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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 a Memorandum of Understanding (MOU) regarding the dedication of roadways and Right of Way in the Deerfield Estates II Subdivision.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	September 3, 2013	

#### LINE ITEM NUMBER

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#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Whisenant	WHISENANT	N/A

#### SUMMARY

Deerfield Estates wishes to dedicate and convey to Hays County certain roadways and ROW that it owns, and/or possesses and maintains for requisite repair and improvements to the roadways.

FILED:

09 03 13

HAYS COUNTY COMMISSIONERS' COURT

Resolution # 28277 VOL V PG 228

**MEMORANDUM OF UNDERSTANDING**  
**REGARDING THE DEDICATION OF ROADWAYS AND RIGHT-OF-WAY**  
**IN THE DEERFIELD ESTATES SUBDIVISION**

This Memorandum of Understanding Regarding the Dedication of Roadways and Right-of-Way (ROW) in the Deerfield Estates II Subdivision ("MOU") is hereby made between Hays County, a political subdivision of the State of Texas ("County"), and Deerfield Estates II Home Owners Association, a Texas corporation ("DEHOA"). The parties cited above are sometimes hereinafter collectively referred to as "the Parties" or "the Parties to this MOU."

**RECITALS**

**WHEREAS**, DEHOA currently owns, possesses, and maintains certain roadways located within the Deerfield Estates Subdivision in Precinct 4 of Hays County, Texas;

**WHEREAS**, DEHOA wishes to dedicate and convey certain roadways and ROW that it owns, and/or possesses and maintains, each parcel of which is described in Exhibit "A";

**WHEREAS**, the roadways that are the subject of this MOU, a depiction of which is attached hereto as Exhibit "B", require repair and improvements in order to generally comply with Hays County Road Standards;

**WHEREAS**, the County is willing to accept dedication of the roadways and ROW and make the requisite repair and improvements (hereinafter "the Work") to the roadways, the scope and costs of which are cited in Exhibit "C", if DEHOA meets certain terms and conditions described herein; and

**WHEREAS**, the Parties to this MOU agree that the roadways cited herein are, in the current condition, negative-equity assets, the deficit of which equals the sum of the estimated improvement costs needed to improve the roadways to minimally comply with Hay County Road Standards;

**NOW THEREFORE**, The Parties agree as follows:

**ARTICLE I. OWNER OBLIGATIONS.**

- 1.1 *Payment of Estimated Roadway Improvements.* As a condition precedent to County's obligations cited in Article II, DEHOA shall pay County the estimated costs of the Work to the roadways described in Exhibit "A" and depicted in Exhibit "B". The Parties agree that a reasonable estimation of costs of the Work is twenty-three-thousand-eight-hundred-and-eleven dollars and no cents (\$23,811.00 USD). DEHOA shall pay by delivering a check payable to "Hays County, Texas" to County's contact for notice under Section 3.1, below, within forty-five (45) days of the date this MOU is fully executed by the Parties.
- 1.2 *Dedication of Real Property.* As a condition precedent to County's obligations cited in Article II, DEHOA shall dedicate via General Warranty Deed the roadways and ROW described in Exhibit "A" and depicted in Exhibit "B".

- 1.3 *Owner Acceptance of Work.* DEHOA recognizes that, at the time the County performs the improvements needed to achieve County Road Standards on the roadways, the County will have full title to the roadways for the benefit of the public. As such, the County will have sole discretion to assess and make determinations regarding materials used and the quality of work on the improvement of these roadways. If DEHOA wishes to raise complaints over materials used and/or quality of work, it shall do so via the Precinct 4 Commissioner, who will have discretion to determine a course of action over the complaint.

## **ARTICLE II. COUNTY OBLIGATIONS.**

- 2.1 *Receipt and Use of Payment; Commencement.* County shall receive and earmark payment from DEHOA under Section 1.1, above; and shall use all monies paid from DEHOA for funding labor and materials associated with the Work to the roadways described in Exhibit "A" and depicted in Exhibit "B". Unless otherwise agreed to in writing by the Parties, Work shall commence within one (1) year of the fulfillment of DEHOA's obligations under Sections 1.1 and 1.2 above.
- 2.2 *Return of Monies Remaining After Completion of the Work.* After County completes the Work cited in Exhibit "C", County shall provide DEHOA with an accounting of actual costs incurred in performance of the Work and, if actual costs are less than the total original estimated amount, pay DEHOA the difference between the actual costs and the original estimated costs cited in Section 1.1, above, minus any monies already paid pursuant to Section 2.3, below. County shall make payments under Section 2.2 and 2.3 by mailing a check payable to " " to DEHOA's contact for notice under Section 3.1, below, within sixty (60) days of project completion. If County has expended more than the original estimated costs cited in Section 1.1, then the overage costs shall be considered general County road maintenance pursuant to Section 2.4, below.
- 2.3 *County Maintenance After Completion of the Work.* After completion of the Work, County shall maintain the roadways and ROW in accordance with its normal practices for maintenance of County roadways and ROW.
- 2.4 *Mailboxes.* To the extent that Hays County possesses the authority to provide exceptions to mailbox requirements, existing mailboxes that do not meet Hays County specifications will be "grandfathered" related to their compliance with United States Postal Service requirements and their useful life in a non-deteriorated condition. All subsequent and/or replacement mailboxes will have to comply with Hays County Transportation specifications. Repair required on "grandfathered" mailboxes will be allowed as long as the cost of repair does not exceed fifty percent (50%) of the cost of replacement to meet Hays County Transportation specifications.

## **ARTICLE III. MISCELLANEOUS.**

- 3.1 *Notice.* Notice under this MOU shall be deemed sufficient if it is delivered in writing by hand delivery or by U.S. Mail (in which case it shall be deemed delivered three (3) days



after it is deposited in the mail) sent to the following individuals at the following locations:

**For County:** Jerry Borcharding, County Engineer (or successor)  
2171 Yarrington Road  
San Marcos, Texas 78666  
512.738.2080  
jerry@co.hays.tx.us

**For DEHOA:** Elizabeth Musgrove, President (or successor)  
\_\_\_\_\_  
\_\_\_\_\_, TX \_\_\_\_\_

- 3.2** *Compliance with Laws.* Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this MOU and/or applicable to the parties performing the terms and conditions of this MOU.
- 3.3** *Termination.* If either Party identifies a breach of the terms and conditions of this MOU by the other Party, the non-breaching Party shall provide Notice of said breach to the breaching Party. Breaching Party shall be given sixty (60) days to cure said breach. If breaching Party has not cured the default within sixty (60) days of receiving Notice of breach, the non-breaching Party shall have a right to terminate this MOU by providing written Notice of termination to the breaching Party.
- 3.4** *Force Majeure.* Either of the parties to this agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this MOU, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy.
- 3.5** *Severability.* If any Section or provision of this MOU is held to be invalid or void, the other Sections and provisions of this MOU shall remain in full force and effect to the greatest extent as is possible, and all remaining Sections or provisions of this MOU shall be construed so that they are as consistent with the parties' intents as possible.
- 3.6** *Multiple Counterparts.* This MOU may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties.
- 3.7** *Section Headings; Exhibits.* The Section and Subsection headings used herein shall not enter in the interpretation hereof. The Exhibit(s) that may be referred to herein and may be attached hereto are incorporated herein to the same extent as if set forth in full herein.

- 3.8 *Waiver by Party.* Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this MOU of any covenant, term, condition, agreement, right, or duty that arises under this MOU shall be considered a one-time waiver and shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this MOU.
- 3.9 *Governing Law and Venue.* THIS MOU SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this MOU will be brought in Hays County, Texas.
- 3.10 *Assignment.* No party to this MOU may assign its duties, rights, and/or obligations under this MOU, in whole or in part, without the other party's prior written consent thereto.
- 3.11 *Binding Effect.* Subject to any provisions hereof restricting assignment, this MOU shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.
- 3.12 *Entire Agreement; Amendment.* This MOU (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof
- 3.13 *Incorporation by Reference.* Each Attachment and/or Exhibit referenced in this MOU, whether it be attached to this MOU at the time its execution or, by agreement, attached at a later date, is hereby incorporated by reference for all purposes.
- 3.14 *Legal Review; Authority.* The Parties have had ample opportunity to review the terms and conditions of this MOU and to consult with legal counsel regarding these terms and conditions. The Parties agree that they each have the authority to enter into this Agreement. Although this MOU is not being made pursuant to Chapter 253 of the Texas Transportation Code, the Parties agree that sufficient authority for the County exists in a combination of provisions from the Texas Transportation Code, The Purchasing Act, and the Texas Property Code.

**The Parties to this Memorandum of Understanding Regarding the Dedication of Roadways and Right-of-Way (ROW) in the Deerfield Estates Subdivision hereby agree to the terms and conditions cited above, as is evidenced by their authorized signatures below.**

**COUNTY:**

**DEHOA:**

\_\_\_\_\_  
Judge Bert Cobb, M.D.  
Hays County Judge  
San Marcos, Texas 78666

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Elizabeth Musgrove  
DEHOA President

\_\_\_\_\_  
Date

**Attest:** \_\_\_\_\_

**Liz Q. Gonzalez**  
**Hays County Clerk**