

Montgomery City Council
AGENDA REPORT

Meeting Date: April 27, 2021	Budgeted Amount: N/A
Prepared By: Dave McCorquodale	Exhibits: Updated Interlocal Agreement from County Attorney

Subject

Consideration and possible action regarding approval of an Interlocal Agreement between the City of Montgomery and Montgomery County for road and right-of-way repair and maintenance.

Description

This is an update to the existing agreement that has been in place for a number of years and has allowed the City to perform street repaving projects utilizing Precinct 1 work crews.

Individual street projects will continue to be approved by City Council. The Public Works Director will be at the meeting to answer any questions, and the City Attorney has reviewed the agreement and can provide comments as needed.

Recommendation

Motion to adopt the Interlocal Agreement between the City of Montgomery and Montgomery County.

Approved By

Asst. City Administrator	Dave McCorquodale <i>DMC</i>	Date: 04/22/2021
City Administrator	Richard Tramm <i>RT</i>	Date: 04/22/2021

INTERLOCAL AGREEMENT

THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This Agreement (“Agreement”) is made and entered into by and between MONTGOMERY COUNTY, TEXAS, hereinafter referred to as “County,” a political subdivision of the State of Texas acting herein by and through its County Judge and County Commissioners, and the CITY OF MONTGOMERY, TEXAS (“City”), a general law city acting by and through its City Council; hereafter called collectively (“Parties”):

WHEREAS, this Agreement is entered into pursuant to Chapter 791 of the Texas Government Code which authorizes interlocal cooperation contracts between governmental entities for the purchase of goods and services;

WHEREAS, County and City have determined it would be in the best interest of the County and the City, and to the inhabitants thereof, that provisions be made for the construction, repair and maintenance of city roads, rights of way, drainage ditches, parking lots, or other like facilities owned or administered by City; and

WHEREAS, City is willing to reimburse the County for all costs and expenses associated with such Projects.

NOW, THEREFORE, in consideration of the mutual covenants and considerations and undertakings herein set forth, it is agreed as follows:

1. City may request County to perform any construction, repair, or maintenance of city roads, rights of way, drainage ditches, parking lots, or any other like facility owned or administered by City (hereinafter “Project”) within the scope of this Agreement. Each such request shall be submitted to the respective Precinct Commissioner (“Precinct”) on the form attached hereto as “Exhibit A”. Such request shall include all necessary information including plans and specifications to evaluate the request and determine an estimated cost (“Estimate”) to complete the Project.

2. County may request City to provide any additional information it shall deem necessary to evaluate and review such request, including plans and specifications for the proposed Project. Nothing herein shall be deemed to require County to consent to the performance of any work on a Project under this Agreement.

3. Before County may begin work on any individual Project, the Montgomery County Commissioners Court shall give specific written approval to said Project on the form attached hereto as “Exhibit B.” At County’s sole discretion, such consent may be conditioned upon City’s prior approval of County’s estimated project costs. Should consent be so conditioned, County shall furnish City a written estimate of costs of performing such work. No action shall be taken by the County until such revised estimate is reviewed and approved by the City on the attached form (see “Exhibit A”).

4. City hereby agrees that prior to submission to Commissioners Court for approval of any Project, City shall confirm funds are available from its budget for the current fiscal year for payment for work anticipated to be performed.

5. Notwithstanding any Estimate provided, nothing herein shall be deemed to waive County's right to payment by City of all actual costs incurred in the performance of work completed for any Project. In consideration of the full and true performance of such work by County, City agrees and binds itself, to pay the County for the work performed for any Project, including but not limited to the cost of all labor, material, and equipment used by County.

6. Upon completion of the Project, County shall provide City a statement of actual costs incurred for any work performed. City shall remit to County payment of such costs within thirty (30) days of receipt of the aforementioned statement.

7. The work completed by County pursuant to this Agreement shall be executed, performed, and completed in good, substantial, and workmanlike manner as measured by County's usual practice in such projects.

8. City shall specify in writing to the Precinct any complaint as to the quality of workmanship performed by County.

9. Nothing herein is intended to require County to provide any right of way. It is understood and agreed that the providing of rights of way, engineering work and plans, designs, and specifications shall be at the expense of the City.

10. County shall have the right and authority, upon reasonable notice to the proper City official, to block streets and roadways, park equipment on rights of way and to do all things reasonably necessary to perform such maintenance, repairs, or additions related to the Project.

11. County shall not be liable for any delay in Projects. It is further understood and agreed that County shall perform such work only after and subject to fulfilling commitments and priorities on other County projects. County, upon completion of such work, shall clear away all tools, machinery, debris, and any materials or things which may be lying on the worksite, and shall do everything necessary to finish all the work in a complete and workmanlike manner, both in appearance and in fact.

12. Parties agree that by entering into this Agreement no intent exists to waive any claims or defenses including sovereign immunity or limitations of liability. To the extent permitted by law, City hereby agrees to indemnify and hold County harmless for all damages and liabilities for which may be imposed by law upon City for acts of omission or commission by City during the term and performance of this Agreement.

13. Nothing in this Agreement shall alter or change the legal responsibility under existing law for maintenance and repairs from a party, nor will this Agreement cause County to incur any additional responsibility other than what responsibility it would have without this Agreement.

14. All notices, requests, demands and other communications under this Agreement shall be given by either United States First Class mail or by hand delivery addressed as follows:

If to City: City of Montgomery, Texas

If to the County: 510 Highway 75 North
Willis, Texas 77378
Tel: (936) 539-7815
Fax: (936) 539-7874

With Copy to: Montgomery County Attorney's Office
501 N Thompson St., Suite 300
Conroe, TX 77301

15. The Effective Date of this Agreement shall be the date of execution by the County and its term shall be one (1) year after the date hereof and it shall be automatically renewed and deemed renewed annually until such time as either party provides thirty (30) days written notice of intent to terminate. Termination may only occur during periods of time when no Projects are currently underway and all outstanding payments for any Projects have been paid in full to County.

16. This Agreement constitutes the entire agreement between the Parties. There have been and are no agreements, covenants, representations, or warranties between the parties other than those expressly stated or provided for herein. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on any party unless reduced to writing and signed by the parties.

17. This Agreement shall be for the sole and exclusive benefit of City and the County and shall not be construed to confer any benefit or right upon any other party, including particularly any landowner or resident of City or the County.

18. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein..

19. This Agreement shall apply to and be binding upon the Parties hereto and their respective officers, directors, successors, and assigns. This Agreement and any of the rights obtained hereunder are not assignable by any party hereto without the express written consent of the other parties, which consent shall not be unreasonably withheld.

20. Each party represents that (i) execution and delivery of this Agreement by it has been duly authorized by its governing body or other persons from whom such party is legally bound to obtain authorization; (ii) that the consummation of the contemplated transactions will not result in a breach or violation of, or a default under, any agreement by which it or any of its properties is bound, or by any statute, rule, regulation, order, or other law to which it is subject; and (iii) this Agreement is a binding and enforceable agreement on its part.

21. This Agreement shall be governed and construed in accordance with the laws of the State of Texas. Venue shall be in Montgomery County, Texas.

EXECUTED AND AGREED this the _____ day of _____, 2021.

CITY OF MONTGOMERY

MONTGOMERY COUNTY, TEXAS

By: _____

By: _____

Name: _____

**MARK J. KEOUGH,
COUNTY JUDGE**

Title: _____

ATTEST:

ATTEST:

By: _____

By: _____

Name: _____

**MARK TURNBULL,
COUNTY CLERK**

Title: _____

EXHIBIT A

**RESOLUTION REQUESTING STREET CONSTRUCTION, REPAIR, AND
MAINTENANCE BY MONTGOMERY COUNTY, TEXAS**

WHEREAS, on _____, 2021, the City of Montgomery and Montgomery County, Texas entered into that certain Interlocal Agreement for the construction, repair, and maintenance of city streets and other like facilities (the "Agreement"); and

WHEREAS, the City requests that Montgomery County perform certain street repair work pursuant to the terms of such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONTGOMERY, TEXAS:

1. That City hereby requests County, pursuant to the terms of such Agreement, to perform the following street construction, repair, or maintenance work:

LOCATION	NATURE OF WORK	EST. AMOUNT

2. That City confirms that sufficient funds are available from its budget for the current fiscal year for payment of such work anticipated to be performed for the Project by County; and

3. That for and in consideration of the performance by County of the street improvements and repairs set forth in this Resolution, the City agrees, upon approval of such request by the Montgomery County Commissioners Court, to pay all costs of materials and related work actually incurred by Montgomery County in performance of the work as provided in the Agreement.

PASSED this _____ day of _____, 20_____.

CITY OF MONTGOMERY, TEXAS

By: _____

ATTEST:

EXHIBIT B

**ORDER CONSENTING TO STREET CONSTRUCTION,
REPAIR, AND MAINTENANCE BY MONTGOMERY COUNTY**

THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

On this _____ day of _____, 2021 at a duly posted and called meeting of the Commissioners Court of Montgomery County, Texas, upon motion of Commissioner _____, seconded by Commissioner _____, duly put and carried:

WHEREAS, pursuant to that certain Interlocal Agreement dated the _____ day of _____, 20____, with the City of Montgomery, Texas, hereinafter referred to as "City," County did agree to perform certain street construction, maintenance, and repairs pursuant to the terms of such Agreement, and

WHEREAS, City has made written request to County for the performance of certain work pursuant to such Agreement (see attached request Exhibit "A"):

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF MONTGOMERY COUNTY, TEXAS:

That County shall perform the following work requested by the City:

LOCATION	NATURE OF WORK	EST. AMOUNT

IT IS FURTHER ORDERED that County be compensated by City for the performance of such work as provided in such above-referenced Agreement, the estimated total cost of such work being \$_____. Notwithstanding such estimated cost, nothing herein shall be deemed to waive County's right under such Agreement for payment of all actual costs incurred in the performance of the work.

IT IS ORDERED that this consent is conditioned upon prior approval by City of the estimated cost and total cost of performance of the work.

{Signatures contained on following page}

Passed and approved this _____ day of _____, 2021.

MONTGOMERY COUNTY, TEXAS

MARK J. KEOUGH, COUNTY JUDGE

ROBERT C. WALKER,
COMMISSIONER, PCT. 1

CHARLIE RILEY,
COMMISSIONER, PCT. 2

JAMES NOACK,
COMMISSIONER, PCT. 3

JAMES METTS,
COMMISSIONER, PCT. 4

ATTEST:

MARK TURNBULL,
COUNTY CLERK