shall have an initial term of one year. Pursuant to section 791.011(f) of the Texas Government Code, this Agreement shall automatically renew on the 1st day of October of each calendar year unless otherwise validly terminated by the parties under section 4.
4. This Agreement may be terminated by the mutual agreement of the Parties.
5. The Parties hereto covenant and agree that they will execute other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
6. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
7. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Caldwell County, Texas. Any suits pursued relating to this Agreement will be filed in a district court of Caldwell County, Texas.
8. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns. No party may assign any rights under this Agreement without the written consent of the other parties. Except as otherwise expressly provided herein, nothing in this Agreement, express or implied is intended to confer upon any person, other than the Parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.
9. This Agreement may be executed simultaneously in one or several counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. The terms of this Agreement shall become binding upon each party from and after the time that it executes a copy hereof. In like manner, from and after the time it executes a consent or other document authorized or required by the terms of the Agreement, such consent or other document shall be binding upon such party.
10. Hays and Caldwell Counties as units of local government, are authorized by §791.011 of the Texas Government Code to contract with each other to perform certain governmental functions and services. As defined in §791.003 of the Texas Government Code, such governmental functions and services include purchase of right of ways .
11. Pursuant to §791.011(d)(1) of the Texas Government Code, this Agreement has been duly authorized by the governing body of both Hays and Caldwell Counties .

12. Pursuant to §791.011(d)(3) of the Texas Government Code, the Parties agree that the funds being committed by Hays County under this Agreement shall be paid from current revenues available to Hays County.

HAYS COUNTY, TEXAS

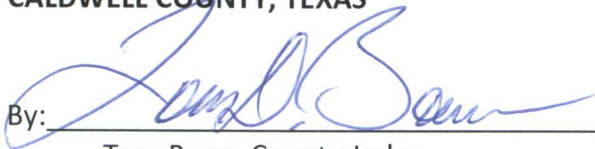
By: 
Bert Cobb M.D., County Judge

Date: 8-6-2013

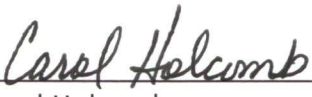


Attest: 
Liz Q. Gonzalez
Hays County Clerk

CALDWELL COUNTY, TEXAS

By: 
Tom Bonn, County Judge

Date: 26 Aug 13

Attest: 
Carol Holcomb
Caldwell County Clerk