

13

**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**

Renew Agreement for Alternative Dispute Resolution Services between Hays County and the Hays County Dispute Resolution Center.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	September 24, 2013	N/A

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
Kennedy	COBB	N/A

**SUMMARY**  
Renewal of this Agreement will allow the continuing collection of the fees that constitute the ADR System Fund, while providing for the performance of certain obligations by the DRC.

## **AGREEMENT FOR ALTERNATIVE DISPUTE RESOLUTION SERVICES**

This Agreement for Alternative Dispute Resolution Services (hereinafter referred to as the "Agreement") is by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as the "County") and Central Texas Alternative Dispute Resolution, Inc., d/b/a Hays County Dispute Resolution Center, a Texas nonprofit corporation (hereinafter referred to as the "DRC"). In this Agreement, the County and the DRC sometimes are referred to jointly as the "Parties" and individually as a "Party."

WHEREAS, the DRC is a Texas nonprofit corporation serving Central Texas, whose principal purpose is to provide the citizens of the County and surrounding counties with access to affordable, quality, effective, alternative dispute resolution ("ADR") services, including mediation, negotiation, facilitation, and conciliation; and

WHEREAS, the DRC's other purposes include providing the citizens of the County and surrounding counties with education and training regarding ADR services, including mediation, negotiation, facilitation, and conciliation; and

WHEREAS, the County finds significant public benefit in providing a more-peaceable atmosphere in the community, relieving any crowded court dockets, reducing the costs of litigation, and saving the County's taxpayers money by making available to the County's residents access to affordable, quality, effective ADR services, including mediation, negotiation, facilitation, and conciliation, as well as education and training regarding ADR services;

THEREFORE, in consideration of the promises and covenants exchanged below, the Parties agree to the following:

### **I. RESPONSIBILITIES OF THE DRC**

**A. To Provide ADR Programs and Services.** The DRC will be responsible for providing ADR programs and services to the County's residents. The programs and services will include, but not be limited to, those described in this paragraph.

**1. Court-Annexed Mediations.** The DRC's programs and services will include mediation of court-referred civil cases from the district courts, county courts-at-law, or justice of the peace courts, with particular emphasis being given to pro-se cases, cases involving at least one indigent party, cases involving an amount in dispute of \$50,000.00 or less, and divorce, child-conservatorship, and child-support cases. The Executive Director and other DRC staff will work in concert with the County's judges and court coordinators to determine which cases are best-suited and most-appropriate for referral to mediation.

**2. Community-Based Mediations.** The DRC's programs and services will also encompass mediation of disputes that might arise between neighbors, employers and employees, landlords and tenants, consumers and merchants, or other parties seeking to resolve disputes

without the use of litigation. The intent behind offering such services to the community is to make the County a more-peaceable community in which to live, work and transact business.

**3. Education and Training.** The DRC will provide programs to educate the County's citizens regarding the benefits of ADR techniques, and it will dispense information about resolving disputes in positive, non-violent ways. The DRC's programs and services will include the training of volunteer mediators to serve the community.

**B. To Provide Reporting, Requests for Payment, and Management of Programs and Services.** The DRC will provide the County with reports of activities and requests for payment as follows:

**1. Reports.** The DRC will provide the County with detailed quarterly and cumulative annual reports regarding (a) its activities, including sources, disposition, and/or current status of all cases completed or pending during each respective period, and (b) its financial status, including revenues and expenditures, for each of those same periods.

**2. Requests for Payment.** The DRC will provide the County with monthly requests for funds to be paid to the DRC from the Alternative Dispute Resolution System Fund. Said monthly requests will contain such reasonable information and details regarding expenses and application of funds as the County Auditor, or his designee, deems necessary.

**3. Management of Programs and Services.** The DRC will manage its own programs and services and implement rules, procedures, and policies that control or direct all affairs of its programs and services. The DRC will also maintain and administer one or more operating accounts separate and distinct from the County's ADR System Fund. The DRC's operating account(s) may be funded by user fees, grants, donations, fundraising activities, and funds from other programs and services, in addition to any amounts provided by the County. The County Auditor shall have a right, upon provision of reasonable written notice to DRC, to review and audit all DRC accounts, regardless of the funding source(s) for those accounts. All reviewing and auditing of DRC accounts shall be performed during regular business hours.

**C. To Provide Evidence of Insurance.** The DRC will maintain in full force and effect during the entire remaining term of this Agreement, a policy of general liability insurance in which the limits shall not be less than \$100,000.00 for each person and \$300,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for destruction of property. The policy will name the County and the DRC as insured parties, and it will contain a clause that the insurer will not cancel or change the insurance without first giving the County at least ten days' prior written notice. The insurance will be from a company acceptable to the County's Insurance Department, and a copy of the policy or certification of insurance will be delivered to the County.



## II. RESPONSIBILITIES OF THE COUNTY

**A. To Maintain and Administer an ADR System Fund.** In accordance with the provisions of Section 152.004 of the Texas Civil Practice and Remedies Code, the County has established and is administering, and will continue to administer during the term of this Agreement, an ADR system fund by taxing and collecting a fee of \$15.00 per filing, paid as other court costs, on all civil cases filed in the County at both the district and county court levels, and \$5.00 per filing on all civil cases filed in the justice of the peace courts, excluding (1) suits filed by the County, (2) suits for delinquent taxes, (3) condemnation proceedings under Chapter 21 of the Texas Property Code, and (4) proceedings under Subtitle C of Title 7 of the Texas Health and Safety Code.

**B. To Compensate the DRC for ADR Programs and Services.** The filing fees collected by the County pursuant to Section 152.054 of the Texas Civil Practice and Remedies Code are to be held in the County Treasury in the ADR System Fund. In exchange for the DRC's programs and services, the County will pay the fees held in the ADR system fund to the DRC on a monthly basis, in accordance with the monthly requests for payment that the DRC will submit to the County as provided in this Agreement. The County, through specific county departments, at the DRC's request, will also consider additional budget requests to assist the DRC in establishing and maintaining financial viability during the term of this Agreement. All payments, including payment amounts, are subject to the approval of the County Auditor before payment.

## III. OTHER TERMS AND CONDITIONS

**A. Availability of Funds.** Both Parties understand that, any additional funds granted after consideration of any additional budget requests to specific departments, received from the DRC, the only funds available from the County for distribution to the DRC for services described in this Agreement will be the funds collected as fees and available in the ADR System Fund, which funds will be paid to the DRC for services as provided in this Agreement.

**B. Relationship of the Parties.** At all times and for all purposes hereunder, the DRC will be an independent contractor, not a County employee. No statement contained in this Agreement will be construed so as to find any employee of the DRC an employee of the County. The DRC, its agents, employees, officers, and directors, will be entitled to none of the rights, privileges, or benefits of County employment unless the County so authorizes. The DRC is and will remain an independent agency with respect to all programs and services it performs under this Agreement.

**C. DRC's Relationships with Others.** The DRC reserves the right to establish relationships with, and to provide ADR programs and services for, other public and private entities and individuals.

**D. Parties in Interest.** This Agreement will bind and benefit the County and the DRC and will not bestow any rights upon a third party.

**E. Term and Termination; Extension and Renewal.** This Agreement will be in full force and effect from October 1, 2013 through September 30, 2014, unless otherwise terminated prior

to that time by a Party as provided under the terms of this Agreement. This Agreement may be renewed and extended at the end of the primary term, or of any renewal term, by mutual agreement for an additional one-year term, subject to the express written approval of the Commissioners Court of the County. A Party may terminate its performance under this Agreement only upon default by the other Party. Should such a default occur, the Party against whom the default has occurred shall have the right to terminate all or part of its duties under the terms of this Agreement as of the thirtieth (30<sup>th</sup>) day following the receipt, by the defaulting Party, of notice describing such default(s) and the intention of the other Party to terminate, provided that: 1) such termination will be ineffective if within said thirty-day period the defaulting Party cures the default, or 2) such termination may, at the sole election of the Party against whom the default has occurred, be stayed pending the cure of the default.

**F. Non-Waiver.** Failure of either Party to insist on the strict performance of any of the covenants or promises herein, or to exercise any rights or remedies provided for herein, upon default or failure of performance will not be considered a waiver of the right to insist on and to enforce by an appropriate remedy, strict compliance with any other obligation hereunder, or to exercise any right or remedy occurring as a result of any future default or failure of performance.

**G. Applicable Laws.** This Agreement is subject to, and will be construed in accordance with, the laws of the State of Texas, the laws of the federal government of the United States of America, and all rules and regulations of any regulatory body or officer having jurisdiction. This Agreement is performable in Hays County, Texas.

**H. Notice.** All notices required or permitted hereunder will be in writing and addressed to the respective officer of the other Party at the address described below or at such other address as the receiving Party may have prescribed by notice to the sending Party:

County: County Judge Bert Cobb  
Hays County Commissioners Court  
111 E. San Antonio Street, Suite 300  
San Marcos, Texas 78666

DRC: Tera Cleland  
Executive Director  
Hays County Dispute Resolution  
Center  
829 N. LBJ, Suite 108  
San Marcos, Texas 78666

**I. Ambiguities.** If there are any ambiguities in the interpretation or enforcement of any terms of this Agreement, those ambiguities will not be construed for, or against, any Party on the basis that said Party did or did not author same.

**J. Entire Agreement; Amendment.** This Agreement contains all of the covenants and promises of the Parties relating to the subject matter hereof, and is the full expression of the contract between the Parties. Any amendment to this Agreement will be of no force or effect unless it is in writing and signed by both Parties.

**K. Severability.** If one or more of the provisions contained in this Agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**L. Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be considered an original and all of which, taken together, will constitute one and the same instrument.

**HAYS COUNTY, TEXAS**

By:   
Bert Cobb, County Judge  
Hays County Commissioners Court

**CENTRAL TEXAS ALTERNATIVE  
DISPUTE RESOLUTION, INC.**

By:   
Tera Cleland, Executive Director  
Central Texas Alternative Dispute  
Resolution, Inc.

Approved by the Hays County Judge and the Hays County Commissioners Court on this 21  
day of September, 2013.

ATTEST:

BY:   
Liz Gonzales, Hays County Clerk *deputy*

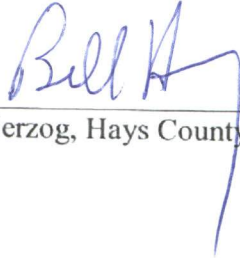




**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 40,400 estimate from the ADR System Fund, and ~~the amount of \$ \_\_\_\_\_~~ from account 115-740-00.5448 to pay the obligation of Hays County under and within the foregoing contract.

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



Bill Herzog, Hays County Auditor