



## Travis County Commissioners Court Agenda Request

**Meeting Date:** October 2, 2012

**Prepared By:** Lee Turner, P.E. **Phone #:** 512-854-7598

**Division Director/Manager:** Steve Sun, P.E.

**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 request to approve an Interlocal Cooperation Agreement between the Lost Creek Municipal Utility District (MUD) and Travis County for the Lost Creek Sidewalk Improvements project located in Travis County Precinct Three.

### **BACKGROUND/SUMMARY OF REQUEST:**

Lost Creek Sidewalk project was approved by voters in the 2011 Travis County bond referendum as a public-public partnership project. This project will construct sidewalks along Lost Creek Blvd and other various streets within the subdivision to provide safe walkways. A project location map is attached. Total project cost estimate is about one million dollars. Per the proposed Interlocal Cooperation Agreement, Travis County and Lost Creek Municipal Utility District will share all eligible project costs equally with a cap of \$500,000 for each party. Lost Creek MUD will manage the design and construction of the project.

### **STAFF RECOMMENDATIONS:**

TNR recommends approval of the Interlocal Cooperation Agreement between the Lost Creek Municipal Utility District and Travis County for Sidewalk Improvements.

### **ISSUES AND OPPORTUNITIES:**

Lost Creek MUD is located in the Lost Creek subdivision west of Loop 360 and south of Bee Cave Road in Travis County Precinct Three. The sidewalk improvements involve installing pedestrian sidewalks along Lost Creek Boulevard and other various streets in the subdivision. This project will provide a safe walkway for residences living along Lost Creek Boulevard, Quaker Ridge Road, Whitmarsh Valley Walk as well as other streets in the subdivision. The sidewalk will be constructed in compliance with the Americans with Disabilities Act (ADA) and Architectural Barriers Regulations of the Texas Department of Licensing and Regulation (TDLR). Lost Creek MUD will manage the design and construction of the project. Travis County will fund 50% of the cost of the project not to exceed \$500,000. Lost Creek MUD will also fund 50% of the cost of the project. Lost Creek MUD has agreed to these terms by signing the attached interlocal cooperation agreement.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

The Lost Creek Sidewalk project was included in the 2011 Bond Election. The total estimated project cost is approximately \$1,000,000. Travis County will be responsible for 50% of the cost of the design and construction of the project. However, the interlocal agreement limits the maximum contribution for Travis County to \$500,000. Lost Creek MUD will fund the remaining 50%. Lost Creek MUD will provide the project management services for the development, design, and construction of the Project. Travis County staff will review the plans and specification and approve applications for payment from the design professional and construction contractor. Upon completion of the project, Travis County will assume ownership and maintenance responsibilities for the project.

WBS Element: SWCN.149.000004

Fund Reservation: Will be provided once budget transfer is completed

Fund: 4074

Fund Center: 1490190000

G/L: 521040

**ATTACHMENTS/EXHIBITS:**

- Copy of the Interlocal Agreement between Lost Creek Mud and Travis County
- Location Map

**REQUIRED AUTHORIZATIONS:**

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Tom Nuckols	Assistant County Attorney	County Attorney's Office	

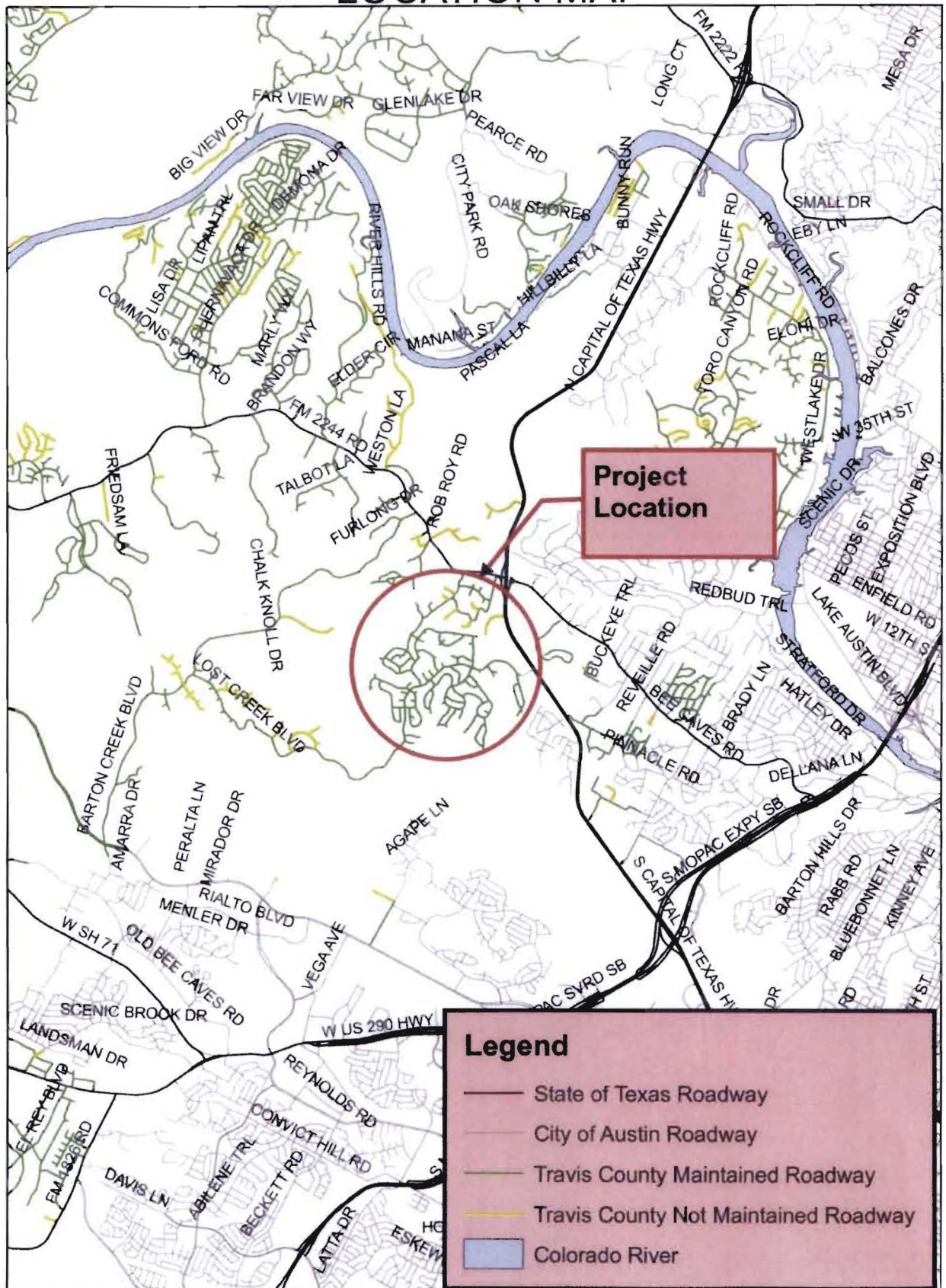
**CC:**

Steve Sun			
Lee Turner			
Donna Williams-Jones			
Tawana Gardner			

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3101 - Public Works/CIP -



# LOST CREEK SIDEWALK IMPROVEMENTS LOCATION MAP



**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN LOST CREEK MUNICIPAL UTILITY DISTRICT AND  
TRAVIS COUNTY FOR SIDEWALK IMPROVEMENTS**

This Interlocal Cooperation Agreement (the "Agreement") is made and entered into by and between Lost Creek Municipal Utility District ("Lost Creek MUD" or the "District") and Travis County (the "County"), political subdivisions of the State of Texas and are sometimes collectively referred to as the "Parties." Each of the Parties confirms that it has the authority and ability to enter into this Agreement, and to perform its obligations under this Agreement, without the further approval or consent of any other person or entity.

WHEREAS, Chapter 791 of the Government Code, 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, the construction of certain sidewalk improvements within the boundaries of the Lost Creek MUD, as more particularly identified in **Exhibit A** attached hereto (the "Project"), is a bond project approved by voters in the November 2011 Travis County Bond Election;

WHEREAS, Lost Creek MUD and Travis County now desire to cooperate in the design, construction, and funding of the Project;

WHEREAS, Lost Creek MUD agrees to meet its obligations under the County's 2011 bond election order by paying 50% of the total cost of the Project under the terms and conditions set forth herein;

WHEREAS, the County agrees to pay 50% of the total cost of the Project under the terms and conditions set forth herein;

WHEREAS, Lost Creek MUD and the County agree that each party's maximum contribution to the Project will not exceed \$500,000;

WHEREAS, construction of the Project will facilitate the safety of pedestrians within Lost Creek MUD and 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.;

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

Section 1. Consideration.



Travis County and Lost Creek MUD 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 Lost Creek MUD and Travis County to be afforded to the community by the Project;
- (b) Increased convenience and safety for pedestrians and the traveling public; and
- (c) The agreement by Lost Creek MUD and Travis County to provide the indemnification and claims notification as specified in Section 10.

Section 2. Acquisition of Right-of-Way.

The Parties agree that it is their mutual intention for the Project to be constructed within existing right-of-way owned by Travis County. Notwithstanding the foregoing, in the event that there is not sufficient right-of-way available for construction and installation of the Project:

- (a) The County Executive of the Travis County Transportation and Natural Resources Department (the "County Executive") and the Lost Creek MUD may agree in writing to modify the design, location, and/or scope of the sidewalk improvements so that all of the improvements are installed within right-of-way owned by Travis County; or
- (b) The County Executive and the Lost Creek MUD may agree to proceed with the original scope of the Project, in which case:
  - (1) Travis County will acquire in fee simple the right-of-way necessary for the construction of the Project, as shown in **Exhibit A**, and will conduct, or cause to be conducted, all appraisal, legal, title company, and other services required to acquire such right-of-way;
  - (2) Travis County and Lost Creek MUD will each pay 50% of the cost of acquiring the right-of-way necessary for the construction of the Project (the "Right-of-Way Acquisition Costs"), which includes 50% of all appraisal, legal, title company, and other services required to acquire the right-of-way but do not include the cost of County staff time; and

- (3) The Right-of-Way Acquisition Costs shall be considered Eligible Project Costs for purposes of this Agreement, and Lost Creek MUD will pay its share of the Right-of-Way Acquisition Costs to the County within 30 days after Lost Creek MUD's receipt of an invoice therefor from the County.

Section 3. Project Management.

- (a) Except as otherwise set forth herein, Lost Creek MUD will provide the project management services for the development, design, and construction of the Project (collectively, "**Project Management Services**"). The Project Management Services to be provided by Lost Creek MUD will include:
  - (1) ensuring timely and satisfactory completion of the Project in accordance with the Project plans and specifications approved by the Parties;
  - (2) assuring the Project scope, as identified in the Project plans and specifications approved by the Parties, is adhered to by the Construction Contractor;
  - (3) monitoring and reporting on the design and construction schedules and budgets in accordance with the terms of this Agreement;
  - (4) monitoring and reporting on the design and construction quality in accordance with the terms of this Agreement;
  - (5) reviewing contractor's pay requests;
  - (6) providing the County with prior notice of commencement of construction of the Project;
  - (7) otherwise coordinating between the Parties and other persons and entities involved in the Project on an ongoing basis, as determined in the Project Manager's reasonable discretion;
  - (8) generally ensuring that the Project is satisfactorily completed in accordance with approved plans and specifications, on time, and within budget; and
  - (9) providing all files for the Project to the County within 30 days after completion of the construction of the Project, including all addenda and change orders, record drawings, pay requests, and payment records.
- (b) The County Executive will act on behalf of Travis County with respect to the Project, coordinate with Lost Creek MUD, 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. The County Executive may



designate other representatives to act on behalf of Travis County with respect to the Project.

- (c) The Lost Creek MUD General Manager will act on behalf of Lost Creek MUD with respect to the Project, coordinate with Travis County, receive and transmit information and instructions, and will have complete authority to interpret and define Lost Creek MUD's policies and decisions with respect to the Project. The Lost Creek MUD General Manager may designate other representatives to act on behalf of Lost Creek MUD 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 the County Executive and the Lost Creek MUD General Manager, then either Party may terminate this Agreement by providing written notice of termination to the other Party. In the event of such termination, the Parties shall be without further duty or obligation to each other; provided, however, each Party shall remain responsible for payment of 50% of Eligible Project Costs incurred prior to the date of termination. Payment for such costs shall be rendered within 30 days after receipt of a written invoice for payment unless such costs are the subject of dispute between the Parties.
- (e) For Project Management Services performed by the Project Manager (as defined in Section 6 below), the Lost Creek MUD may pay the Project Manager no more than four percent of the Lost Creek MUD's actual costs incurred under the Construction Contract and approved by the County ("**Eligible Project Management Costs**"), and the County will pay to the Lost Creek MUD 50% of the Eligible Project Management Costs.

Section 4. Project Development.

- (a) Lost Creek MUD will be responsible for the management of the development and construction of the Project in accordance with the terms of this Agreement, including (i) the development of the engineering design, plans and specifications for the Project, (ii) the surveying of the Project, (iii) the construction of the Project, (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) Lost Creek MUD will require the Project Engineer to ensure that the plans and specifications for the Project comply with any applicable Travis County design and construction standards, and any other appropriate, relevant, and applicable Travis County standards, unless otherwise agreed by the Parties. In addition, Lost Creek MUD will require the Project Engineer to ensure that the plans and specifications will comply with any applicable Texas Accessibility Standards.
- (c) Lost Creek MUD will ensure that the Project Engineer provides insurance in accordance with the standard requirements of Travis County for such projects, and Lost Creek MUD will have Travis County named as an additional insured with respect to such coverage.
- (d) Lost Creek MUD and, to the extent set forth herein, the County will be responsible for the review and approval of the engineering design, plans and specifications, and for construction inspection and testing for the Project. In addition, Lost Creek MUD and, to the extent set forth herein, the County will be responsible for the review and approval of any modifications to the engineering design, plans, and specifications for the Project, during the development and construction of the Project.
- (e) Lost Creek MUD will be responsible for relocation of any existing Lost Creek MUD or Travis County facilities required by the construction of the Project. Before relocating any such facilities, Lost Creek MUD must obtain approval from Travis County to ensure that the facilities are relocated to a place that is acceptable to Travis County.
- (f) Lost Creek MUD must require the Project Engineer or the Construction Contractor (as defined below) to take any appropriate remedial action to correct any deficiencies with the Project timely identified by Travis County in connection with its review of the plans and specifications, or in connection with its inspection of construction prior to final acceptance of the Project.

Section 5. Project Bidding & Award of Construction Contract.

- (a) Lost Creek MUD will be responsible for overseeing the solicitation of bids for one or more contracts for construction of the Project ("Construction Contract") based on the approved plans and specifications. Bids must be solicited by means of a competitive process in accordance with the requirements of Section 49.273 of



the Water Code, and in compliance with County's Historically Underutilized Businesses Program. Lost Creek MUD will notify the County of the most advantageous bidder and the amount of the bid. The contractor under the Construction Contract will be referred to herein as the "Construction Contractor."

- (b) Lost Creek MUD must include in all contracts and other agreements a provision that each contractor, materialman, or supplier will look solely to Lost Creek MUD for all sums coming due thereunder and that the County will have no obligation to the Construction Contractor, but will only be obligated to pay Lost Creek MUD in the time and manner required under this Agreement.
- (c) Within five business days after executing a contract with the Construction Contractor, Lost Creek MUD will (1) obtain the Construction Contractor's written consent to a collateral assignment of Lost Creek MUD's rights under the Construction Contract, in the form attached as **Exhibit C**, which authorizes the County to exercise Lost Creek MUD's rights under the Construction Contract and to complete the Project if Lost Creek MUD fails to do so as provided in this Agreement, (2) execute the collateral assignment, and (3) deliver the collateral assignment to the County.

Section 6. Additional Management Duties of Lost Creek MUD.

Lost Creek MUD hereby covenants and agrees to:

- (a) Provide to the County four hard copies and one electronic copy of the plans and specifications for the construction of the Project at the 50%, 90%, and 100% design complete stages for the County's review and approval;
- (b) Correct any deficiencies with the Project design timely identified by Travis County within fourteen (14) working days of receipt of the plans and specifications;
- (c) Provide to the County written notice of the proposed and actual schedule for design and the advertisement for bids, award of contract, and construction of the Project;
- (d) Obtain written County approval of Lost Creek MUD's traffic control plans before construction of the Project;

- (e) 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;
- (f) Provide to the County a written copy of all contracts and billings and evidence of payment affecting the Project, including accompanying information regarding compliance with the County's minority and women-owned businesses policy, and such billings must include a monthly progress report with a schedule update and status of all tasks and construction progress photographs;
- (g) Provide to the County a copy of any change order request related to the Project within two working days of its receipt by Lost Creek MUD, by delivery to the County Executive;
- (h) Provide to the County documentation and at least ten working days' notice of the submittal for the County to review and jointly approve the construction contractor's application for final payment;
- (i) Within 30 days after either the completion of the Project or the termination of this Agreement, whichever date is sooner, provide to the County a copy of:
  - (1) all executed change orders and addenda related to the Project;
  - (2) the record drawings of the Project, if any, for the County's records in a format to be specified by the County;
  - (3) all pay requests and payment records related to the Project; and
  - (4) all files of the Project Manager relating to the Project.
- (j) Contract with a professional engineering firm acceptable to the County to serve as Lost Creek MUD's agent in performing all necessary engineering, including design, surveying, geotechnical and traffic analysis services, utility relocation coordination, project manager services during the design phase, and other engineering services for the Project (the "**Project Engineer**");
- (k) Ensure that its contract with the Project Engineer contains:
  - (1) an acknowledgement by the Project Engineer that the Project is a public works project on public property, and



- (2) a provision that the Project Engineer will look solely to Lost Creek MUD for all sums coming due thereunder and that the County will have no obligation to the Project Engineer, but will only be obligated to pay Lost Creek MUD in the time and manner required under this Agreement.
- (l) Replace the Project Engineer if, in the County's opinion, the Project Engineer is not satisfactorily performing any and all responsibilities related to the Project.
- (m) Within five business days after executing a contract with the Project Engineer:
  - (1) provide a copy of the executed contract to the County, and
  - (2) (A) obtain the Project Engineer's written consent to a collateral assignment of Lost Creek MUD's rights under the contract with the Project Engineer in the form attached as **Exhibit C** which authorizes the County to utilize the services of the Project Engineer to complete the Project if Lost Creek MUD fails to do so as provided in this Agreement, (B) execute the collateral assignment, and (C) deliver the collateral assignment to the County.
- (n) Designate a qualified employee of Lost Creek MUD or contract with either the Project Engineer or another person to serve as Lost Creek MUD's agent for providing Project Management Services (the "**Project Manager**");
- (o) Ensure that its contract with the Project Manager contains:
  - (1) an acknowledgement by the Project Manager that the Project is a public works project on public property, and
  - (2) a provision that the Project Manager will look solely to Lost Creek MUD for all sums coming due thereunder and that the County will have no obligation to the Project Manager, but will only be obligated to pay Lost Creek MUD in the time and manner required under this Agreement.
- (p) Replace the Project Manager if, in the County's opinion, the Project Manager is not satisfactorily performing any and all responsibilities related to the Project.
- (q) Within five business days after executing a contract with the Project Manager:
  - (1) provide a copy of the executed contract to the County, and

- (2) (A) obtain the Project Manager's written consent to a collateral assignment of Lost Creek MUD's rights under the contract with the Project Manager in the form attached as **Exhibit C** which authorizes the County to utilize the services of the Project Manager to complete the Project if Lost Creek MUD fails to do so as provided in this Agreement, (B) execute the collateral assignment, and (C) deliver the collateral assignment to the County.
- (r) Cause the Project to be completed in accordance with the terms and conditions set forth in this Agreement within four years after the Funding Date (as defined in Section 14 below) unless the County Executive agrees in writing to extend the completion date for the Project.

Section 7. Management Duties of Travis County.

Travis County hereby covenants and agrees to the following:

- (a) Timely review the submitted plans and specifications at the 50% and 90% design complete stages and review and approve the plans and specifications at the 100% design complete stage by providing any comments within 14 working days of submittal and work in good faith to resolve any outstanding issues. Failure to provide written comments within such 14 working day period shall be deemed approval by the County;
- (b) Timely review any applicable permit applications required by Travis County for the Project and work in good faith to resolve any outstanding issues;
- (c) Timely review any change order proposal for the Project and return the change order request to the Lost Creek MUD within seven working days of its receipt by Travis County's Project Manager with a written recommendation for its disposition. If the Parties disagree regarding the disposition of a change order request, they will refer the matter to the County Executive and the Lost Creek MUD General Manager in accordance with Section 3(d) or seek to resolve the disagreement through mediation as set forth in Section 20(k).
- (d) At the option and expense of Travis County, perform any additional independent inspection and testing of the Project. Any such additional testing will be scheduled to avoid delaying the construction of the Project to the maximum extent practical;



- (e) Report any deficiencies observed in the construction of the Project immediately to Lost Creek MUD's Project Manager with an additional written report within two working days;
- (f) Cooperate with Lost Creek MUD to obtain any applicable permits and environmental clearances for the Project;
- (g) Review and jointly approve the construction contractor's application for final payment within five working days after Lost Creek MUD delivers to the County a copy of the construction contractor's application for payment from Lost Creek MUD;
- (h) Upon satisfactory completion of construction and any applicable warranty or construction performance period, accept the Project and assume ownership and maintenance responsibilities for the Project.

Section 8. Bond and Guarantee.

Lost Creek MUD shall ensure that all construction contracts relating to the Project include a payment and performance bond acceptable to and in favor of and benefiting Lost Creek MUD and Travis County for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting Lost Creek MUD and Travis County for a period of one year from the date of acceptance of the Project by Lost Creek MUD. Lost Creek MUD will ensure that the Parties will be named as co-obligees on the bonds.

Section 9. Insurance.

- (a) Lost Creek MUD agrees to cause the Project Engineer to obtain and maintain in force throughout the term of this Agreement insurance in accordance with the standard requirements of Travis County for such projects, and Lost Creek MUD will have Travis County named as an additional insured with respect to such coverage. The policy must contain a provision requiring the insurer to give at least 30 calendar days' prior written notice before any termination or expiration of such policy for any reason. Lost Creek MUD must cause its Project Engineer to provide the County with a written certificate of compliance with the foregoing requirements.
- (b) Lost Creek MUD agrees to require the Construction Contractor to provide workers compensation insurance, auto liability and general liability insurance in the standard amounts required by Travis County. Travis County and Lost Creek MUD will be included as additional insureds on the above-referenced general liability and

automobile liability insurance policies, and a waiver of subrogation will be provided on the general liability, auto liability and worker's compensation coverages. Each policy must contain a provision requiring the insurer to give at least 30 calendar days' prior written notice before any termination or expiration of such policy for any reason. Lost Creek MUD must cause its construction contractors to provide the County with written certificates of compliance with the foregoing requirements.

Section 10. Indemnification.

- (a) Liability. To the extent allowed by Texas law, Travis County and Lost Creek MUD agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions.
- (b) Claims Notification. If Lost Creek MUD or Travis County receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against Lost Creek MUD or Travis County in relation to this Agreement, the Party receiving such notice must give written notice to the other Party of the claim or other action within three working days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action, or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice must be given in the manner provided in Section 20 of this Agreement. Except as otherwise directed, the notifying Party must furnish to the other Party copies of all pertinent papers received by that Party with respect to these claims or actions.
- (c) Lost Creek MUD agrees to cause its contractor(s) installing the Project to agree under its Lost Creek MUD contract to indemnify Travis County and Lost Creek MUD against all claims, costs, losses and damages arising out of or resulting from the performance of the work under the Construction Contract, provided the claim, cost, loss or damage is:
  - (1) 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



- (2) caused in whole or part by any negligent act or omission of the Construction Contractor, any of Lost Creek MUD'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 Lost Creek MUD or whether liability is imposed upon Travis County or Lost Creek MUD by laws or regulations regardless of the negligence of any such entity.

Section 11. Financial Obligations.

- (a) "Eligible Project Costs" are those costs that are determined by the County to be reasonably necessary to survey, design, permit, investigate, and construct the Project as described in Exhibit A. Eligible Project Costs consist of Eligible Preconstruction Costs, Eligible Construction Costs, and Eligible Project Management Costs, as defined below.
  - (1) Eligible Preconstruction Costs are those costs that are determined by the County to be reasonably necessary to survey, design, permit, investigate and construct the Project as described in **Exhibit A** and are incurred prior to award of a Construction Contract including, but not limited to, planning; engineering; estimating; preparing specifications; preparing schedules; soil investigations; site assessments; alternatives analyses; land surveying; coordination of utility location, relocation, or protection; obtaining environmental clearances and permits; regulatory agency reviews and approvals; and bidding and awarding. Right-of-Way acquisition costs incurred by the County shall qualify as Eligible Preconstruction Costs. Preliminary engineering work which is incorporated into the final design of the Project will be included as Eligible Preconstruction Costs.
  - (2) Eligible Construction Costs are those costs that are determined by the County to be reasonably necessary to survey, design, permit, investigate and construct the Project as described in **Exhibit A** and are incurred after award of a Construction Contract, including but not limited to, inspection; testing; construction surveying; submittal reviews; change order and claim investigations and resolutions; and warranty period monitoring and reporting of deficiencies.

- (3) Eligible Project Management Costs are those costs that are determined by the County to be reasonably necessary to perform the Project Management Services and must not be more than 4% of Lost Creek MUD's actual costs incurred under the Construction Contract and approved by the County.
- (b) Notwithstanding any provision to the contrary, Lost Creek MUD and Travis County must each pay:
  - (1) fifty percent of all Eligible Preconstruction Costs,
  - (2) fifty percent of all Eligible Construction Costs, and
  - (3) fifty percent of all Eligible Project Management Costs
- (c) Lost Creek MUD will take responsibility for the design and construction of the Project. County will pay to Lost Creek MUD 50% of all Eligible Preconstruction Costs, 50% of all Eligible Construction Costs, and 50% of all Eligible Project Management Costs. Lost Creek MUD will bear responsibility for 100% of all Project costs that it incurs that are not Eligible Project Costs. Lost Creek MUD will submit invoices for Eligible Preconstruction Costs, Eligible Construction Costs, and Eligible Project Management Costs as provided in Section 11(d), and the County will reimburse Lost Creek MUD as provided in Section 11(f).
- (d) Upon Lost Creek MUD's receipt and approval of a payment application for the Project, it will submit an invoice to the County which details the sums paid by Lost Creek MUD and due to be reimbursed by the County, including:
  - (1) copies of all draw requests from contractors included in the invoice, a detailed summary of the work completed and an affidavit of bills paid and partial lien waiver;
  - (2) the cumulative amount of all draw requests to date;
  - (3) Lost Creek MUD's and the County's respective portions of the current draw requests in accordance with Section 11(b) and Section 11(c), and the calculations used to arrive at that allocation;
  - (4) the cumulative amounts paid by Lost Creek MUD and reimbursed by the County under this Agreement through the date of the accounting; and
  - (5) documentation evidencing Lost Creek MUD's payments, if any, to contractors during the previous month, an itemization of what was paid, and any other documentation required by the Travis County Auditor's Office.



- (e) Prior Project Expenses. The Parties acknowledge and agree that Lost Creek MUD has previously incurred those preliminary engineering and other costs and expenses related to the Project set forth in **Exhibit B** attached hereto (collectively, the "Preliminary Project Costs"). To the extent that the Preliminary Project Costs are determined by the County to be Eligible Preconstruction Costs and to the extent the County is authorized to do so, the County will reimburse Lost Creek MUD for Preliminary Project Costs in accordance with Section 11(c) and 11(f) if Lost Creek MUD submits invoices and documentation in accordance with Section 11(d).
- (f) Reimbursement by County.
  - (1) If the County determines that the services and work described in the invoice were rendered in compliance with this Agreement, the County will make payment to Lost Creek MUD within 30 days of receipt of each invoice.
  - (2) In the event changes or corrections are required to any invoice prior to payment, a request for additional information will be made by the County within 10 days of receipt of the invoice.
  - (3) Interest on overdue payments is governed by Chapter 2251 of the Texas Government Code.
  - (4) Notwithstanding any provision to the contrary, the County's obligation to reimburse Lost Creek MUD as specified in this Section 11 is suspended until the County receives bond proceeds for the Project. When the County receives bond proceeds for the Project, the County will notify Lost Creek MUD, and Lost Creek MUD will submit an invoice for and the County will pay all suspended payments for Eligible Project Costs to the maximum extent of such bond proceeds.
- (g) Total Costs: The Parties mutually agree that the total net costs incurred by Lost Creek MUD (including 50 percent of the Preliminary Project Costs but excluding Eligible Project Costs reimbursed by the County) related to the Project will not exceed \$500,000. At such time as the total costs and expenses paid by Lost Creek MUD for the Project equal \$500,000, it must provide written notice thereof to Travis County. The Parties further agree that Travis County's maximum Project participation amount is \$500,000.

Section 12. Continued Maintenance.

Upon acceptance of the Project by Travis County, Travis County agrees to maintain the completed Project, and will provide periodic maintenance, repair, and reconstruction of the Project on an as-needed basis. Notwithstanding the foregoing, the Parties acknowledge that the City of Austin will be responsible for maintenance of the Project if it annexes Lost Creek MUD.

Section 13. County Completion of Project.

- (a) If Lost Creek MUD breaches its obligations under this Agreement, the County has the right, but not the obligation, to complete the construction of the Project either pursuant to the Construction Contract and the collateral assignments or otherwise. Before exercising this right, the County will send Lost Creek MUD written notice specifying the breach in Lost Creek MUD's performance and the actions required to cure the breach. If the Lost Creek MUD does not cure the breach within ten business days ( or such time as the County determines for matters that may reasonably be required to cure the breach, provided Lost Creek MUD promptly begins and diligently pursues such cure thereafter (for matters that may not be cured within 10 days), the County may proceed with completion of the Project. If this Agreement is terminated by either Party before the Project is completed, the County has the right, but not the obligation, to complete the construction of the Project either pursuant to the Construction Contract and the collateral assignments or otherwise.
- (b) If the County elects to complete the Project, all plans, designs, rights-of-way, easements, real and personal property conveyed, produced, or installed within the public right-of-way prior to the take-over of the Project by the County will become the property of the County to the reasonable extent necessary to allow the County to complete and maintain the Project.
- (c) Lost Creek MUD hereby grants to the County a nonexclusive right and easement to enter the property of Lost Creek MUD to the reasonable extent necessary for construction of the Project under this Agreement in accordance with its terms and provisions and in accordance with the notice and cure periods contained in this Agreement.
- (d) Notwithstanding any provision in this Agreement to the contrary, if the County elects to complete the Project pursuant to the collateral assignments, the Parties agree that, with respect to the District's contracts with the Project Manager, the Project Engineer, and the Construction Contractor (collectively, the "Contracts"), the District will remain liable for its share of all costs, claims, liabilities, and expenses, including personal injury or property damage arising out

of the services that are the subject of the Contracts, incurred on or before the Assumption Date, as that term is defined in the collateral assignments.

Section 14. **FUNDING.** THE COUNTY CANNOT GUARANTEE THE AVAILABILITY OF FUNDS FOR THE PROJECT, AND ENTERS INTO THIS AGREEMENT ONLY TO THE EXTENT THAT SUFFICIENT BOND FUNDS ARE MADE AVAILABLE FOR THE PROJECT. THERE IS RISK INVOLVED WITH THIS AGREEMENT. THE COUNTY'S OBLIGATIONS UNDER THIS AGREEMENT ARE CONTINGENT UPON THE ACTUAL RECEIPT BY THE COUNTY OF SUFFICIENT BOND FUNDS (THE "FUNDING DATE"). IF SUFFICIENT BOND FUNDS ARE NOT AVAILABLE, THE COUNTY WILL NOTIFY LOST CREEK MUD IN WRITING WITHIN A REASONABLE TIME AFTER SUCH FACT IS DETERMINED. THE COUNTY WILL THEN TERMINATE THIS AGREEMENT AND WILL NOT BE LIABLE FOR THE FAILURE TO MAKE ANY PAYMENT TO LOST CREEK MUD UNDER THIS AGREEMENT. THE COUNTY AGREES TO PROVIDE WRITTEN NOTICE TO LOST CREEK MUD AS OF THE DATE OF RECEIPT OF SUFFICIENT BOND FUNDING, AND THE DISTRICT SHALL HAVE NO OBLIGATION TO PROVIDE ANY WORK OR SERVICES UNDER THIS AGREEMENT UNTIL RECEIPT OF SUCH NOTICE.

Section 15. Commencement and Term of Agreement.

This Agreement becomes effective on the date of full execution and will terminate upon the expiration of the construction warranty period or upon completion of all construction warranty repairs, whichever is later, unless terminated sooner under other provisions of this Agreement.

Section 16. Termination.

- (a) In addition to any other provisions of this Agreement that provide for termination, either Party may terminate this Agreement upon written notice to the other Party if, within one year after the Parties execute this Agreement:
  - (1) Lost Creek MUD has not awarded a contract for construction of the Project, or
  - (2) Travis County has not acquired the necessary right-of-way for the Project.
- (b) Termination by Lost Creek MUD. This Agreement may be terminated by Lost Creek MUD by delivering written notice of



termination to Travis County not later than 30 days before the effective date of termination.

- (c) Termination by County. Subject to providing at least 30 days' prior written notification to Lost Creek MUD or its successors in interest, this Agreement may be terminated by Travis County if:
  - (1) The Project or a portion of the Project constitutes a danger to the public which Travis County deems not to be remediable by alteration or maintenance of such Project; or
  - (2) Lost Creek MUD fails to substantially comply with the terms and conditions of this Agreement and fails to cure such default in accordance with the notice and cure provisions set forth herein.
- (d) Subject to the final accounting requirements set forth below in Section 17, if this Agreement is terminated before Lost Creek MUD or its successors in interest cause the Project to be completed and accepted and if the County chooses not to complete the Project, the County may reallocate any bond funding for the Project to other County projects.
- (e) Each Party shall remain responsible for payment of 50% of Eligible Project Costs incurred prior to and including either the date of termination or the Assumption Date, whichever date is sooner. Payment for such costs shall be rendered within 30 days after receipt of a written invoice for payment unless such costs are the subject of dispute between the Parties.
- (f) The following provisions shall survive the termination of this Agreement: Section 2(b)(3), Section 6(i), Section 10, Section 11(a), Section 11(b), Section 11(e), Section 13, Section 16(d), Section 16(e), Section 16(f), Section 17, Section 18, Section 19, and Section 20. In addition, the Collateral Assignments of Contract and Contract Rights shall survive the termination of this Agreement. The Parties agree that the survival of such provisions shall not obligate Lost Creek MUD to pay for any costs or expenses incurred or arising after the date of termination of this Agreement or the Assumption Date, whichever is earlier, and Lost Creek MUD shall not be responsible for payment of any such costs or expenses.

#### Section 17. Final Accounting

- (a) Within 30 days after the Project is complete or this Agreement is terminated, Lost Creek MUD shall render a final written accounting

of any and all costs to be paid or borne by, or credited or refunded to, any Party under this Agreement, taking into account any amount the County has previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the Project. Lost Creek MUD must send a copy of such accounting to the County. The County has the right to audit Lost Creek MUD's records and may request any such audit, or any adjustments or corrections, within 30 days of receipt of the accounting.

- (b) After Lost Creek MUD has sent any corrected or adjusted final accounting to the County, the County will pay any amount it owes no later than 30 days after receipt of such final accounting. Lost Creek MUD must refund any amounts due the County within 30 days after delivery of any adjusted final accounting.

Section 18. Binding Effect.

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

Section 19. Assignment.

Lost Creek MUD may 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 Lost Creek MUD, its successors and assigns, to give prompt written notice to Travis County of any assignment or transfer of any of Lost Creek MUD's rights in this Agreement, giving name, date, address, and contact person.

Section 20. Miscellaneous.

- (a) Force Majeure. In the event that the performance by Lost Creek MUD or Travis County of any of its obligations or undertakings hereunder is 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 will 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 will 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:

LOST CREEK MUD: Tom Clark (or successor)  
General Manager  
1305 Quaker Ridge Road  
Austin, Texas 78746

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 291.132

- (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 will 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) 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.



- (f) 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 will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof is to be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (i) Current Funds. The party or parties paying for the performance of governmental functions or services must make payments therefor from current revenues available to the paying party.
- (j) 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.
- (k) Mediation. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation are to remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality
- (l) Taxpayer Identification. The District must provide the COUNTY with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations and a statement of entity status in a form satisfactory to the County Auditor before any funds are payable under this Agreement.
- (m) 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.
- (n) Application of Law. This Agreement is governed by the laws of the State of Texas.

Each of the signatories to this Agreement represents and warrants that he is duly authorized to sign this in the capacity indicated.

LOST CREEK MUNICIPAL UTILITY DISTRICT

By: Stephen Verpeck  
Name: STEPHEN VERPECK  
Title: PRESIDENT

Date: \_\_\_\_\_

\_\_\_\_\_  
District Secretary

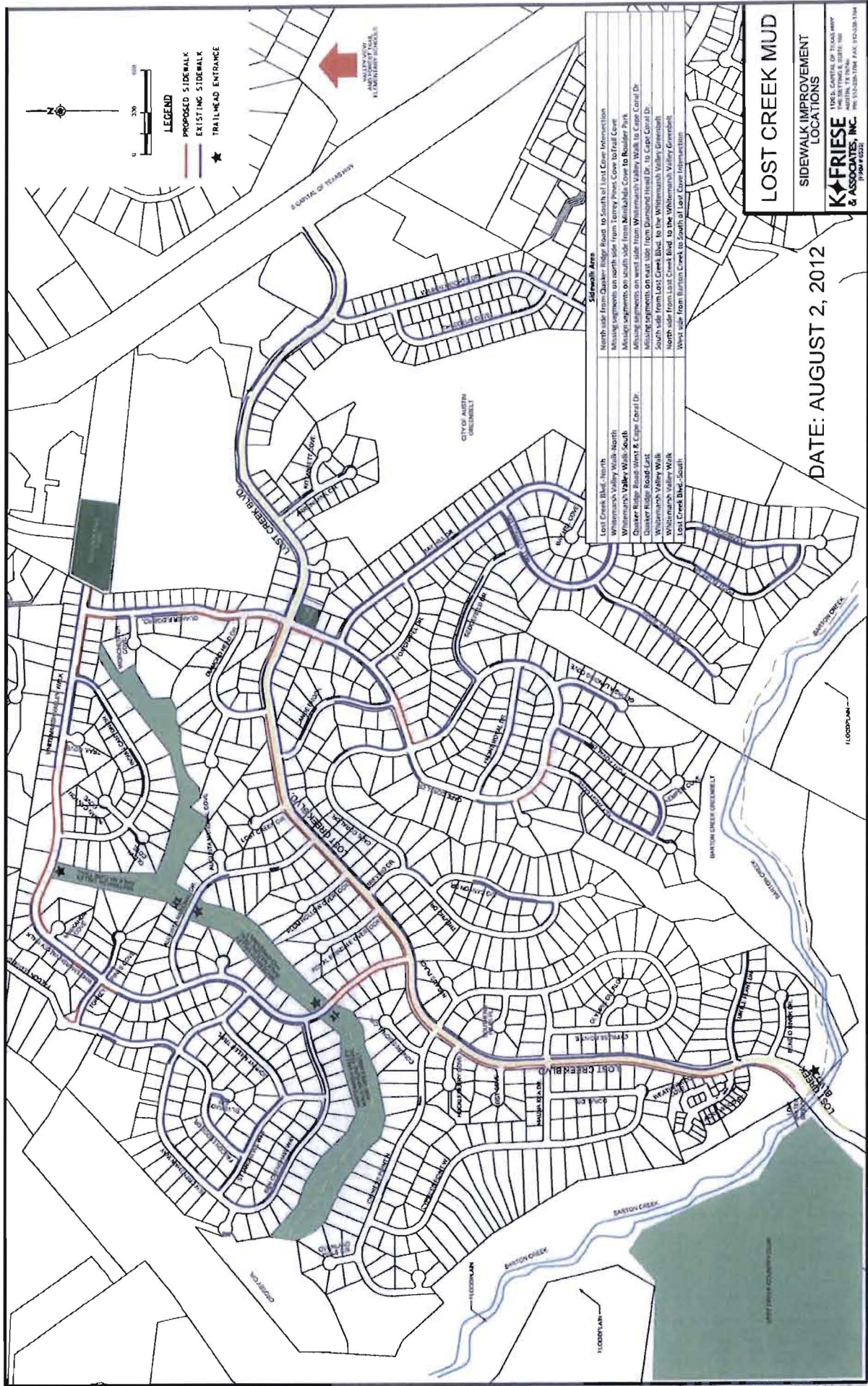
TRAVIS COUNTY, TEXAS

By: \_\_\_\_\_  
Samuel T. Biscoe, County Judge

Date: \_\_\_\_\_

EXHIBIT 'A'





**LOST CREEK MUD**

**SIDEWALK IMPROVEMENT LOCATIONS**

**K+RIESE & ASSOCIATES, INC.**

1305 S. CAPITAL OF TEXAS HWY  
THE WOODBRIDGE, TEXAS 76090  
PH: 817-238-1700 FAX: 817-238-1701  
WWW.KRIESE.COM

DATE: AUGUST 2, 2012

EXHIBIT 'B'

**Exhibit 'B'**  
**INTERLOCAL COOPERATION AGREEMENT**  
**BETWEEN LOST CREEK MUNICIPAL UTILITY DISTRICT AND TRAVIS**  
**COUNTY FOR SIDEWALK IMPROVEMENTS**

The County Agrees to reimburse Lost Creek for qualified project costs incurred prior to contract execution as follows:

<u>Date</u>	<u>Vendor</u>	<u>Amount</u>
6/17/2011	KFrieese Engineering	\$2,575.88
8/26/2012	KFrieese Engineering	1,706.97
10/21/2011	KFrieese Engineering	1,085.53
11/23/2011	KFrieese Engineering	339.56
12/16/2011	KFrieese Engineering	1,104.13
1/27/2012	KFrieese Engineering	713.71
03/23/2012	KFrieese engineering	272.92
3/09/2012	KFrieese Engineering	3,647.88
4/20/2012	KFrieese engineering	954.87
5/18/2012	KFrieese Engineering	454.70
6/15/2012	KFrieese Engineering	5,588.78
7/3/2012	KFrieese Engineering	<u>954.83</u>
	Total	\$19,599.76





**Check Number: 2997**  
Date Posted: 6/30/2011

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15-14617 (11/0)

1997

06/17/2011

LESS CREDIT MUD  
Operating Fund

Capital City  
Houston, TX

c/o Municipal Accounts & Collections, L.P.  
8834 N. Capital of Texas Highway, Suite 150  
Austin, Texas 78719  
512-712-3400

Pay to the  
Order of

K Prieto & Associates, Inc.

87,637.26

In the  
Amount of

Seven Thousand Six Hundred Thirty-Seven Dollars and Twenty-Six Cents

K Prieto & Associates, Inc.  
1120 S. Capital of Texas Hwy  
The Setting II, Suite 100  
Austin, TX 78746

Tom Clark

Master

Engineering Fees

VOID AFTER SIX MONTHS

1

299711130249151 3750694811

**Save time and money using Online Bill Payment**

Add this payee to Online Bill Payment using this simple form.

Enter the payee information, then click **Continue**.

Payee Name:	
Payee Nickname:	(Optional)
Account Number:	
Confirm Account Number:	
<input type="checkbox"/> This payee does not have an account number	
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$$\begin{array}{r} \$5151.77 \\ \div 2 \\ \hline \$2575.88 \end{array}$$



K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

June 08, 2011  
Project No: 0202  
Invoice No: 1105046

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from May 01, 2011 to May 31, 2011

Task 100 Phase 1

Professional Personnel

	Hours	Rate	Amount
Una, Elizabeth	.50	61.75	30.88
Skidmore, Joseph	8.50	171.37	1,456.65
Wright, Katherine	47.50	70.97	3,356.08
Totals	56.50		5,143.61
Total Labor			5,143.61

Reimbursable Expenses

Mileage	8.16	
Total Reimbursables	8.16	8.16

Total this Task \$5,151.77

Total this Invoice \$5,151.77

Billings to Date

Current	Prior	Total
5,151.77	0.00	5,151.77

TC

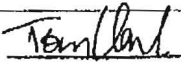
10350

RECEIVED JUN 14 2011



Check Number: 3127  
Date Posted: 9/9/2011

View Both Sides | Zoom In | Zoom Out | Print | Close Window

THE FACE OF THIS CHECK IS PRINTED GREEN - THE BACK CONTAINS A SIMULATED WATERMARK		
<b>Levi Creek MUD</b> <b>Operating Fund</b> c/o K P Reese & Associates, L.P. 8311 N. Capital of Texas Highway, Suite 150 Austin, Texas 78719 512-783-1800	<b>Capital One</b> <b>Houston, TX</b>	31-2991/1130 <b>3127</b> 08/26/2011
Pay to the Order of: <b>K Reese &amp; Associates, Inc.</b>	<b>\$4,930.27</b>	
In the Amount of: <b>Four Thousand Nine Hundred Thirty Dollars and Twenty-Seven Cents</b>		
<b>K Reese &amp; Associates, Inc.</b> 1120 S. Capital of Texas Hwy The Sealing II, Suite 100 Austin, TX 78746		
Money: <b>Regiocheck Post</b>	Void after six months	

⑈3127⑈⑈113024915⑈⑈375069469⑈⑈

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Payee Name:	
Payee Nickname:	(Optional)
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*\$1,706.97*





K Friesse & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

RECEIVED AUG 15 2011

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

August 02, 2011  
Project No: 0202  
Invoice No: 1107005

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from July 01, 2011 to July 31, 2011

Task 100 Phase 1  
Professional Personnel

	Hours	Rate	Amount
Afshar, Mohammad	4.50	80.28	361.17
Wright, Katherine	7.50	76.97	577.28
Totals	12.00		938.45
Total Labor			938.45
Total this Task			\$938.45

Task 101 Phase 2  
Professional Personnel

	Hours	Rate	Amount
McEvoy, Victoria	4.00	77.17	308.68
Skidmore, Joseph	9.50	171.37	1,628.02
Wright, Katherine	7.00	76.97	538.79
Totals	20.50		2,475.49
Total Labor			2,475.49
Total this Task			\$2,475.49

Total this Invoice \$3,413.94

	Current	Prior	Total
Billings to Date	3,413.94	5,151.77	8,565.71

1.2  
\$ 1,706.97

PAID  
8/26/11

16350



Check Number: 3252  
Date Posted: 10/27/2011

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Levi Creek MUD Operating Fund c/o Municipal Accounts & Counseling, L.P. 8334 N. Capital of Texas Highway, Suite 100 Austin, Texas 78745 512-780-2499	Capital One Houston, TX 3252 10/21/2011
Pay to the Order of: K Páese & Associates, Inc.	\$9,955.49
In the Amount of: Nine Thousand Nine Hundred Fifty-Five Dollars and Forty-Eight Cents	
K Páese & Associates, Inc. 1120 S. Capital of Texas Hwy The Setting II, Suite 100 Austin, TX 78745	<i>Tom Clash</i>
Memo: Registering Fees	
VOID AFTER SIX MONTHS	

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Payee Nickname:	(Optional)
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Confirm Account Number:	
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<a href="#">Continue</a>	

\$ 1,085.53



K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

October 06, 2011  
Project No: 0202  
Invoice No: 1109034

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from September 01, 2011 to September 30, 2011

Task 101 Phase 2  
Professional Personnel

	Hours	Rate	Amount
Afshar, Mohammad	1.50	80.26	120.39
McEvoy, Victoria	21.00	77.17	1,620.57
Skidmore, Joseph	2.50	171.37	428.43
Totals	25.00		2,169.39
Total Labor			2,169.39

Reimbursable Expenses

Mileage	1.67	
Total Reimbursables	1.67	1.67

Total this Task \$2,171.06

Total this Invoice \$2,171.06

Outstanding Invoices

Number	Date	Balance
1108035	9/8/2011	2,288.19
Total		2,288.19

Total Now Due \$4,459.25

	Current	Prior	Total
Billings to Date	2,171.06	10,853.90	13,024.96

RECEIVED OCT 13 2011





Check Number: 3330  
Date Posted: 12/5/2011

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Last Check MJJD Operating Fund c/o Municipal Accounts & Consulting, L.P. 504 N. Capital of Texas Highway, Suite 150 Austin, Texas 78719 512-782-2401	Capital One Houston, TX 3330 11/23/2011
---	--

Pay to the order of: K. Price & Associates, Inc. \$5,717.61

In the Amount of: Five Thousand Seven Hundred Seventeen Dollars and Sixty-One Cents

K. Price & Associates, Inc.  
 1120 S. Capital of Texas Hwy  
 The Setting II, Suite 100  
 Austin, TX 78746

Name: Engineering Fees

Valid after six months

3330 11130249151 117506946911

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 Enter the payee information, then click Continue.

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Payee Nickname:	(Optional)
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\$ 339.56



K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

November 07, 2011  
Project No: 0202  
Invoice No: 1110030

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from October 01, 2011 to October 31, 2011

Task 101 Phase 2  
Professional Personnel

	Hours	Rate	Amount
Afshar, Mohammad	1.25	80.26	100.33
McEvoy, Victoria	7.50	77.17	578.78
Totals	8.75		679.11
Total Labor			679.11

Total this Task \$679.11

Total this Invoice \$679.11

10136

	Current	Prior	Total
Billings to Date	679.11	13,024.96	13,704.07

$\div 2$   
\$339.56

RECEIVED NOV 14 2011



Check Number: 3388

Date Posted: 1/3/2012

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Lost Creek MUD Operating Fund c/o Municipal Accounts & Consulting, L.P. 1434 N. Capital of Texas Highway, Suite 150 Austin, Texas 78759 512-782-2960	Capital One Houston, TX <b>3388</b> 12/16/2011
---	---

Pay to the Order of: K Fries & Associates, Inc. **\$2,982.74**

In the Amount of: Two Thousand Nine Hundred Eighty-Two Dollars and Seventy-Four Cents

K Fries & Associates, Inc.  
1120 S. Capital of Texas Hwy  
The Settling II, Suite 100  
Austin, TX 78746

Signature: Tom Clark

Memorandum: Engineering Fees

Valid after six months

⑈ 3388 ⑆ 113024915 ⑆ 3750694691 ⑆

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Payee Name:	
Payee Nickname:	(Optional)
Account Number:	
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\$1,104.13





K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

December 05, 2011  
Project No: 0202  
Invoice No: 1111034

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

16134

RECEIVED DEC 18 2011

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from November 01, 2011 to November 30, 2011

Task 100 Phase 1  
Professional Personnel

	Hours	Rate	Amount
Afshar, Mohammad	8.75	80.28	702.28
Duran, Michelle	4.50	49.38	222.21
Totals	13.25		924.49
Total Labor			924.49
Total this Task			\$924.49

Task 101 Phase 2  
Professional Personnel

	Hours	Rate	Amount
McEvoy, Victoria	.25	77.17	19.29
Skidmore, Joseph	3.50	171.37	599.80
Sullivan, Jennifer	5.50	120.85	664.68
Totals	9.25		1,283.77
Total Labor			1,283.77
Total this Task			\$1,283.77

Total this Invoice

\$2,208.26

	Current	Prior	Total
Billings to Date	2,208.26	13,704.07	15,912.33

16640

Tom Clark

PAID  
12/16/11



Check Number: 3459  
Date Posted: 2/10/2012

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Lost Creek MUD Operating Fund c/o Municipal Accounts & Clearing, L.P. 6834 H. Capital of Texas Highway, Suite 100 Austin, Texas 78719 512-762-2400	Capital One Houston, TX	33-2491/1130 3459 02/27/2012
Pay to the Order of:	K. Priese & Associates, Inc.	\$1,487.84
Is the Amount of:	One Thousand Four Hundred Eighty-Seven Dollars and Eighty-Four Cents	
	K. Priese & Associates, Inc. 1120 S. Capital of Texas Hwy The Setting II, Suite 100 Austin, TX 78746	
Memo:	Engineering Fees	

Void after 60 days

⑆3159⑆⑆113024915⑆⑆3750694691⑆

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Enter the payee information, then click Continue.

Payee Name:	
Payee Nickname:	(Optional)
Account Number:	
Confirm Account Number:	
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\$ 713.71



K Friesse & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

January 05, 2012  
Project No: 0202  
Invoice No: 1112038

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MOD Sidewalks  
Professional Services from December 01, 2011 to December 31, 2011

RECEIVED JAN 12 2012

Task 100 Phase 1  
Professional Personnel

	Hours	Rate	Amount
Afshar, Mohammad	9.75	80.26	782.54
Totals	9.75		782.54
Total Labor			782.54
Total this Task			\$782.54

Task 101 Phase 2  
Professional Personnel

	Hours	Rate	Amount
Skidmore, Joseph	2.00	171.37	342.74
Sullivan, Jennifer	2.50	120.85	302.13
Totals	4.50		644.87
Total Labor			644.87
Total this Task			\$644.87

Total this Invoice \$1,427.41

	Current	Prior	Total
Billings to Date	1,427.41	15,912.33	17,339.74

\$713.71

PAID  
1/27/12





Check Number: 3615  
Date Posted: 4/17/2012

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<b>Lost Creek MUD</b> <b>Operating Fund</b> c/o Municipal Accounts & Consulting, L.P. 1344 N. Capital of Texas Highway, Suite 150 Austin, Texas 78712 512-782-2100	<b>Capital One</b> Houston, TX	<b>\$5,249/11130</b>  <b>3615</b> <b>03/23/2012</b>
Pay to the Order of:	K. Priebe & Associates, Inc.	\$545.64
In the Amount of:	Five Hundred Forty-Five Dollars and Sixty-Four Cents	
Payee:	K. Priebe & Associates, Inc. 1120 S. Capital of Texas Hwy The Setting II, Suite 100 Austin, TX 78746	
Notes:	Engineering Fees - Skidmore	
Valid after six months		

⑈3615⑈ ⑆13024915⑈ ⑆3750694691⑈

Save time and money using Online Bill Payment	
Add this payee to Online Bill Payment using this simple form.	
Enter the payee information, then click <b>Continue</b> .	
Payee Name:	
Payee Nickname:	(Optional)
Account Number:	
Confirm Account Number:	
<input type="checkbox"/> This payee does not have an account number	
<input type="button" value="Continue"/>	

\$272.92

**K FRIESE**  
& ASSOCIATES, INC.

K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

March 06, 2012  
Project No: 0202  
Invoice No: 1202038

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from February 01, 2012 to February 29, 2012

Task 101 Phase 2  
Professional Personnel

	Hours	Rate	Amount
Skidmore, Joseph	3.00	181.88	545.64
Totals	3.00		545.64
Total Labor			545.64

Total this Task \$545.64

Total this Invoice \$545.64

Outstanding Invoices

Number	Date	Balance
1201030	2/8/2012	7,295.76
Total		7,295.76

Total Now Due \$7,841.40

	Current	Prior	Total
Billings to Date	845.64	24,635.60	25,181.14

16136

**PAID**  
01/30/12  
3/23/12



Check Number: 3592  
Date Posted: 3/22/2012

View Both Sides | Zoom In | Zoom Out | Print | Close Window

THE FACE OF THIS CHECK IS PRINTED GREEN • THE BACK CONTAINS A SIMULATED WATERMARK

<b>Left Check M/P</b> Operating Fund c/o Municipal Accounts & Consulting, L.P. 8434 N. Capital of Texas Highway, Suite 150 Austin, Texas 78759 512-753-3400	Capital One Houston, TX 3592 03/09/2012
--	--

Pay to the Order of: **K Filene & Associates, Inc.** \$7,295.76

In the Amount of: **Seven Thousand Two Hundred Ninety-Five Dollars and Seventy-Six Cents**

**K Filene & Associates, Inc.**  
 1120 S. Capital of Texas Hwy  
 The Striding II, Suite 100  
 Austin, TX 78746

Memo: **Employment Fees - Sidewalks**  
 Void after 60 months

⑈ 3592 ⑈ ⑆ 13024915 ⑆ ⑈ 3750694691 ⑈

<b>Save time and money using Online Bill Payment</b> Add this payee to Online Bill Payment using this simple form. Enter the payee information, then click Continue.	
Payee Name:	
Payee Nickname:	(Optional)
Account Number:	
Confirm Account Number:	
<input type="checkbox"/> This payee does not have an account number	
<input type="button" value="Continue"/>	

\$ 3647.88





K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

February 06, 2012  
Project No: 0202  
Invoice No: 1201030

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from January 01, 2012 to January 31, 2012

RECEIVED FEB 17 2012

Task 100 Phase 1  
Professional Personnel

	Hours	Rate	Amount
Afshar, Mohammad	6.76	82.67	475.35
Gilpin, Charlotte	1.00	115.53	115.53
Totals	6.76		590.88
Total Labor			590.88
Total this Task			\$590.88

Task 101 Phase 2  
Professional Personnel

	Hours	Rate	Amount
Gilpin, Charlotte	5.00	115.53	577.65
McEvoy, Victoria	8.00	81.04	648.32
Sklmore, Joseph	13.00	181.88	2,364.44
Sullivan, Jennifer	25.00	124.49	3,112.25
Totals	51.00		6,702.66
Total Labor			6,702.66

Reimbursable Expenses

Mileage	2.22	
Total Reimbursables	2.22	2.22

Total this Task \$6,704.88

Total this Invoice \$7,295.76

	Current	Prior	Total
Billings to Date	7,295.76	17,339.74	24,635.50

PAID  
3/9/12  
Tom Clark  
÷ 2  
\$3647.88



**Check Number: 3677**  
Date Posted: 5/17/2012

View Both Sides | Zoom In | Zoom Out | Print | Close Window

THE FACE OF THIS CHECK IS PRINTED GREEN - THE BACK CONTAINS A SIMULATED WATERMARK


Lois Creek MUD Operating Fund c/o Municipal Accounts & Clearing, L.P. 3314 N. Capital of Texas Highway, Suite 150 Austin, Texas 78759 512-782-1400	Capital One Houston, TX	\$5240.11/100 3677 04/20/2012
Pay to the Order of	K Fidesa & Associates, Inc.	\$1,009.74
In the Amount of	One Thousand Nine Hundred Nine Dollars and Seventy-Four Cents	
	K Fidesa & Associates, Inc. 1120 S. Capital of Texas Hwy The Settling II, Suite 100 Austin, TX 78746	<i>Tom Cal</i>
Money	Engineering Fees - Sidewalks	VOID after six months

⑈3677⑈ 15113024915⑈ ⑈375089469⑈

**Save time and money using Online Bill Payment**

Add this payee to Online Bill Payment using this simple form.

Enter the payee information, then click **Continue**.

Payee Name:	
Payee Nickname:	(Optional)
Account Number:	
Confirm Account Number:	
<input type="checkbox"/> This payee does not have an account number	
	

\$ 954.87



K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

April 08, 2012  
Project No: 0202  
Invoice No: 1203033

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MUD Sidewalks

Professional Services from March 01, 2012 to March 31, 2012

Task 101 Phase 2

Professional Personnel

	Hours	Rate	Amount
Skidmore, Joseph	10.50	181.88	1,909.74
Totals	10.50		1,909.74
Total Labor			1,909.74

Total this Task \$1,909.74

Total this Invoice \$1,909.74

Outstanding Invoices

Number	Date	Balance
1202038	3/6/2012	545.84
Total		545.84

Total Now Due ~~\$2,455.38~~

	Current	Prior	Total
Billings to Date	1,909.74	25,181.14	27,090.88

16136

RECEIVED APR 12 2012

CELESTIAL  
4/12/12





Check Number: 3728  
Date Posted: 6/11/2012

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THIS FACE OF THIS CHECK IS PRINTED GREEN - THE BACK CONTAINS A SIMULATED WATERMARK	
Local Check MUD Operating Fund c/o Municipal Accounts & Consulting, L.P. 8831 N. Capital of Texas Highway, Suite 150 Austin, Texas 78759 512-732-2400	Capital One Houston, TX 05/27/1130 <b>3728</b> 05/18/2012
Pay to the Order of: K Fiese & Associates, Inc.	\$909.43
Pay Amount of: Nine Hundred Nine Dollars and Forty Cents	
K Fiese & Associates, Inc. 1120 S. Capital of Texas Hwy The Setting II, Suite 100 Austin, TX 78746	
Memo: Engineering Fees - Sidewalks	Void after six months

⑆3728⑆ ⑆113024915⑆ ⑆3750694691⑆

<b>Save time and money using Online Bill Payment</b> Add this payee to Online Bill Payment using this simple form. Enter the payee information, then click Continue.	
Payee Name:	
Payee Nickname:	(Optional)
Account Number:	
Confirm Account Number:	
<input type="checkbox"/> This payee does not have an account number	
<input type="button" value="Continue"/>	

\$ 454.70

**K FRIESE**  
& ASSOCIATES, INC.

K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

**PAID**  
123123  
5/18/12

May 04, 2012  
Project No: 0202  
Invoice No: 1204022

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from April 01, 2012 to April 30, 2012

Task 101 Phase 2  
Professional Personnel

	Hours	Rate	Amount
Skidmore, Joseph	5.00	181.88	909.40
Totals	5.00		909.40
Total Labor			909.40

Total this Task \$909.40  
Total this Invoice \$909.40

Outstanding Invoices

Number	Date	Balance
1203033	4/6/2012	1,909.74
Total		1,909.74

Total Now Due \$2,819.14

	Current	Prior	Total
Billings to Date	909.40	27,090.88	28,000.28

RECEIVED MAY 14 2012



Check Number: 3794

Date Posted: 6/25/2012

View Both Sides | Zoom In | Zoom Out | Print | Close Window

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Last Check M/D Operating Fund c/o Municipal Accounts & Cash Serv. L.P. 4834 N. Capital of Texas Highway, Suite 150 Austin, Texas 78719 (512) 783-2430	Capital One Houston, TX <b>3794</b> 06/15/2012
--	---

Pay to the Order of: K Priebe & Associates, Inc. \$11,177.56

In the Amount of: Eleven Thousand One Hundred Seventy-Seven Dollars and Fifty-Six Cents

K Priebe & Associates, Inc.  
1120 S. Capital of Texas Hwy  
The Seiring II, Suite 100  
Austin, TX 78745

Memo: Engineering Fees - Sidewalks

VOID AFTER SIX MONTHS

⑈ 3794 ⑈ 113024915⑈ ⑈ 3750694691⑈

Save time and money using Online Bill Payment

Add this payee to Online Bill Payment using this simple form.

Enter the payee information, then click Continue.

Payee Name:	
Payee Nickname:	(Optional)
Account Number:	
Confirm Account Number:	
<input type="checkbox"/> This payee does not have an account number	
<input type="button" value="Continue"/>	

\$ 3588.70

1





K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Setting II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

June 04, 2012  
Project No: 0202  
Invoice No: 1205028

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

RECEIVED JUN 08 2012

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from May 01, 2012 to May 31, 2012

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Task	100	Phase 1	
Professional Personnel			
Alexander, Tara	66.50	127.31	8,466.12
Kaylor, Robert	8.50	75.66	643.11
Totals	75.00		9,109.23
Total Labor			9,109.23
Total this Task			\$9,109.23

---

Task	101	Phase 2	
Professional Personnel			
Kaylor, Robert	4.50	75.66	340.47
Skidmore, Joseph	9.50	181.88	1,727.86
Totals	14.00		2,068.33
Total Labor			2,068.33
Total this Task			\$2,068.33
Total this Invoice			\$11,177.56

Outstanding Invoices

Number	Date	Balance
1204022	5/4/2012	909.40
Total		909.40

Total Now Due

2  
\$5,588.78  
~~\$12,086.96~~

	Current	Prior	Total
Billings to Date	11,177.56	28,000.28	39,177.84



K Friese & Associates, Inc.  
1120 South Capital of Texas Highway  
The Settling II, Suite 100  
Austin, Texas 78746  
(512) 338-1704

July 03, 2012  
Project No: 0202  
Invoice No: 1206017

Tom Clark  
Lost Creek Municipal Utility District  
1305 Quaker Ridge Road  
Austin, TX 78746

Project 0202 Lost Creek MUD Sidewalks  
Professional Services from June 01, 2012 to June 30, 2012

Task 100 Phase 1  
Professional Personnel

	Hours	Rate	Amount
Alexander, Tara	15.00	127.31	1,909.65
Totals	15.00		1,909.65
Total Labor			1,909.65
Total this Task			\$1,909.65
Total this Invoice			\$1,909.65

	Current	Prior	Total
Billings to Date	1,909.65	39,177.84	41,087.49

2  
954.83

EXHIBIT 'C'



**EXHIBIT C  
COLLATERAL ASSIGNMENT**

**COLLATERAL ASSIGNMENT OF CONTRACT AND CONTRACT RIGHTS**

DATE: 8/30, 2012

**ASSIGNOR:** Lost Creek Municipal Utility District

**ASSIGNOR'S ADDRESS:** 1305 Quaker Ridge Road, Austin, Texas 78746

**BENEFICIARY:** Travis County, Texas

**BENEFICIARY'S ADDRESS:** P.O. Box 1748, Austin, Texas 78767

**PARTICIPATION AGREEMENT:** The Interlocal Cooperation Agreement between Assignor and Beneficiary dated 8/30, 2012

**CONTRACT:** One or more of the following described contracts (collectively, the "Contracts"):

- (a) The Construction Contract between \_\_\_\_\_ and Assignor dated as of \_\_\_\_\_, 20\_\_, a copy of which is attached hereto as Exhibit "A";
  - (b) The Engineering Contract between \_\_\_\_\_ and Assignor dated as of \_\_\_\_\_, 20\_\_, a copy of which is attached as Exhibit "B"; and
  - (c) The Project Construction Management Contract between \_\_\_\_\_ and Assignor dated as of \_\_\_\_\_, 20\_\_, a copy of which is attached as Exhibit "C".
1. **Agreement.** To the extent authorized by law and subject to the terms and conditions of this Collateral Assignment of Contract and Contract Rights (this "Assignment"), in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which Assignor acknowledges, Assignor hereby grants, assigns, transfers, and conveys to Beneficiary the Contracts, and all powers, benefits, right, title, and interest accruing and to accrue to Assignor and to which Assignor is or may hereafter become entitled to by virtue of the Contracts.
  2. **Secured Obligations.** This assignment is made to Beneficiary to secure the performance by Assignor of all of Assignor's duties and obligations under the Participation Agreement.
  3. **License.** Assignor hereby grants to Beneficiary a limited license (the "License") to exercise and enjoy all of Assignor's rights and benefits under the Contracts. Upon the occurrence of an Event of Default (as defined below), Beneficiary will have the complete right,

power and authority hereunder, then or thereafter, to terminate this License, in its own name or in the name of Assignor, and to exercise, assume, and enjoy all of Assignor's rights, title, interest, and benefits under the Contracts.

4. **Assumption Date.** Upon the occurrence of an Event of Default, as defined below, Beneficiary may, at its option, given written notice to Assignor and assume Assignor's rights, duties and obligations under the Contracts, subject to the terms and conditions of this Assignment, as of the date of such notice (the "Assumption Date").

(a) After the Assumption Date, all of Assignor's rights and benefits under the Contracts will terminate without notice of any kind to Assignor, and Beneficiary will succeed to all of Assignor's rights, benefits, duties and obligations under the Contracts EXCEPT THAT ASSIGNOR SHALL REMAIN RESPONSIBLE FOR ALL COSTS, CLAIMS, LIABILITIES, AND EXPENSES THAT AROSE ON OR BEFORE THE ASSUMPTION DATE.

(b) The other parties to the Contracts will recognize and attorn to Beneficiary as if Beneficiary had originally been a party to such Contracts. In the event of a conflict between the terms of the Contracts and the terms of the Participation Agreement, the terms of the Participation Agreement will control.

5. **Assignor's Representations and Warranties and Related Covenants.** Assignor represents and warrants to Beneficiary as follows:

(a) Assignor's execution, delivery and performance of this Assignment does not require the consent or approval of any governmental body other than the Lost Creek Municipal Utility District and are not in contravention of, or in conflict with, any law or regulation or any term or provision of the Contracts. This Assignment is a valid, binding and legally enforceable obligation of Assignor in accordance with its terms, except to the extent, if any, that enforceability may be affected or limited by creditors' rights, legislation and court decisions of general application.

(b) The execution and delivery of this Assignment is not, and the performance of this Assignment will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which Assignor is a party or by which Assignor or any of its property is or may be bound or

affected, and do not and will not cause any security interest, lien or other encumbrance to be created or imposed or accelerated upon or in connection with any such property.

- (c) To the Assignor's current actual knowledge, there is no litigation or other proceeding pending against or affecting Assignor or its properties which, if determined adversely to Assignor, would have a materially adverse effect on Assignor's financial condition, properties or operations. Assignor is not in default in any materially adverse manner with respect to any law, restriction, order, writ, injunction, decree or demand of any court or other governmental or regulatory authority or with respect to any agreement, indenture or undertaking to which it or any of its property is bound or affected.
- (d) Except for this Assignment (which Assignor has authority to grant): Assignor has not previously assigned, transferred, conveyed, sold, pledged or hypothecated any of the Contracts.

6. **Assignor's Agreements.** Assignor agrees as follows:

- (a) To perform all of its obligations under the Participation Agreement.
- (b) To perform or cause to be performed each and every obligation and duty imposed upon Assignor by the Contracts and to not do any act or not omit to do any act which would constitute a breach of, default under or noncompliance with the Contracts.
- (c) Not to execute any amendment or modification of the Contracts or otherwise change or alter any of the terms and provisions of the Contracts without Beneficiary's prior written consent.
- (d) To promptly notify Beneficiary of the occurrence of any event which constitutes a breach of, default under, or noncompliance with, or which with the passage of time, notice, or both, will constitute a breach of, default under, or noncompliance with any of the terms and provisions of the Contracts.
- (e) To send, with reasonable promptness, to Beneficiary copies of any and all notices of default, breach or material alteration



sent or received by Assignor under the Contracts or in connection with Assignor's interest in the Contracts.

7. **Events of Default.** Any one or more of the following events or conditions constitutes an "Event of Default" for purposes of this Assignment:

- (a) Any event of default which occurs under the Participation Agreement which is not cured within any applicable grace or notice and opportunity to cure period;
- (b) Material breach of, noncompliance with, or default under any of the terms and provisions of the Contracts which is not cured within any applicable grace or notice and opportunity to cure period.

8. **Beneficiary's Rights and Remedies.**

- (a) To the extent authorized by law and subject to the terms and conditions set forth herein, Assignor hereby irrevocably appoints Beneficiary as Assignor's true and lawful agent and attorney-in-fact, with full power of substitution, in Beneficiary's own name or in the name of Assignor, for Beneficiary's sole use and benefit, but at Assignor's cost and expense, to exercise, upon the occurrence of an Event of Default, all or any of the following powers and rights with respect to the Contracts (without any obligation on the part of Beneficiary to exercise any of the following powers and rights): (1) to demand, receive, collect, sue and give acquittance for, settle, compromise, compound, prosecute or defend any action or proceeding with respect to the Contracts; (2) to exercise, enforce, enjoy, carry out, receive, and/or perform any and all rights, powers, duties, benefits, obligations and remedies of Assignor with respect to and arising under the Contracts, provided, however, Beneficiary's exercise of or Beneficiary's failure to exercise any such authority will in no manner affect Assignor's liability hereunder or under the Participation Agreement, and provided, further, that Beneficiary will be under no obligation or duty to exercise any of the powers hereby conferred upon it and will be without liability for any act or failure to act in connection with the preservation of any rights under, any of the Contracts. . To the extent authorized by law, the agency and authority hereby granted and created is an agency coupled with an interest.
- (b) Upon the occurrence of an Event of Default and at any time thereafter, Beneficiary will have the rights and remedies



provided by law. After the Assumption Date, Assignor shall be without further duty, obligation, or liability of any kind with respect to the Contracts, including any costs arising thereunder except that Assignor shall remain liable for those obligations, liabilities, and costs incurred on or before the Assumption Date. After the Assumption Date, Beneficiary shall assume sole and absolute responsibility for performance of Assignor's obligations under the Contracts, and Assignor shall have no duty, liability or responsibility for any costs, claims, or expenses arising out of or related to the Contracts, including payment to any other parties to the Contracts, except for those costs, claims, and expenses incurred on or before the Assumption Date, or for personal injury or property damage arising out of the services that are the subject of the Contracts, except for personal injury or property damage arising out of services that were rendered on or before the Assumption Date.

- (c) All recitals in any instrument of assignment or any other instrument executed by Beneficiary incident to the Contracts or any part thereof will be full proof of the matters stated therein and no other proof will be requisite to establish full legal propriety of the action taken by Beneficiary or of any fact, condition or thing incident thereto, and all prerequisites of such action will be presumed conclusively to have been performed or to have occurred.
- (d) Assignor waives demand, notice, protest, and all demands and notices of any action taken by Beneficiary under this Assignment. The provisions of this section shall survive termination of the Contracts and Participation Agreement.

9. **General.** Assignor and Beneficiary agree as follows:

- (a) Upon the full performance of Assignor's obligations under the Participation Agreement, this Assignment and the interests created hereby will automatically terminate. Upon termination of this Assignment, Beneficiary will, at Assignor's sole cost and expense, execute and deliver to Assignor such documents as Assignor may reasonably request to evidence such termination.
- (b) Beneficiary is not, by entering into this Assignment or accepting the assignment of and security interest in the Contracts, assuming or agreeing to assume any obligation or liabilities on the part of Assignor under the Contracts.

- (c) Beneficiary's remedies hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein will not be construed as a waiver of any of Beneficiary's other remedies.
- (d) Notice mailed to Assignor's address as reflected above, or to Assignor's most recent changed address on file with Beneficiary, at least ten (10) days prior to the related action, will be deemed reasonable.
- (e) THIS ASSIGNMENT HAS BEEN MADE IN, AND THE INTEREST GRANTED HEREBY IS GRANTED IN, AND BOTH WILL BE GOVERNED BY, THE LAWS OF THE STATE OF TEXAS IN ALL RESPECTS, INCLUDING WITHOUT LIMITATION MATTERS OF CONSTRUCTION, VALIDITY, ENFORCEMENT, AND PERFORMANCE. This Assignment may not be modified, altered or amended except in writing duly signed by an authorized representative of Beneficiary and by Assignor. If any provision of this Assignment is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted statute, rule or regulation, or by order of or judgment of a court, any and all other terms and provisions of this Assignment will remain in full force and effect as stated and set forth herein.
- (f) All notices, demands, requests and other communications required or permitted hereunder will be in writing and may be personally served or sent by mail, and if given by personal service, it will be deemed to have been given upon receipt, and if sent by mail, it will be deemed to have been given upon its deposit in the mail, postage prepaid, registered or certified, return receipt requested, addressed to Assignor or Beneficiary, as the case may be. The addresses of the parties to this Assignment are set forth on page 1 of this Assignment. Any of the parties to this Assignment will have the right to change their respective addresses by designating a new address in a written notice to the other parties as herein required.
- (g) This Assignment may be executed in multiple original counterparts.
- (h) In the event of a conflict between the terms of this Assignment and the Participation Agreement, the Participation Agreement shall control.

In Witness Whereof, the Beneficiary and the Assignor have executed this Assignment effective as of the later date of signing as indicated below.

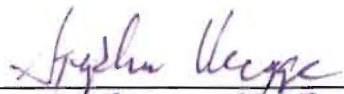
BENEFICIARY:

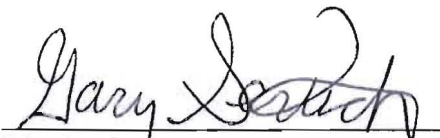
TRAVIS COUNTY, TEXAS

By: \_\_\_\_\_  
Samuel T. Biscoe, County Judge  
Date: \_\_\_\_\_

ASSIGNOR:

LOST CREEK MUNICIPAL UTILITY  
DISTRICT

By:   
Name: STEPHEN V. REGGE  
Title: PRESIDENT

  
District Secretary

**BY ITS SIGNATURE BELOW, THE UNDERSIGNED SIGNIFIES ITS CONSENT  
TO AND APPROVAL OF THIS ASSIGNMENT FROM THE LOST CREEK  
MUNICIPAL UTILITY DISTRICT TO TRAVIS COUNTY:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_