



# Item 7

## Travis County Commissioners Court Agenda Request

**Meeting Date:** May 21, 2013

**Prepared By:** Donald W. Ward **Phone #:** 854-9317

**Division Director/Manager:** Donald W. Ward *DWW*

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

**Sponsoring Court Member:** Commissioner Daugherty, Precinct Three

**AGENDA LANGUAGE:** Consider and take appropriate action to approve an Interlocal Agreement with the City of Jonestown, Texas, for purposes of roadway, right-of-way and sign maintenance within the jurisdiction of the City of Jonestown, Texas.

**BACKGROUND/SUMMARY OF REQUEST:**

Travis County has been requested to provide roadway, right-of-way and sign maintenance within the jurisdiction of the City of Jonestown, Texas. The City of Jonestown will fund all costs plus ten percent (10%) associated with any type of work provided by TNR Road Maintenance or TNR's contractor.

**STAFF RECOMMENDATIONS:**

Recommend approval.

**ISSUES AND OPPORTUNITIES:**

none

**FISCAL IMPACT AND SOURCE OF FUNDING:**

none

**ATTACHMENTS/EXHIBITS:**

Interlocal Agreement Document

**REQUIRED AUTHORIZATIONS:**

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Julie Joe	Asst. County Attorney	County Attorney's Office	854-9515
Eddie Jones	Roadway Manager	TNR	854-9383
Carol Joseph	Assistant Director TNR	TNR	854-9418

**CC:**


: :  
**0101 - Administrative -**

INTERLOCAL AGREEMENT BETWEEN  
TRAVIS COUNTY  
AND THE CITY OF JONESTOWN  
FOR STREET MAINTENANCE

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

This Agreement made and entered into by the City of Jonestown, an incorporated City of the State of Texas, hereinafter referred to as the "City" and Travis County, a political subdivision of the State of Texas, hereinafter referred to as the "County," each acting by and through its duly elected officials (collectively, the "Parties").

WITNESSETH:

WHEREAS, the City has the duty and authority to maintain and repair the streets or roadways located within its corporate boundaries and is desirous of obtaining repairs, maintenance and improvement of certain streets or portions thereof along with services involving traffic signalization and identification of drainage issues that may impact the City's streets and roadways;

WHEREAS, Travis County may expend funds for maintenance or repair of city streets and has the ability to perform the services desired and needed by the City;

WHEREAS, the City and Travis County have determined that it would be in the best interest of the citizens of the City and Travis County for Travis County to perform the improvements on behalf of the City by using either the County's staff or the County's contractors; and

WHEREAS, Travis County and the City intend to conform this Agreement in all respects with Texas Government Code Chapter 791, more commonly known as "The Interlocal Cooperation Act;"

NOW, THEREFORE, it is mutually agreed as follows:

## SECTION I.

### TERM OF AGREEMENT

The term of this Agreement commences on the date when the authorized signers for Travis County and the City have both signed the Agreement. The Agreement shall continue in full force and effect until the 30th day of September, 2013, unless earlier terminated by thirty (30) days' written notice from either party to the other. Thereafter, this Agreement shall be automatically renewed on October 1 of each year for successive one-year terms unless the City or Travis County provides thirty (30) days' written notice to the other that an amendment or termination is necessary.

## SECTION II

### AREA OF RESPONSIBILITY

- A. The Parties agree that the City may request that the County perform the following services on behalf of the City within the corporate limits of the City and within those geographical areas over which the City has the legal responsibility to maintain streets and roadways:
- (1) the repair and maintenance of roadways as selected by the City or portions thereof located within the City to be included in Travis County's annual Hot Mix Asphalt Concrete ("HMAC") Program, routine street maintenance, street sign replacement, roadway striping, and other roadway/pavement repairs as requested by the City;
  - (2) identification of drainage issues that may need to be addressed in connection with the roadways or streets; and
  - (3) traffic signalization warrant studies, planning and drafting of traffic control system designs, evaluation of the performance of traffic signals; and construction and installation of traffic lights.
- B. Attached hereto and incorporated herein for all purposes as Exhibit "A" is the current map of the City's streets and roadways together with all streets and roadways that are the responsibility of the City. Should the City's corporate boundaries change, the City will provide the County a new

Exhibit "A" to reflect the new boundaries, and upon the receipt of the new Exhibit "A" by the County, this Agreement will be automatically amended to replace the existing Exhibit "A" with the new Exhibit "A" without further action of the Parties. .

- C. The City has the duty and authority to maintain and repair the streets or roadways depicted in Exhibit "A."
- D. This Agreement does not govern the construction of new streets or roads.

### SECTION III CITY REPRESENTATIVES

The City Administrator and his designee are hereby designated as the Agents of the City for the performance of services pursuant to this Agreement. The City authorizes the designated City Agents to request performance of any of the Services as set forth in this Agreement, and any such request will be as binding on the City as fully as if such request or agreement had been made by specific action of a majority of the City's Board of Aldermen.

### SECTION IV TRAVIS COUNTY REPRESENTATIVE

The County Executive of the Travis County Transportation and Natural Resources Department ("TNR") and the TNR Road Maintenance Manager are hereby designated as the Agents of Travis County for the performance of services pursuant to this Agreement.

### SECTION V CITY'S REQUEST FOR SERVICE

The City's Agent may submit a written request to the TNR Road Maintenance Manager to perform one of the services described in Section II.A. with respect to any street or roadway that the City has the legal responsibility to maintain. At the time of making said request, the City's Agent shall specify in detail (1) the nature of the service requested, (2) the extent of the service requested, (3) the selected City street or streets or portions thereof upon which the service is to be performed, (4) any drainage

concerns that, to the extent allowed by state law, must be addressed as part of the requested service, and (5) the time within which City desires the service requested to be commenced and to be completed.

SECTION VI  
AGREEMENT TO PERFORM SERVICE

Upon receipt of a request for service in conformance with Section V hereof, Travis County's Agent shall promptly acknowledge receipt to the City's Agent and submit the request to the Travis County Commissioners Court for consideration in accordance with Section 791.014 of the Government Code. If the Travis County Commissioners Court authorizes the performance of the requested service, Travis County's Agent will cause to be prepared a written work order or schedule setting forth in detail: (1) the nature of the service requested, (2) the extent of the service requested, (3) the City street or streets or portions thereof upon which the service is to be performed, (4) any drainage concerns that must be addressed as part of the requested service, and (5) the time within which the services are to be commenced and to be completed. Travis County is not be obligated to perform any service under this Agreement unless and until the written work order or schedule described in this Section VI has been signed by the City's Agent and returned to the TNR Road Maintenance Manager. The terms of a written work order or schedule signed by the City's Agent control over any oral or prior written request for service.

SECTION VII  
PERFORMANCE OF SERVICE

Upon receipt of a signed work order from the City by Travis County's Agent, as described in Section VI hereof, TNR shall perform the work or solicit bids for the service set forth in such work order or schedule. Such service shall be performed to the same standard and using the same quality of materials as for Travis County roads of similar size, use, and construction. Except when otherwise provided herein, Travis County may furnish all personnel, equipment, and materials necessary, or award a construction contract to a private contractor pursuant to Travis County bidding requirements to

perform the services set forth in each work order. It is expressly understood that work performed pursuant to the Agreement may be performed pursuant to a change order or supplement order from Travis County to a contractor currently under contract with Travis County to perform the type of street repair and maintenance required by the City. Travis County may utilize any interlocal agreements it has in place to perform traffic signal studies.

SECTION VIII  
CLOSING STREETS

Should it become necessary, in the sole discretion of Travis County's Agent, to deny public access to any City street or streets or portions thereof during the performance of any service requested pursuant to this Agreement, Travis County's Agent shall so notify the City's Agent in writing. Such written notification may be contained in the written work order or schedule or may be by separate writing and may be submitted at any time during the performance of any services requested hereunder. Upon receipt of such written notice, the City's Board of Aldermen shall promptly act to temporarily close the said City street or streets or portions thereof. Travis County shall have no further obligation for the performance of any services hereunder unless and until said City street or streets or portions thereof are closed to the public. In the event any such closure results in the denial of public access by any third party to private property, the City, at its sole cost and expense, shall provide such alternative public access as may be required by law. Travis County shall have no obligation to provide alternative public access in the event of any such closure.

SECTION IX  
NO WARRANTIES

Travis County agrees to use reasonable efforts to perform services pursuant to this Agreement so as to deliver improvements to the City at the same standard of quality which Travis County would provide for its own roads. HOWEVER, NEITHER THE AGREEMENT TO PERFORM NOR THE PERFORMANCE OF ANY SERVICE PURSUANT TO THIS AGREEMENT OR ANY WRITTEN WORK ORDER PROVIDED

FOR IN THIS AGREEMENT SHALL CREATE OR CONSTITUTE ANY WARRANTY THAT SUCH WORK IS PERFORMED IN A GOOD AND WORKMANLIKE MANNER, THAT SUCH WORK IS FIT FOR ITS INTENDED PURPOSE, OR ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. Notwithstanding the foregoing, all warranties, express and implied, including but not limited to warranties that work is performed in a good and workmanlike manner and that such work is fit for all its intended purpose which are given by any third-party contractor to Travis County regarding work performed pursuant to this Agreement shall survive, and Travis County hereby assigns to the City, without warranty, Travis County's rights under any express or implied warranty given by a third-party contractor to Travis County regarding work performed for the City pursuant to this Agreement. Travis County further agrees to cooperate with the City, at the City's cost in enforcing any warranty or seeking recovery for breach thereof given by a third-party contractor to Travis County regarding work performed for the City pursuant to this Agreement.

## SECTION X PAYMENT

- A. For the services herein agreed to be performed, the City shall pay Travis County as follows:
- (1) If the County solicits to perform the requested service, the City will pay the County the contract award price plus 10% of the contract award price as an administrative charge;
  - (2) For any traffic signal construction, installation, signalization warrant studies, planning and drafting of traffic control system design and acts incidental to installation of traffic control signals that the County performs for the City under an interlocal agreement between Travis County and another political subdivision, the City shall pay to Travis County the price established pursuant to such interlocal agreement plus an administrative charge comprised of 10% of the price established pursuant to that interlocal agreement.
  - (3) If the County uses its own personnel and equipment to perform the requested service, the City will pay the County the actual cost to the County for all



personnel employed in the performance of the maintenance or repair, the actual cost to the County of all materials incorporated into the maintenance or repair, and the actual cost to the County for the use of equipment, plus 10% of the total actual costs to the County as an administrative charge.

(a) The actual cost of personnel for each County employee performing services under this Agreement is the actual hourly wage paid by the County to each employee plus all "fringe benefits" ordinarily paid by the County to such person at the time the work is performed, including but not limited to insurance and retirement, on the day of performance, multiplied by the number of hours elapsing from the time a County employee is dispatched to the job site hereunder until his return to his customary job station or other work site, provided, however, that any fractional portion of an hour during the time elapsed shall be counted as a full hour for purposes of calculating the time elapsed and provided further that in no event shall the calculation of time elapsed include any period of time during which or for which Travis County is not obligated to pay the employee.

(b) The actual cost of materials is the price per unit of materials set forth in the most recent contract of Travis County TNR for the acquisition of such materials, multiplied by the total units of materials or measurable fractional portions thereof actually incorporated into or expanded during the performance of services pursuant to this Agreement.

(c) The City shall pay the County the hourly rates set forth in the work order for each hour of operation of the equipment used by the County in the performance of Services pursuant to this Agreement; provided, however, that any fractional portion of an hour of operation shall be treated as a full hour for purposes of calculating the charge for equipment.

B. The City agrees to place into an interest bearing account with Travis County, within 30 days of the City's approval of the contract or work order, the estimated cost of construction of the work. If the actual construction costs and approved change orders exceed the amount in escrow, then the City shall supplement the escrow with the amount required to meet the actual costs. In the event the amount paid into escrow is more than

the actual cost, then the excess amount will be returned to the City. All interest accrued in the escrow account will be paid by Travis County to the City, less any fees or charges accrued for the holding of the funds in an interest bearing account.

C. Upon the completion of the service detailed in each contract or work order, Travis County will send to the City a statement showing the amount of compensation due it for performance of the services pursuant to such work order. The amount of compensation on each statement shall be due in full within 30 days after the date of the statement. The City shall pay for services with current revenues available to the City. Payments not timely made shall include an interest charge for every month past due. Accrual and payment of interest on overdue payments is governed by Chapter 2251 of the Texas Government Code.

## SECTION XI CLAIMS

Travis County and the City are not liable or responsible for any claims or damages of any kind for injury to or death of any person or persons, for damage to or loss of property arising out of or attributed directly or indirectly to operations or performance of any service provided by the other. The foregoing sentence shall not serve as a release of liability of Travis County or a relinquishment of any right of the City arising out of (1) the assignment of the Travis County to the City of any third-party warranty or (2) Travis County's agreement provided in Section IX to assign third party warranty and to cooperate with the City, at the City's expense, in enforcing any warranty or seeking any recovery for breach thereof.

## SECTION XII FORCE MAJEURE

In the event that the performance by either Travis County or any of its contractors or political subdivisions with which the County has interlocal agreements for performing of any of its obligations or undertakings hereunder are interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct,

or the act or conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

SECTION XIII  
CHOICE OF LAW

The obligations and undertakings of each of the parties to this Agreement shall be performable in Travis County, Texas and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

SECTION XIV  
ENTIRETY OF AGREEMENT AND MODIFICATION

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. Any oral representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the party to be charged and expressly authorized by the governing body of such party. NO OFFICIAL, REPRESENTATIVE, EMPLOYEE, OR AGENT OF TRAVIS COUNTY OR THE CITY HAS ANY AUTHORITY TO MODIFY OR AMEND THIS AGREEMENT EXCEPT PURSUANT TO SPECIFIC AUTHORITY TO DO SO GRANTED BY THE COMMISSIONERS COURT OF THE COUNTY.

SECTION XV  
NON-ASSIGNMENT OF RIGHTS

No assignment of this Agreement or of any right accruing hereunder shall be made in whole or in part by either Travis County or the City without the prior written consent of the other.

SECTION XVI

## SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the successors, successors in office, and assigns of the respective parties hereto.

### SECTION XVII

#### NOTICE

Any notice to be given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY:           Honorable Deane Armstrong, Mayor (or her successor in office)  
                  18649 FM 1431, Suite 4A  
                  Jonestown, Texas 78645

COUNTY:       Steven Manilla, P.E., County Executive  
                  Travis County Transportation and Natural Resources Department  
                  P. O. Box 1748  
                  Austin, Texas 78767

With copies to:

The Honorable David Escamilla (or his successor in office)  
County Attorney  
Travis County Commissioner's Court  
P.O. Box 1748  
Austin, Texas 78767

And:

Ms. Cyd Grimes, C.P.M. (or successor)  
Travis County Purchasing Agent  
P.O. Box 1748  
Austin, Texas 78767

And            Ms. Paige Saenz, City Attorney

McKamie Krueger, LP  
223 West Anderson Lane, Suite A105  
Austin, Texas 78732

Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section XVII.

#### SECTION XVIII COMPUTATION OF TIME

When any period of time is referred to in this Agreement or in any work order or schedule prepared and executed hereunder, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday, Sunday, or a day made a legal holiday by the County or the City, such days shall be omitted from the computation.

#### SECTION XIX HEADINGS

The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.

#### SECTION XX NUMBER AND GENDER DEFINED

As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall be deemed to include the others.

#### SECTION XXI MEDIATION

When mediation is acceptable to both parties in resolving a dispute arising under the Agreement, the parties agree to use a mutually agreed upon mediator or someone

appointed by a court of competent jurisdiction for mediation as described in §154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the results of the mediation, the mediation will not constitute the final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing to waive the confidentiality.

IN WITNESS WHEREOF, the parties have executed this Agreement.

TRAVIS COUNTY

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

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

THE CITY OF JONESTOWN

By: Deane Armstrong  
Deane Armstrong, Mayor

Date: 4-11-2013