

**Travis County Commissioners Court Agenda Request**

Meeting Date: January 31, 2012

Prepared By: Greg Chico, Right-of-Way Manager **Phone #:** 854-4659

Division Director/Manager: Steve Manilla, P.E., County Executive

Department Head: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Eckhardt, Precinct Two

AGENDA LANGUAGE: Consider and take appropriate action on a proposed Interlocal Cooperation Agreement between Williamson County and Travis County for improvements to County Road 138 located in Precinct Two.

BACKGROUND/SUMMARY OF REQUEST:

In early 2010, TNR was approached by Williamson County regarding their planned improvements to County Road 138. This existing roadway is almost entirely within Williamson County; however, one very short portion (approximately 350') traverses Travis County, just east of SH 130. Within this small stretch, plans for the improvements require additional right-of-way. Williamson County has proposed to pay all expenses and assume all responsibility for engineering design, construction, and inspection, for the entire section of roadway -- including the small area within unincorporated Travis County -- provided Travis County acquires the needed new ROW (totalling less than 9,500 square feet).

STAFF RECOMMENDATIONS:

TNR recommends approval and execution of the Interlocal Cooperation Agreement as presented and executed by Williamson County. The proposed Interlocal Agreement has been reviewed (and was predominantly drafted) by the Travis County Attorney's Office. Additionally, County staff within TNR view this proposed cooperation between the two counties as a prime opportunity to coordinate local government efforts in construction of roadway improvements to County Road 138.

ISSUES AND OPPORTUNITIES:

N/A

FISCAL IMPACT AND SOURCE OF FUNDING:

If approved, TNR would encumber \$40,000 to cover various potential County costs associated with fulfillment of the Interlocal requirements -- primarily the purchase of required right-of-way, as set forth in the proposed agreement. Funds for this purpose would be available within Acct. # 001-4931-828-8114.

ATTACHMENTS/EXHIBITS:

A: copy of proposed Interlocal Cooperation Agreement

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429

CC:

Greg Chico	Right-of-Way Manager	TNR	854-4659
Dee Heap	Right-of-Way Negotiator	TNR	854-7647
Donna Williams- Jones	Senior Financial Analyst	TNR	854-9383
Julie Joe	Asst. County Attorney	TCAO	854-9513

SM:SM:gc

0101 - Administrative - 3105

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN WILLIAMSON COUNTY AND TRAVIS COUNTY
FOR IMPROVEMENTS TO COUNTY ROAD 138**

This Interlocal Cooperation Agreement (the "Agreement") is made and entered into by and between WILLIAMSON COUNTY ("Williamson County") and TRAVIS COUNTY ("Travis County"), political subdivisions of the State of Texas and are sometimes collectively referred to as "the Parties."

WHEREAS, V.T.C.A., Government Code, Chapter 791, the Texas Interlocal Cooperation Act, provides that any one or more public agencies may contract with each other for the performance of governmental functions and for the joint use of facilities or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties;

WHEREAS, Williamson County desires to make certain improvements to County Road 138 (also known as Peter Martin Road) to accommodate future anticipated development in the vicinity of County Road 138;

WHEREAS, a portion of County Road 138 is located in Travis County;

WHEREAS, Williamson County and Travis County now desire to cooperate in the design, construction, maintenance, and acquisition of right-of-way for that portion of County Road 138 that is located within Travis County and which is shown on Exhibit "A", attached hereto (the "Project");

WHEREAS, Williamson County will provide for the design, construction, operation, and maintenance of that portion of the Project (the "Improvements") that is located in the unincorporated area of Travis County and is more particularly described in attached Exhibit "A";

WHEREAS, construction of the Improvements will facilitate the movement of people and goods to and from Williamson County and Travis County;

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

NOW, THEREFORE, the Parties agree as follows:

1. Consideration.

Travis County and Williamson County each acknowledge the receipt and sufficiency of good and valuable consideration for the execution of this Agreement, including but not limited to the following:

- (a) The safety of the citizens of Williamson County and Travis County to be afforded to the community by the Improvements; and
- (b) Increased convenience for the traveling public.

2. Acquisition of Right-of-Way.

Travis County shall acquire in fee simple the 0.2169 acre right-of-way necessary for the construction of the Project, as shown in Exhibit "A", and shall conduct, cause to be conducted, and pay all costs associated with, appraisal, legal, title company, and other services required to acquire such right-of-way.

3. Project Management.

- (a) Williamson County will provide the project management services for the development and construction of the Project.
- (b) The County Executive of the Travis County Transportation and Natural Resources Department ("Travis County's TNR County Executive") will act on behalf of Travis County with respect to the Project, coordinate with Williamson County, receive and transmit information and instructions, and will have complete authority to interpret and define Travis County's policies and decisions with respect to the Project. Travis County's TNR County Executive may designate other representatives to act on behalf of Travis County with respect to the Project.
- (c) The Williamson County Engineer will act on behalf of Williamson County with respect to the Project, coordinate with Travis County, receive and transmit information and instructions, and will have complete authority to interpret and define Williamson County's policies and decisions with respect to the Project. The Williamson County Engineer may designate other representatives to act on behalf of Williamson County with respect to the Project.
- (d) If a disagreement between the Parties arises regarding engineering design, design and construction standards, plans and specifications, inspection and testing, deficiencies and remedial action, change orders, or any other requirement or provision of this Agreement, and the disagreement is not resolved by the respective designated representatives of Travis County's TNR County Executive and the Williamson County Engineer, it shall be referred as soon as possible to Travis County's TNR County Executive and the Williamson County Engineer for resolution.

4. Project Development.

- (a) Williamson County will be responsible for the management of the development and construction of the Project, including (i) the development of the engineering design, plans and specifications for the Improvements, (ii) the surveying, (iii) the construction, (iv) the inspection and testing and any required permitting and environmental assessments and clearances associated with the Project, and (vi) acceptance of the completed work.
- (b) Williamson County will be responsible for relocation of any existing Travis County facilities required by the construction of the Improvements. Before relocating any such facilities, Williamson County must obtain approval from Travis County to ensure that the facilities are relocated to a place that is acceptable to Travis County.

5. Project Bidding & Award of Construction Contract.

Williamson County will be responsible for overseeing the solicitation of bids for the construction of the Project based on the approved plans and specifications. Bids shall be solicited by means of a competitive process.

6. Additional Management Duties of Williamson County.

Williamson County hereby covenants and agrees to the following:

- (a) Williamson County is solely responsible for the costs and the securing of any required permits, including a Travis County Development Permit for the portion of work to be completed within Travis County. Travis County agrees to waive all fees related to the Travis County Development Permit;
- (b) Williamson County will coordinate utility relocations for the Project and funding to pay the costs of utility relocations that are required for the Project and that are not legally the responsibility of the utility owner; and
- (b) Williamson County will maintain the Improvements, including all public infrastructure and roadway drainage facilities unless Travis County notifies Williamson County in writing of Travis County's intention to maintain the Improvements in which case Williamson County will continue to maintain the Improvements until the date set forth in the notice from Travis County.

7. Bond and Guarantee.

Williamson County must ensure that all construction contracts affecting the Project shall include a payment and performance bond acceptable to and in favor of and benefiting Williamson County for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting Williamson County for a period of one year from the date of acceptance of the Project.

8. Indemnification.

Williamson County agrees to cause its contractor(s) installing, repairing, or maintaining the Improvements to agree under its Williamson County contract to indemnify Travis County and Williamson County against all claims, costs, losses and damages arising out of or resulting from the performance of the work under Williamson County contract, provided the claim, cost, loss or damage is:

- (a) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting from it; and
- (b) caused in whole or part by any negligent act or omission of a Williamson County contractor, any of Williamson County's contractor's subcontractor(s), supplier(s), or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of Travis County or Williamson County or whether liability is imposed upon Travis County or Williamson County by laws or regulations regardless of the negligence of any such entity.

9. Financial Obligations.

Williamson County will provide funding for the cost of design, regulatory permitting, utility relocations, construction, construction management, inspection, and testing for the Project.

10. Continued Maintenance.

- (a) Williamson County agrees to maintain the completed Project.
- (b) Travis County has the right to request to assume maintenance responsibility for any portion of the Improvements with the understanding that Williamson County will grant any such request.

11. Binding Effect.

The terms and conditions of this Agreement will be binding on any successors and assigns in interest to Williamson County or Travis County.

12. Default.

In the event that Williamson County fails to maintain the Improvements, then Travis County will give Williamson County written notice thereof by registered or certified mail, return receipt requested, to the addresses set forth below.

13. Commencement; Termination by Abandonment.

This Agreement will begin on the date of full execution and continue thereafter for so long as the Improvements are used for the purposes set forth herein, unless terminated under other provisions of this Agreement.

14. Termination.

(a) This Agreement will terminate if, within two years after the Parties execute this Agreement:

- (1) Williamson County has not awarded a contract for the Project, or
- (2) Travis County has not acquired the necessary right-of-way for the Project.

(b) Termination by Williamson County. This Agreement may be terminated by Williamson County by delivering written notice of termination to Travis County not later than 30 days before the effective date of termination. In the event of termination Williamson County agrees to restore Travis County's roadway to as good or better condition than its condition prior to construction. Travis County and Williamson County shall jointly inspect the condition of Travis County's roadway prior to the commencement of construction.

(c) Termination by Travis County. Subject to providing at least 30 days' prior written notification to Williamson County or its successors in interest, this Agreement is revocable by Travis County if:

- (1) The Improvements or a portion of them constitute a danger to the public which Travis County deems not to be remediable by alteration or maintenance of such Improvements;
- (2) Despite 30 days' written notice to Williamson County, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
- (3) Williamson County fails to substantially comply with the terms and conditions of this Agreement.

15. Assignment.

Williamson County must not assign, sublet, or transfer its interest in this Agreement without the written consent of Travis County. If such consent is granted, it will then be the duty of Williamson County, its successors and assigns, to give prompt written notice to Travis County of any assignment or transfer of any of Williamson County's rights in this Agreement, giving name, date, address, and contact person.

16. Miscellaneous.

- (a) Force Majeure. In the event that the performance by Williamson County or Travis County of any of its 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 or conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.
- (b) 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:

WILLIAMSON COUNTY: Dan A. Gattis (or successor)
Williamson County Judge
710 S. Main Street, Suite 101
Georgetown, Texas 78626

TRAVIS COUNTY: Steven M. Manilla, P.E. (or successor)
County Executive, TNR
P. O. Box 1748

Austin, Texas 78767

WITH A COPY TO: David Escamilla (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767
File Number 291.80

- (c) Number and Gender Defined. 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.
- (d) Entire Agreement. This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting the construction of 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 authorized representatives of the Parties. No official, representative, agent, or employee of Travis County, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners Court of Travis County, Texas. The recitals set forth above and the attached exhibits are incorporated herein.
- (e) Effective Date. This Agreement takes effect upon the last date of execution of the Agreement by Williamson County and Travis County. This Agreement will automatically renew from year to year, unless terminated earlier by the Parties.
- (f) Other Instruments. The Parties covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (g) Invalid Provision. 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.

- (h) Current Funds. 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.
- (i) Venue. TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN TRAVIS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.
- (j) Interpretation. In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either party.
- (k) Application of Law. This Agreement is governed by the laws of the State of Texas.

WILLIAMSON COUNTY, TEXAS

By: 

Dan A. Gattis, County Judge

Date: 12-12-2011

TRAVIS COUNTY, TEXAS

By: _____

Samuel T. Biscoe, County Judge

Date: _____