



Travis County Commissioners Court Agenda Request

Meeting Date: June 26, 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 Huber, Precinct Three

AGENDA LANGUAGE: Consider and take appropriate action on a proposed Interlocal Agreement between Travis County and Hays County for the purpose of acquiring right-of-way (ROW) and associated easements, located within Travis County, as needed for the planned FM 1626 Safety Expansion Roadway Project in Precinct Three.

BACKGROUND/SUMMARY OF REQUEST:

On May 8, 2012, the Hays County Commissioners Court voted to approve a proposed Interlocal Agreement ("ILA") with Travis County. An excerpt of minutes from the Hays County Court session is attached as Exhibit "A". That same day, Hays County Judge, Dr. Bert Cobb, executed this contemplated agreement (copy of the document is attached as Exhibit "B").

FM 1626 is a significant transportation link serving vehicular traffic in northern sections of Hays County, as well as parts of southern Travis County. Recent population growth and economic activity in the area have led to increased demand for greater arterial capacity, as well as improved safety measures for this specific roadway. Historically, in considering roadway improvements to infrastructure that traverses county borders in Central Texas, local governments from both entities have sought common-sense solutions that typically involve cooperation and coordination between the various jurisdictions. This is a situation wherein such an issue and opportunity exists. Hays County has entered into a "Pass-Through Financing Agreement" with the Texas Department of Transportation ("TxDOT") for improvements to this roadway. That agreement calls for Hays County to acquire all needed right-of-way for the planned improvements -- property located in both Hays and Travis Counties. The project consists of widening FM 1626 to a four lane section with twelve (12) foot lanes and a fourteen (14) foot left turn lane, improved shoulders and a new bridge structure at Little Bear Creek.

Additionally, but not directly related to or contingent upon this proposed ILA with Hays County, Travis County has an existing "Pass-Through Agreement" in place

with TxDOT as well, for plans to extend FM 1626 safety improvements from the eastern end of the planned Hays County project, to the improved roadway's current intersection with FM 2304 (Manchaca Road) in southern Travis County.

The proposed ILA with Hays County would set forth the parameters within which Hays County personnel would acquire the necessary ROW parcels and related easement land areas located within Travis County, on behalf of Travis. Hays would pay all administrative costs for such acquisitions, to include staffing time and expense. For property located within Travis County, Travis would pay all direct parcel purchase costs, closing costs to include title insurance, and expenses for appraisals, reviews, land plans, and consultants / expert witness. For any parcel or land area located within both (straddling) counties, the costs for acquisition of such property would be allocated on a pro-rata basis, based upon the acreage attributable to each respective county.

The Travis County Attorney's Office has reviewed the proposed ILA, and approved its form for use by Travis County, if the Commissioners' Court so directs. Finally, the proposed ILA calls for the Travis County Judge to "... designate a person to act on behalf of Travis ("Travis Designee") with respect to the services to be performed under this Agreement."

STAFF RECOMMENDATIONS:

TNR staff has reviewed the proposed ILA and believes that it represents an opportunity for Travis County to capitalize upon the efforts and investments planned by Hays County and TxDOT for the benefit of Travis County residents. A coordinated and concerted effort by one -- versus two or three separate entities -- governmental body in acquiring private property needed for the planned roadway improvements, is: (1) generally a prudent approach from a time and project management perspective; (2) often preferred by individual property owners; and, (3) may save the general public money by eliminating duplication of services for consultants, etc.

Consequently, TNR recommends that the Commissioners' Court:

- (1) approve the proposed ILA; and,
- (2) designate Mr. Steve Manilla, P.E., County Executive, TNR, as the Travis County Designee stipulated in the proposed ILA.

ISSUES AND OPPORTUNITIES:

This is an opportunity for the County to cooperate with two public entities to improve a public roadway for the local community, in a reasonable and appropriate manner.

Other than expenditures for acquisition of property required as right-of-way for the expanded roadway, all costs for the project -- to include design and construction -- would be borne by other public entities.

FISCAL IMPACT AND SOURCE OF FUNDING:

In the November 2005 bond election, voters approved funding for improvements to several TxDOT roadways, to include FM 1626. At present, more than \$600,000 is available for expenses associated with this project, within cost center #1490190000; G/L account #522060. Additionally, \$100,000 of CO funds were approved in 2007 by the Commissioners' Court for improvements to FM 1626, and these funds remain unspent to date.

ATTACHMENTS/EXHIBITS:

- A: Excerpt of minutes for Hays County Commissioners Court meeting for item # 28085 on May 8, 2012
- B: Proposed FM 1626 Safety Expansion Project Interlocal Cooperation Agreement

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Steve Sun	Acting Public Works Director	TNR	854-9383

CC:

Chris Gilmore	Assistant County Atty.	TCAO	854-9455
Greg Chico	Right-of-Way Manager	TNR	854-4659
Donna Williams-Jones	Senior Financial Analyst	TNR	854-7677

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DATE: MAY 8, 2012

TO: TRAVIS COUNTY JUDGE

FROM: HAYS COUNTY CLERK
ROSE ROBINSON, DEPUTY

SUBJECT **AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN TRAVIS COUNTY AND HAYS COUNTY FOR THE PURPOSE OF ACQUIRING PROJECT RIGHTS OF WAY (ROW) AND ASSOCIATED EASEMENTS LOCATED IN TRAVIS COUNTY TO ACCOMPLISH THE FM 1626 SAFETY EXPANSION PROJECT**

1. I've enclosed 2 originals.
2. Sign both and return 1 original to me.
3. I've enclosed Certified Copy of the minutes of the approval.
4. I've enclosed a return address label for your convenience.
5. Let me know if I can be of further assistance at 393-7333. Thanks



LIZ Q GONZALEZ
HAYS COUNTY CLERK
712 South StageCoach Trl.
Ste 2008
San Marcos, Texas 78666

Hays County Clerk * 712 South Stagecoach Trl. Ste 2008, San Marcos, TX 78666 *
(512) 393-7329

*12/11/11
Liz Q Gonzalez*



CERTIFIED COPY OF HAYS COUNTY COMMISSIONERS' COURT MINUTES

STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 8TH DAY OF MAY A.D., 2012, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

ALBERT H. COBB JR	COUNTY JUDGE
DEBBIE GONZALES INGALSBE	COMMISSIONER, PCT. 1
MARK JONES	COMMISSIONER, PCT. 2
WILL CONLEY	COMMISSIONER, PCT. 3
RAY O. WHISENANT JR	COMMISSIONER, PCT. 4
LIZ Q. GONZALEZ	COUNTY CLERK

AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

28085 AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN TRAVIS COUNTY AND HAYS COUNTY FOR THE PURPOSE OF ACQUIRING PROJECT RIGHTS OF WAY (ROW) AND ASSOCIATED EASEMENTS LOCATED IN TRAVIS COUNTY TO ACCOMPLISH THE FM 1626 SAFETY EXPANSION PROJECT

Mark Kennedy Special Counsel and Jeff Watson of HNTB spoke. This agreement will allow Hays County to acquire the rights of way and associated easements in Travis County necessary for the expeditious completion of the FM 1626 Safety Expansion Project. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to authorize the County Judge to execute an Interlocal Agreement between Travis County and Hays County for the purpose of acquiring project Rights of Way (ROW) and associated easements located in Travis County to accomplish the FM 1626 Safety Expansion Project. All voting "Aye". MOTION PASSED

**THE STATE OF TEXAS
COUNTY OF HAYS**

I, Liz Q. Gonzalez, County Clerk and Ex-Officio Clerk of the Commissioners' Court of Hays County, Texas, do hereby certify that the following contains a true and correct copy of the minutes of MAY 8, 2012 under Resolution #28085 in the Commissioners' Court Minutes of Hays County, Texas:
Given under my hand and seal of office at San Marcos, Texas this the 8TH day of May, 2012.



**LIZ Q. GONZALEZ, COUNTY CLERK AND
EXOFFICIO CLERK OF THE HAYS
COUNTY COMMISSIONERS' COURT**

BY 
DEPUTY

**FM 1626 SAFETY EXPANSION PROJECT
INTERLOCAL COOPERATION AGREEMENT
HAYS COUNTY AND TRAVIS COUNTY**

This Agreement is made and entered into by and between Hays County, Texas, ("Hays"), and Travis County, Texas, ("Travis"), 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") to improve FM 1626 North Between FM 967 and Brodie Lane known as the FM 1626 Safety Expansion Project (the "Project") located within both Hays County and Travis 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 Travis 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 Travis 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 Travis 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 "FM1626 Safety Expansion Project" consists of widening FM 1626 to a four lane section with twelve (12) foot lanes and a fourteen (14) foot left turn lane, improved shoulders and a new bridge structure at Little Bear Creek. The total project cost is estimated to be \$36,400,000.00.

AGREEMENTS

Now, therefore, the Parties agree as follows:

A. MANAGEMENT AND COORDINATION

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

not obligated to purchase any parcel until funds are provided in its Fiscal Year 2012 budget approved by the Travis County Commissioners Court.

3. The Director or his designee will regularly report on the status of the services to Hays.

B. SERVICES

1. Hays will assist Travis by managing the process for acquisition of Project right-of-way and associated easements in Travis County. Travis agrees to provide assistance in negotiations with landowners in Travis County only in 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 Travis with regard to the acquisition of Project right-of-way and associated easements in Travis County.

a. In coordination with Travis, 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 obtain the approval of Travis for the appraised value of any parcel to be purchased. Upon approval of a parcel's appraised value by Travis, Hays will transmit to the owner an offer of the approved appraised value.

d. Hays will transmit all counter-offers to Travis for its approval and make any counter-offers approved by Travis, including any final offers to any owners who appear unwilling to agree to sell a parcel.

e. 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.

f. Hays will manage relocation of utilities to provide clear right-of-way for construction of the Project on a timely basis. Travis will coordinate with and act on behalf of TXDOT with respect to relocation of improvements or assets.

g. If condemnation of a parcel is necessary, Hays will provide a full copy of its file to the Travis 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. To expedite approval of acquisitions of parcels and payment for services under this agreement, Hays' Right of Way Manager shall regularly report to Travis and the Director on the status of negotiations and payments coming due under this agreement.

5. If Travis finds Hays deficient in providing any services, Travis 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 Travis related to acquisition of right-of-way and associated easements in Travis County.
2. Travis shall bear the following costs related to acquisition of Project right-of-way and associated easements in Travis 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. Hays shall either pay directly for professional services or actual acquisition costs covered by this agreement or, upon the request of the Director, Travis shall pay such costs to a parcel owner, title company, utility company, or other entity that is entitled to receive payment for such costs. For costs Hays has paid or intends to pay directly, Travis shall pay to Hays the amount necessary to pay those costs within thirty (30) calendar days of receiving from Hays notice of that amount, which may be an estimate if it is an amount Hays has not yet paid.
4. The Hays County Treasurer shall act as Escrow Agent for the management of Travis' funds and shall deposit the funds in an interest bearing account. Hays shall invest the funds in accordance with the Public Funds Investment Act, Tex. Rev. Civ. Stat. Ann. Art. 842-A, and other applicable laws, or bond covenants. The interest, which accrues on the escrowed funds, shall be credited to Travis' account and may be used to pay any of the obligations of Hays under this agreement. Any funds remaining in Travis' account upon the completion of the services shall be returned to Travis. Hays shall provide Travis, at least quarterly, with an accounting of the deposits to and disbursements from Travis' escrow account. Hays will make its records available, at reasonable request, to Travis auditors, or its independent financial advisors or other professionals who provide arbitrage rebate calculations to Travis.
5. In the event that additional funding is required for the acquisition of the right-of-way for the Project, the Parties may amend this Agreement or enter into a separate agreement to provide such additional funding.
6. 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.
7. Travis and Hays will be responsible for their respective shares of any costs associated with the development of the Project that are not covered by this agreement

D. PARCELS PARTLY IN BOTH HAYS AND TRAVIS COUNTIES

1. If condemnation of a parcel located in both Travis and Hays is necessary, both Travis 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 Travis County, Travis will condemn that parcel at its expense and on a timely basis.
2. Both professional services and actual acquisition costs related to any parcel located partly in both Travis and Hays counties shall be pro-rated according to the relative amount of acreage in the respective counties, including the pro-rata amount of the purchase price in a

purchase contract, the award of the Special Commissioners, and the amount of any judgments in condemnation actions, including the costs of court and expert witnesses.

E. LIABILITY

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. If Travis fails to timely fund a purchase contract for a parcel as provided in Section C, Travis will be responsible, to the exclusion of any and all responsibility of Hays, for any and all costs associated with the failure to timely fund such a contract, including any damages, increased purchase cost, cost of condemnation, attorney's fees and any other costs whatsoever resulting from such failure to timely provide the necessary funds.

F. ACCESS TO PROJECT PROPERTY

The Parties acknowledge that it may be necessary for Travis 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: Austin, Texas 78767

HAYS: To be designated by Hays County Judge under A.2 above.

COPY TO:

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

TRAVIS: To be designated by Travis County Judge under A.2 above.

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

I. MISCELLANEOUS

1. As used in this Agreement, whenever the context so indicates, the masculine, Feminine, or neuter gender and the singular of 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 Travis County, Texas. Any suits pursued relating to this Agreement will be filed in a district court of Travis 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 Travis 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 Travis Counties .

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

Effective as of the later date set forth below:

HAYS COUNTY, TEXAS

By: Bert Cobb
Bert Cobb M.D., County Judge

Date: 5-8-2012

TRAVIS COUNTY, TEXAS

By: _____
Samuel T. Briscoe, County Judge

Date: _____
