

VILLAGE OF VOLENTE, TEXAS

RESOLUTION NO. 2020-R-03

**A RESOLUTION TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN
THE VILLAGE OF VOLENTE, TEXAS AND TRAVIS COUNTY.**

WHEREAS, the Village of Volente, Texas ("Village") is a General Law (Type "B") municipality located in Travis County, and created in accordance with State law; and

WHEREAS, the Village of Volente desires to enter into an Interlocal Agreement with Travis County, for county personnel to provide road maintenance services within the Village of Volente and with contract rate being quoted by Travis County individually for each work order requested by the Village of Volente.

BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS:

That the Village of Volente Mayor is hereby authorized to execute on behalf of the Village of Volente a Interlocal Agreement with Travis County, a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.

PASSED, APPROVED, and ADOPTED on this the 16th day of June 2020, by a vote of.

4 AYES, 0 NAYS, and 0 ABSTENTIONS

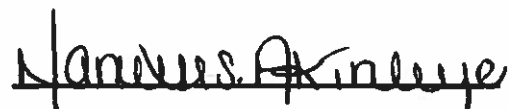
At a regular meeting of the City Council of the Village of Volente, Texas.

VILLAGE OF VOLENTE, TEXAS



Jana Nace, Mayor

ATTEST:



Nanette Akinleye, Acting City Secretary



Travis County Commissioners Court Agenda Request

Meeting Date: July 7, 2020

AGENDA LANGUAGE: Consider and take appropriate action regarding a request to enter into an Interlocal Agreement with the Village of Volente in Precinct Three.

Prepared By: David Hunter, Assistant Public Works Director **Phone #:** (512) 854-4660

Department Head: Cynthia C. McDonald, County Executive - TNR

Sponsoring Court Member: Commissioner Daugherty, Precinct Three

Press Inquiries: Hector Nieto, PIO@traviscountytexas.gov or (512) 854-8740

BACKGROUND/SUMMARY OF REQUEST:

The Village of Volente has requested to enter into an Interlocal Agreement with Travis County to provide maintenance services for Village streets, including, but not limited to, vegetation control within the right-of-way, street overlays, roadway striping, street signage, drainage system maintenance, and drainage system repairs.

STAFF RECOMMENDATIONS:

Staff recommends approval. This is a similar arrangement that TNR has afforded other communities within Travis County.

ISSUES AND OPPORTUNITIES:

This agreement provides a method for smaller municipalities that do not have the personnel and resources to adequately maintain their roadways to be able to request assistance from Travis County for street maintenance.

FISCAL IMPACT AND SOURCE OF FUNDING:

There will be no fiscal impact. The agreement provides a method for the Village of Volente to reimburse Travis County for services provided through an interest-bearing escrow account with the County.

ATTACHMENTS/EXHIBITS:

The Village of Volente Resolution No. 2020-R-03, Interlocal Agreement

REQUIRED AUTHORIZATIONS:

Cynthia C. McDonald	County Executive	TNR	(512) 854-9418
Isabelle Lopez	Financial Manager, Sr.	TNR	(512) 854-7675
Morgan Cotten, PE	Public Works Director	TNR	(512) 854-9434
Sydnia Crosbie	Chief Deputy	TNR	(512) 854-7682

CC:

Julie Joe	Assistant County Attorney	TCAO	(512) 854-4835
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DPH:CCM:kg

**INTERLOCAL AGREEMENT FOR TRAVIS COUNTY
TO PROVIDE ROAD MAINTENANCE SERVICES
FOR VILLAGE OF VOLENTE**

This Agreement is made and entered into by the Village of Volente, Texas, a Type B General-Law Municipality and municipal corporation, hereinafter referred to as the "Village", and Travis County, Texas, a political subdivision of the State of Texas, hereinafter referred to as the "County," each acting by and through its duly elected officials. The Village and the County are hereinafter collectively referred to as the "Parties."

RECITALS

1. The Village has the duty and authority to maintain the streets within its corporate limits.
2. The Village desires to obtain, and the County is capable of providing, maintenance services for Village streets, including, but not limited to, vegetation control within the right-of-way, street overlays, roadway striping, street signage, drainage system maintenance, and drainage system repairs (together, the "Services").
3. The Village and the County have determined that it would be in the best interest of the citizens of the Village and the County for the County to perform the Services on behalf of the Village.
4. The Travis County Commissioners Court and the Village's governing body each finds that the Services will provide increased safety for persons using Village streets, facilitate the movement of people, goods, and services in the Village and Travis County, and benefit the residents of the Village and the residents of Travis County.
5. Pursuant to Texas Transportation Code Section 251.012, a county may expend county funds for the construction, improvement, maintenance, and repair of municipal streets located in the county, and the work authorized by Section 251.012 may be done or financed by, among other things:
 - (a) The county through the use of county equipment;
 - (b) An independent contractor with whom the county has contracted; or
 - (c) By the county as an independent contractor with the municipality.
6. The Village and the County intend to conform this Agreement in all respects to Texas Government Code Chapter 791, more commonly known as "The Interlocal Cooperation Act."

NOW, THEREFORE, it is mutually agreed as follows:

Section 1. TERM OF AGREEMENT

Any previous agreement between the Parties for the provision of Services by the County is hereby terminated. The term of this Agreement shall commence on the last date of execution of this Agreement by the County and the Village, and shall continue in full force

and effect until the 30th day of September 2020, and will be automatically renewed for successive one year terms unless terminated earlier by either party by providing 30 days' written notice to the other at any time.

Section 2. SERVICES THAT MAY BE REQUESTED

- (a) The Village may request that the County perform Services in accordance with the terms and conditions set forth in this Agreement. Notwithstanding any provision to the contrary, the Services to be provided by the County pursuant to this Agreement do not include the construction of new streets or roads.
- (b) The Parties acknowledge and agree that the Village will not be making any requests of the County to construct, improve, or repair a building, road, or other facility pursuant to this Agreement, and that, accordingly, Texas Government Code Section 791.014 does not apply to any Service the Village may request or the County may provide pursuant to this Agreement. **NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE VILLAGE EXPRESSLY WAIVES ANY CLAIMS IT MAY HAVE UNDER TEXAS GOVERNMENT CODE SECTION 791.014, AND THIS WAIVER WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

Section 3. VILLAGE REPRESENTATIVE

The governing body of the Village hereby designates the Village's mayor, hereinafter called "Village Agent" to serve as the representative and agent for the Village. The designated Village Agent is authorized to request performance of Services as set forth in this Agreement, and, to the extent permitted by law, any such request made by the Village Agent shall bind the Village as fully as if such request had been made by specific action of a majority of the governing body of the Village.

Section 4. COUNTY REPRESENTATIVE

The Director of Public Works of the Travis County Transportation and Natural Resources Department (the "Public Works Director") will act on behalf of the County with respect to the Services, coordinate with the Village, receive and transmit information and instructions, and will have complete authority to interpret and define the County's policies and decisions with respect to the Services. The Public Works Director may designate a County Project Manager or other representatives to transmit instructions and act on behalf of the County with respect to the Services.

Section 5. REQUESTS FOR SERVICES

Each request for Services from the Village Agent must be submitted in writing and must specify in detail:

- (a) the nature and extent of the Services requested,
- (b) the Village street or streets or portions thereof upon which the Services are to be performed, and
- (c) the time-frame within which the Village desires the requested Services to be commenced and to be completed.

Section 6. PROCESSING REQUESTS FOR SERVICES

- (a) Upon receipt of a request for Service in conformance with Section 5 hereof, the Public Works Director shall promptly inform the Village Agent whether the County will perform the requested Service. Notwithstanding any provision to the contrary, the Public Works Director has sole discretion to determine whether the County has the capacity to perform a requested Service. Nothing in this Agreement requires the Village to request services solely from the County.
- (b) If the Public Works Director determines in his sole discretion that the County has the capacity to perform a requested Service, the Public Works Director will cause to be prepared a written work order setting forth in detail:
- (1) the nature and the extent of the Service requested,
 - (2) the Village street or streets or portions thereof upon which the Service is to be performed, the estimated time within which the services are to be commenced and to be completed,
 - (3) the estimated cost of the requested services; and;
 - (4) the estimated administrative charge to cover the County's costs for administering the services to be performed under the proposed work order. The County's administrative charge as of the effective date of this Agreement is 19.71% of the estimated work cost, but, **notwithstanding any provision to the contrary, this administrative charge is subject to change solely at the County's discretion based on the County's budget rules.**
- (c) Not later than 30 days after receiving a work order from the County, the Village will return the work order to the County with a written response as to whether the Village would like for the County to proceed with the work described in the work order. If the Village responds that it would like for the County to proceed with the work order, the Village will deposit with the County Treasurer the estimated cost of the requested services set forth in the work order and the estimated administrative charge. The funds will be placed in a County-approved escrow account.
- (d) If the Village fails to provide written approval of the work order or fails to deposit the estimated cost and estimated administrative charge within 30 days after receiving the work order, the Village will be deemed to have declined the work order.
- (e) The County is not obligated to perform any Service under this Agreement unless and until the written work order described in this Section has been signed by the Village Agent and the Village has deposited with the County Treasurer the estimated cost of the requested services set forth in the work order and the estimated administrative charge.
- (f) The terms of a written work order signed by the Village Agent shall control over any oral or prior written request for Service.

Section 7. PERFORMANCE OF SERVICES

- (a) Upon the County's receipt of the Village's approval of a written work order and the Village's deposit of the estimated cost and estimated administrative charge in a

County-approved escrow account, as described in Section 6 hereof, the County will perform the requested Services or solicit bids for the requested Services.

- (b) The Services requested by the Village will be performed to the same standard and using the same quality of materials as for Travis County roads of similar size, use, and construction.
- (c) The County may furnish all personnel, equipment, and materials necessary, or award a construction contract to a private contractor pursuant to County bidding requirements to perform the specific Services set forth in each work order.

Section 8. CLOSING STREETS

- (a) If the Public Works Director, in the Public Works Director's sole discretion, determines that it is necessary to deny public access to any Village street or streets or portions thereof during the performance of any Service requested pursuant to this Agreement, the Public Works Director will notify the designated Village Agent in writing. The written notification may be contained in the written work order or may be by separate writing and may be submitted at any time during the performance of any Services requested hereunder.
- (b) Upon receipt of a written notice regarding the necessity to close a Village street, the governing body of the Village will promptly act to close the said Village street or streets or portions identified in the notice.
- (c) If the Public Works Director has notified the Village Agent about the need to close all or a portion of a Village street, the County will have no further obligation for the performance of any Services unless and until the requested closure takes place.
- (d) If a street closure results in the denial of public access by any third party to private property, the Village, at its sole cost and expense, shall provide any alternative public access that may be required by law. The County has no obligation to provide any alternative public access with respect to any Village street closure.

Section 9. NO WARRANTIES.

- (a) The County agrees to use reasonable efforts to perform Services pursuant to this Agreement so as to deliver maintenance services to Village at the same standard of quality which 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.
- (b) Notwithstanding anything else to the contrary or otherwise in this Agreement, if the County solicits bids for any Service, or part thereof, set forth in a Village work order and awards a construction contract to a private contractor, the County shall include in any bid solicitation the requirement of a warranty to the same extent it would do so for any bid solicitation for work it would bid out for County work, and the Village shall

be made a beneficiary of any such warranty.

Section 10. COST ESTIMATES

- (a) The County's cost estimate for requested Services that will be performed by County employees will be based on the actual hourly wage rate for each County employee who will provide the Services plus an hourly proration of all fringe benefits ordinarily paid by the County to that County employee, including but not limited to insurance and retirement for each the day of performance by the County, multiplied by the estimated number of hours elapsing from the time the employee would be dispatched to the job site until the employee's return to the employee's customary job station or other work site, provided, however, that in no event will 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 County's cost estimate for materials will be calculated based on the price per unit of materials set forth in the most recent TNR contract for the acquisition of those materials, multiplied by the estimated total units of materials or measurable fractional portions thereof that the County estimates will be actually incorporated into or expended during the performance of the Services requested by the Village Agent.
- (c) The County's cost estimate for use of County equipment to perform requested Services for the Village will be based on the fee schedule approved by the Travis County Commissioners Court for the County fiscal year during which the request for Services is received by the Public Works Director. Any equipment not specifically listed in the approved fee schedule, the use of which becomes necessary in the performance of requested Services, will be furnished by the County, if the equipment is in the County's inventory, at the rate the Federal Emergency Management Agency ("FEMA") lists for that equipment, or if FEMA does not list a rate for that equipment, the County will charge the Village a rate that the Public Works Director determines is reasonable for the County to achieve full cost recovery for the use of that equipment. All other equipment, the use of which becomes necessary in the performance of requested Services, will be furnished by the Village at no cost to the County.

Section 11. FINANCIAL OBLIGATIONS

- (a) The Village agrees to pay all costs for each work order under the terms and conditions in this Agreement. The Village shall make payments from current revenues available to the Village. The Village will pay for the cost of each work order through an escrow account with the County.
- (b) The County Treasurer shall act as Escrow Agent for the management of the Village's funds and shall deposit the funds in an interest bearing escrow account. The County shall invest the funds in accordance with the Public Funds Investment Act, and any other applicable laws or bond covenants. The interest and any unused portion of the public funds provided by the Village under this agreement shall be returned to the Village within 60 days after the termination of this Agreement. The County shall provide the Village with an accounting of the deposits to and disbursements from the County's escrow account. The County will make its

records available, at reasonable times, to the Village's auditors, or its independent financial advisors or other professionals who provide arbitrage rebate calculations to the Village.

- (c) Within 60 days after the completion of the Services described in a work order, or this Agreement is terminated, the County will render and send to the Village 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 Village has previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the work order or this Agreement. The statement will set forth:
 - (1) For work performed by a County employee:
 - (A) The actual hourly wage rate for that employee;
 - (B) The number of hours, calculated in fifteen-minute increments, worked by that employee, calculated from the time the employee was dispatched to the job site until the employee's return to the employee's customary job station or work site; and
 - (C) The value of the fringe benefits paid to that employee for the time period during which the employee performed Services under the work order;
 - (2) For a work order in which County equipment was used to perform the requested services:
 - (A) The type of equipment actually used;
 - (B) The actual number of hours, calculated in fifteen-minute increments, the equipment was used, and
 - (C) The fee rate for use of the equipment as set forth in the fee schedule approved by the Travis County Commissioners Court for the County fiscal year during which the equipment was used;
 - (3) For materials used in performing the services:
 - (A) The type of material used;
 - (B) The actual unit price for the materials; and
 - (C) The actual number of units of the materials used; and
 - (4) The County's calculation of the administrative charge.
- (d) The Village has the right to audit the County's records with respect to the final written accounting and may request any such audit, or any adjustments or corrections, within 30 days of receipt of the accounting.
- (e) After the County has sent any corrected or adjusted final accounting to the Village, the Village will pay any amount it owes no later than 30 days after receipt of such final accounting. The County must refund any amounts due the Village within 30 days after delivery of any adjusted final accounting.

Section 12. INDEMNITY

- (a) TO THE EXTENT PERMITTED BY LAW, THE COUNTY SHALL NOT BE LIABLE OR RESPONSIBLE FOR AND SHALL BE SAVED AND HELD HARMLESS BY THE

VILLAGE, AND VILLAGE AGREES TO INDEMNIFY COUNTY AND COUNTY'S OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COUNTY COSTS AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE ACTS OR OMISSIONS OF THE VILLAGE AND VILLAGE'S AGENTS, SERVANTS, EMPLOYEES, AND INVITEES IN CONNECTION WITH THE WORK PERFORMED UNDER THIS AGREEMENT. VILLAGE SHALL NOT BE REQUIRED TO INDEMNIFY FOR NEGLIGENCE ON THE PART OF COUNTY. THIS INDEMNITY CLAUSE SHALL NOT APPLY TO CONTRACTORS TO WHOM THE COUNTY AWARDS CONSTRUCTION CONTRACTS. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THIS SECTION 12 WILL SURVIVE THE TERMINATION OF THIS AGREEMENT. THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE VILLAGE'S AUTHORITY TO INDEMNIFY AND/OR HOLD HARMLESS ANY THIRD PARTY IS GOVERNED BY ARTICLE XI, SECTION 7 OF THE TEXAS CONSTITUTION. NOTHING IN THIS AGREEMENT REQUIRES THAT FUNDS BE ASSESSED OR COLLECTED OR THAT A SINKING FUND BE CREATED.

- (b) **Claims Notification.** If the Village or the 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 the Village or the 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 13 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.

Section 13. MISCELLANEOUS

- (a) **Force Majeure** If the performance by the County under this Agreement is interrupted or delayed (1) by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God or the result of war, riot, civil commotion, sovereign conduct, or (2) as a result of COVID-19 or any pandemic or other event declared a disaster (including a disaster declared by the County Judge), then County will be excused from such performance for a period of time that is reasonably necessary after such occurrence to remedy the effects of the occurrence. Upon the discovery of such an event, the County shall notify the Village, and if the Public Works Director or the Public Works Director's designee

determines it is necessary, establish an estimated period of time to delay services under the Agreement.

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

VILLAGE: Honorable Jana Nace (or her successor in office)
Mayor of Village of Volente
16100 Wharf Cove
Volente, Texas 78641

COUNTY: Cynthia C. McDonald (or her successor)
County Executive, TNR
P. O. Box 1748
Austin, Texas 78767

AND: Bonnie Floyd, MBA, CPPO, CPPB (or her successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

WITH COPY TO: David Escamilla (or his successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767
File No. 356.274

- (c) **Number and Gender Defined.** As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
- (d) **Entire Agreement.** This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties concerning this Agreement. 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 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 shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (g) **Current Funds.** The Party or Parties paying for the performance of governmental functions or services shall make payments therefor from current revenues available to the paying Party.
- (h) This Agreement shall be binding upon and inure to the benefit of the County and the Village and their respective successors, executors, administrators, and assigns.
- (i) **Non-Assignment of Rights.** No assignment of this Agreement or of any right accruing hereunder shall be made in whole or in part by the Village without the prior written consent of the County.
- (j) **No Third-Party Beneficiary.** This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a Party to it and the Parties are not waiving any defense or immunity to which they are entitled against any person or legal entity that is not a party to this Agreement.
- (k) This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, and venue shall be in Travis County.
- (l) **Computation of Time.** When any period of time is referred to in this Agreement or in any work order 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 Village, such day shall be omitted from the computation.
- (m) 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.
- (n) **Non-Exclusivity.** This Agreement does not create and should not be regarded as an exclusive arrangement between the Parties to the Agreement.
- (o) **No Partnerships.** This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner of any other Party.
- (p) **Multiple Counterparts.** This Agreement may be executed by the Parties in one or more counterparts, each of which shall be considered one and the same agreement. Signatures transmitted electronically by e-mail in a "PDF" format, by DocuSign or similar e-signature service shall have the same force and effect as original signatures in this Agreement.

VILLAGE OF VOLENTE, TEXAS

By: Jana Nace
Jana Nace, Mayor

Date: June 17, 2020

TRAVIS COUNTY, TEXAS

By: Samuel T. Buscise
County Judge

Date: 7-7-20