



Travis County Commissioners Court Agenda Request

Meeting Date: September 24, 2013
Prepared By/Phone Number: Bruce Elfant
Tax-Assessor-Collector
Elected/Appointed Official/Dept. Head: 512-854-9473
Commissioners Court Sponsor:

AGENDA LANGUAGE:

CONSIDER AND TAKE APPROPRIATE ACTION ON PROPOSED NEW AGREEMENT FOR ASSESSMENT AND COLLECTION SERVICES BETWEEN TRAVIS COUNTY AND TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 17.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Please see attached memo regarding Municipal Utility Districts #17.

STAFF RECOMMENDATIONS:

ISSUES AND OPPORTUNITIES:

FISCAL IMPACT AND SOURCE OF FUNDING:

REQUIRED AUTHORIZATIONS:

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials should be submitted as a pdf to the County Judge's office, agenda@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.



TRAVIS COUNTY TAX OFFICE
BRUCE ELFANT
TAX ASSESSOR AND COLLECTOR

5501 AIRPORT BOULEVARD
AUSTIN, TX 78751
(512) 854-9473

September 18, 2013

MEMORANDUM FOR THE COUNTY JUDGE SAM BISCOE
PRECINCT 1, COMMISSIONER RON DAVIS
PRECINCT 2, COMMISSIONER BRUCE TODD
PRECINCT 3, COMMISSIONER GERALD DAUGHERTY
PRECINCT 4, COMMISSIONER MARGARET GÓMEZ

FROM: Bruce Elfant, Tax Assessor-Collector

SUBJECT: New Tax Assessment and Collection Agreement Between Travis
County and Travis County Municipal Utility District No. 17

Dear Judge and Commissioners:

The Agreement for Assessment and Collection Services attached hereto provides that the County Tax Assessor-Collector perform tax assessment and collection services for Travis County Municipal Utility District No. 17, as requested by the entity to consolidate the assessment and collection of property taxes within the entity, which is located wholly in Travis County.

If you should have any concerns or comments, please do not hesitate to call me at 4-9632.

Attachment: Agreement for Assessment and Collection Services

BE/vr

cc: Katherine Dulany, Legal Assistant, Armbrust & Brown, PLLC

ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300
AUSTIN, TEXAS 78701-2744
512-435-2300

FACSIMILE 512-435-2360

KATHERINE DULANY
(512) 435-2365
kdulany@abaustin.com

September 18, 2013

VIA HAND DELIVERY

Mr. Bruce Elfant
Travis County Tax Assessor/Collector
5501 Airport Boulevard
Austin, Texas 78751


Re: Travis County Municipal Utility District No. 17

Dear Mr. Elfant:

Enclosed please find two (2) partially-executed Tax Collection Agreements between Travis County and the above-referenced District, which was approved and executed at the District's September 18, 2013 Board meeting. Please have this Agreement submitted to the Commissioner's Court for consideration and approval. If approved, please have the Agreements signed where-noted and forward one (1) fully-executed Agreement to me for the District's files.

In the event you have any questions or need any further information, please do not hesitate to contact me.

Cordially yours,


Katherine Dulany,
Legal Assistant to Sharlene N. Collins

Enclosure

{W0594995.1}

**AGREEMENT FOR ASSESSMENT AND COLLECTION SERVICES
BETWEEN TRAVIS COUNTY AND
TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 17**

This agreement is between the County of Travis (the "County"), a political subdivision of the State of Texas, the Travis County Attorney, and Travis County Municipal Utility District No. 17 (the "MUD"), a local governmental entity, duly organized and existing under Texas laws.

RECITALS

This Agreement's parties wish to consolidate the assessment and collection of property taxes into one agency, the Tax Assessor/Collector of Travis County. This is done to eliminate duplication of services, which promotes governmental efficiency. The parties intend that the County, through its Tax Assessor/Collector, assess and collect the ad valorem property taxes owing to MUD and that the Travis County Attorney represent the MUD in enforcing the taxes. This Agreement is authorized by Texas Property Code sections 6.23, 6.24 and 6.30, and by Texas Government Code Chapter 791, which is known as the Interlocal Cooperation Act. Given this, the parties mutually agree as follows:

1.0 Performance. County's assessment and collection of each year's property taxes will begin not earlier than October 1 of the current tax year and will be completed not later than September 30 of the following tax year, unless the County finds extension to be necessary.

2.0 Services to be Performed.

2.01 Assessment and Collection of Ad Valorem Property Taxes and Delinquent Taxes.

The County will assess and collect the ad valorem property taxes owing to the MUD with regard to all properties on the MUD's tax roll. The County will also collect the delinquent taxes owing to the MUD, as this Agreement provides, including enforcing the collection of the delinquent taxes. For ad valorem property taxes, including delinquent taxes, that the County collects as specified in this subsection, the County further agrees to perform for the MUD all the duties related to assessing and collecting taxes for the MUD that Texas law provides.

2.02 Performing Functions and Consolidated Tax Statements. For ad valorem property taxes and delinquent taxes that the County collects for the MUD under this Agreement, the County will perform all the functions set out in subsection 12.01. In connection to that, the County agrees to prepare consolidated tax statements for each taxpayer. The tax statement will include taxes owed to all taxing units to which the taxpayer owes taxes, except those units that have not contracted with the County for the assessment and collection of its taxes. The County will mail the tax statements to each taxpayer or authorized agent of property within the MUD that is covered under this Agreement.

2.03 Tax Assessor/Collector for MUD. The MUD designates the Travis County Tax Assessor-Collector as its tax assessor and tax collector for all purposes under the Texas Tax Code, with respect to the collection of ad valorem taxes on property within the MUD.

2.04 *Copy of Tax Roll.* The County will provide the MUD's governing body with a copy of the tax roll for each year that this Agreement is in effect, with respect to ad valorem property taxes that this Agreement covers.

3.0 **Payment.**

3.01 *Amount of Payment.* MUD agrees to pay the County the costs of performing the services that this Agreement specifies. These costs will be allocated among the MUD and the other taxing units contracting for assessment and collection services in the same manner so that the MUD and each of the other taxing units pay the same rates approved by the Travis County Commissioners Court.

3.01.01 For the 2014 tax year, the MUD will pay the rate approved by the Travis County Commissioners Court in 2013, per parcel for all parcels located in Travis County and on the MUD's tax roll; and, for each year thereafter during this Agreement, the MUD will pay the rate approved by the Travis County Commissioners Court for the tax year in question, per parcel for all parcels located in Travis County and on the MUD's tax roll.

3.01.02 The County will notify in writing the MUD in subsequent years of this Agreement of the amount that the MUD will pay to the County for performing tax assessment and collection services under to this Agreement.

3.02 *Method of Payment.* The County will withhold from the remittances to the MUD the amount of money necessary to pay for the cost of assessing and collecting current taxes for the MUD, until the County has received the amount of payment authorized under Subsection 3.01 above.

4.0 **Remittance of Collection.** The taxes collected for the MUD will be remitted to the MUD daily, after the proper amount of payment authorized under Subsection 3.01 above and/or taxpayer refunds have been withheld. Taxes collected will be remitted to the MUD on the day after they are processed and credited by the County Tax Office, but no later than when the taxes collected for the County have been remitted to the County Treasurer.

5.0 **Delinquent Taxes.**

5.01 *Collection of Delinquent Taxes.* Under Texas Property Tax Code section 6.24, MUD hereby authorizes the County, by and through the County's Tax Assessor/Collector, to collect delinquent taxes covered by Subsection 2.01 of this Agreement, for MUD, as the County deems necessary. In addition, the MUD hereby authorizes the County, by and through the County's Tax Assessor/Collector, to waive penalties and interest for the MUD in delinquent tax cases where the County, by and through the County's Tax Assessor/Collector, determines that Texas Property Tax Code section 33.011 requires or authorizes such waiver as advised by the Travis County Attorney's Office.

5.02 *Delinquent Tax Suits.*

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5.02.01 Under Texas Property Tax Code section 6.30, MUD hereby authorizes the Travis County Attorney's Office to institute delinquent tax suits for the collection of delinquent taxes covered by Subsection 2.01 of this Agreement.

5.02.02 If the County chooses to have the Tax Office represented by a private attorney, MUD hereby agrees that the private attorney selected by the County will also represent MUD in delinquent tax cases. MUD is not directly responsible for compensation of the private attorney selected by the County, although such attorney will receive compensation in accordance with the Texas Property Tax Code for representing MUD in delinquent tax cases. If MUD selects an attorney to represent it in delinquent tax cases, other than the County Attorney or a private attorney selected by the County, MUD will notify the County in writing of such fact at least thirty (30) days before implementing such decision, in accordance with the notice provisions set forth in Subsection 13.01 of this Agreement.

5.03 *Costs, Expenses and Fees in Delinquent Tax Suits.* All legal services rendered by the Travis County Attorney will be included as part of the services to be performed under the terms and provisions of this Agreement, for the consideration given by MUD under to this Agreement, and for the costs, expenses, and fees recovered by County under this Subsection. Under Texas Property Tax Code section 33.48, the County, in collecting delinquent taxes for MUD, may recover, in addition to other costs authorized by law, the following costs, expenses, and fees in a suit to collect a delinquent tax:

5.03.01 All usual court costs, including the cost of serving process;

5.03.02 Costs of filing for record a notice of lis pendens against property;

5.03.03 Expenses of foreclosure sale;

5.03.04 Reasonable expenses that are incurred by the taxing unit in determining the name, identity, and location of necessary parties and in procuring necessary legal descriptions of property on which a delinquent tax is due;

5.03.05 Attorney's fees in the amount of fifteen percent (15%) of the total amount of taxes, penalties, and interest due MUD; and

5.03.06 Reasonable attorney ad litem fees approved by the Court that are incurred in a suit in which the Court orders the appointment of an attorney to represent the interests of a defendant served with process by means of citation by publication or posting.

The costs, expenses, and fees recovered by the County under Texas Property Tax Code section 33.48 will be payment to the County for the County's collection of delinquent taxes for MUD under Subsection 2.01 of this Agreement; provided, however, pursuant to sections 33.71, 33.72 and 33.73 of the Texas Property Tax Code, the County, for collecting delinquent taxes for MUD under Subsection 2.01 of this Agreement, may also recover the

reasonable costs of a tax master for any tax suits instituted by the County under this Agreement.

6.0 Administrative Provisions.

6.01 *Books and Records.* All expenses incurred by the County for the assessment and collection of taxes under this Agreement will be clearly kept on the books and records of the County. MUD or its designated representatives, upon written request submitted to the Travis County Tax Assessor/Collector, are authorized to examine the books and records to be kept by the County at such reasonable times and intervals as MUD deems fit. Such books and records will be kept in the office of the Travis County Tax Assessor/Collector.

6.02 *Surety Bond.* If MUD requires the County to obtain a surety bond for the Tax Assessor/Collector acting in her capacity as assessor/collector for MUD as provided in this Agreement, MUD agrees to pay the premium for such bond.

6.03 *Change in Tax Rate.* In case MUD's tax rate is rolled back or otherwise changed after the County begins collections for MUD in any given year, the County will continue to act for MUD in providing refunds to taxpayers or sending corrected billing statements only if MUD assumes all additional costs of collection arising from such rollback or other change in the tax rate. These costs will be the actual costs of providing those extra services required by the rollback or other change in the tax rate, and such costs will be withheld in the same manner as provided in Subsection 3.02 of this Agreement.

7.0 General Provisions.

7.01 *Books and Records Held by MUD.* MUD agrees to transfer to the possession and control of the County, without charge, copies of all books and records necessary for performing the County's duties and responsibilities under this Agreement. These books and records will include all tax records, including existing tax rolls or other records available to MUD.

7.02 *Limit on Liability.* The County will not be liable to MUD for any failure to collect taxes under this Agreement; neither will the County Tax Assessor/Collector be liable to MUD for any failure to collect taxes, unless the Tax Assessor/Collector's failure to collect taxes results from her failure to perform the duties imposed upon the Tax Assessor/Collector by law and by this Agreement. The Tax Assessor/Collector, however, will not be liable to MUD for any failure to collect taxes where her failure to perform duties imposed by law and by this Agreement arises out of circumstances beyond her control.

7.03 *Current Revenue Funds.* Payments by the parties for services under this Agreement will be made from current revenues available to the parties.

7.04 *Agreement Voidable.* For each year during the term of this Agreement, if MUD has not established the tax rate as required by law for MUD and notified the Tax Assessor/Collector accordingly within sixty (60) days after the Central Appraisal MUD Appraisal Review Board has certified to MUD the assessed values on the property in MUD,

or by September 30, whichever is later, this Agreement becomes voidable at the County's option. In the event County chooses to void this Agreement, County will give written notice of such action to MUD, in accordance with the notice provisions set forth in Subsection 13.01 of this Agreement.

7.05 *Authorized Refunds.* Authorized refunds to property owners will be made so that each property owner receiving refunds will receive a single check covering all refunds for all taxing units contracting for assessment and collection services. Refunds may become necessary because of changes that include late exemption claims, clerical errors, overpayment, etc. Refunds from the MUD to the property owners within the MUD, except for refunds applicable to property located outside of Travis County, will be deducted from the collections and withheld from the MUD in the same manner as provided in Subsection 3.02 of this Agreement; or, if no collections are available, MUD will remit such refunds to the County within seven (7) days of notification of such sums due.

8.0 **Sovereign Immunity.** In executing this Agreement, neither the County nor the MUD waives or will be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

9.0 **Termination.**

9.01 *Termination of Agreement.* Unless the County declares this Agreement null and void under Subsection 7.04, this Agreement will continue in full force and effect from year to year until such time as either party terminates it by written notice to the other party under Subsection 13.01. But such termination will be effective only if notice is given to the other party on or before July 1 of the year in which the party intends this Agreement to terminate, and only if notice is given at least thirty (30) days prior to the effective date of termination. Provided, however, the MUD may, at its option, declare this Agreement null and void by giving written notice from the MUD to the Tax Assessor/Collector, in accordance with the Notice provisions set forth in Subsection 13.01, in the event the County chooses to have the Tax Office represented by a private attorney and the MUD does not agree with the County's choice. If either party terminates this Agreement, as authorized under this Agreement, this Agreement will terminate in its entirety, except as otherwise expressly provided in Section 9.0.

9.02 *Pending Cases.* In the event either party terminates this Agreement for any reason, the County reserves the right to continue to handle pending cases for the collection of delinquent taxes on properties located in the MUD, for a six (6) month period following the effective date of termination. As used in this Subsection 9.02, "Pending Cases" are cases where the MUD is the taxing unit and include the following:

9.02.01 - Each case for which the County has sent a demand letter to the delinquent taxpayer;

9.02.02 - Each delinquent tax suit filed in court or intervened in court by County; or

9.02.03 - Each case in which the County and the delinquent taxpayer have agreed that the delinquent taxpayer will pay the delinquent tax in partial payments over a specified period of time.

9.03 *Transfer.* Upon the expiration of the six (6) month period specified in Subsection 9.02, the County will transfer all remaining, pending cases to the MUD's new legal representative, and upon such transfer, this Agreement will terminate in its entirety.

10.0 **Amendments.** Any amendments, alterations, deletions or waiver of the provisions of this Agreement will be valid only when expressed in writing and agreed to by official action of the governing bodies of both parties, and will be effective only if they do not adversely affect the prompt fulfillment of contract obligations. However, in the performance of services under this Agreement, the County, the County Tax Assessor/Collector, and/or the County Attorney's Office may institute changes, as required or authorized by applicable law.

11.0 **Regulations and Laws.** This Agreement will be governed, interpreted, construed, and enforced in accordance with all applicable laws of the United States of America and all applicable laws and amendments to them of the State of Texas (statutory law, case law, rules and regulations), including the provisions of the Texas Property Tax Code.

12.0 **Definitions.**

12.01 *Assessment and Collection.* For purposes of this Agreement, the terms "assessment" and "collection" will include the following:

12.01.01 Calculation of tax;

12.01.02 Preparation of tax rolls;

12.01.03 Proration of taxes;

12.01.04 Correction of clerical errors in tax rolls;

12.01.05 Collection of tax liabilities; and

12.01.06 Issuance of refunds and calculation of an effective tax rate as required by Texas Property Tax Code section 26.04, for the years covered by this Agreement.

The term "assessment" does not include those functions defined as "appraisal" by the Texas Property Tax Code.

12.02 *Current Taxes.* For purposes of this Agreement, the term "current taxes" includes only those taxes legally due and payable without penalty and interest.

12.03 *Delinquent Taxes.* For purposes of this Agreement, the term "delinquent taxes" includes any taxes that have not been received by the County on or before January 31 of any

given tax year and on which penalty and interest are due.

12.04 *Tax Year.* For purposes of this Agreement, the term "tax year" refers to the twelve (12) month period that runs from October 1 of one year through September 30 of the following year.

13.0 **Miscellaneous Provisions.**

13.01 *Notice.* Except as otherwise provided in this Agreement, all notice required or permitted under this Agreement will be in writing and will be hand delivered or sent by certified or registered mail, postage prepaid, return receipt requested. For purposes of sending notice under this Agreement, the address of the County is: Honorable Bruce Elfant (or his successor), Travis County Tax Assessor/Collector, 5501 Airport Boulevard, Austin, Texas 78751. For purposes of sending notice under this Agreement, the address of the MUD is: Travis County Municipal Utility District No. 17 c/o Sharlene N. Collins (or her successor) at Arbrust & Brown, PLLC; 100 Congress Avenue, Suite 1300; Austin, Texas 78701. Either party may change its address by giving written notice as provided in this subsection or by notifying the MUD and all other entities by a general mass mail-out. In the case of notice sent by registered or certified mail, notice will be deemed effective three days after deposit in a United States mailbox or a United States post office. In the case of notice made by hand delivery, notice will be deemed effective immediately. This Section does not preclude the County Tax Assessor/Collector from providing the MUD and all other entities general notice concerning the Tax Assessment and Collection Agreements or any related matter through general mass mail-outs by regular mail.

13.02 *Parties Bound.* This Agreement is binding upon the parties to it and their executors, heirs, legal representatives, successors, and assigns.

13.03 *Copies.* This Agreement is executed in multiple copies, any one of which is a true copy, having the same evidentiary value.

13.04 *Integration.* This represents the entire Agreement and supersedes all prior agreements and negotiations, either written or oral, between the parties relating to the subject matter here.

13.05 *Severability.* The provisions of this Agreement are severable. If any paragraph, section, subsection, sentence, clause, or phrase of this Agreement is held by a court of competent jurisdiction, for any reason, to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect the remaining provisions of this Agreement. In such an event occurs, however, either party may terminate this Agreement by providing written notice of termination to the other party under Subsections 9.0 and 13.01.

13.06 *Venue.* All obligations and undertakings pursuant to this Agreement are fully performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the courts of appropriate jurisdiction in Travis County, Texas exclusively.

13.07 *Effective Date.* This Agreement will take effect on the date this Agreement is approved by the Travis County Commissioners Court.

13.08 *Titles, Headings and Subheadings.* The titles, headings, and subheadings set forth in this Agreement are intended for the convenience of the parties and are not intended for use in the construction or interpretation of the provisions contained in it.

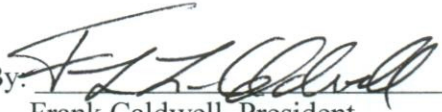
13.09 *Gender and Number.* As used in this Agreement, unless the context indicates otherwise, a masculine, feminine, or neuter gender will each be deemed to include the other, and the singular or plural number will each be deemed to include the other.

13.10 *Instruments.* Each party agrees that it will execute, in a timely manner, all instruments and documents needed to implement this Agreement's terms, conditions, and provisions, or that are needed for the other party's performance of its duties and responsibilities under this Agreement.

EXECUTED in triplicate by the County of Travis and by the Travis County Municipal Utility District No. 17, on this the ____ day of _____, 2013.

DISTRICT:

**TRAVIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 17**

By: 
Frank Caldwell, President
Board of Directors

Date: 9-18-13

By: 
Mike Marsh, Secretary
Board of Directors

Date: 9-18-13

COUNTY:

TRAVIS COUNTY, TEXAS

By: _____
Honorable Samuel T. Biscoe
Travis County Judge

Date: _____

By: _____
J. Elliott Beck, Assistant County
Attorney
For David Escamilla, Travis County
Attorney

Date: _____