

INTERLOCAL AGREEMENT BETWEEN WISE COUNTY, TEXAS
AND THE CITY OF NEWARK FOR ROAD REPAIRS AND MAINTENANCE

THE STATE OF TEXAS §
 §
COUNTY OF WISE §

WHEREAS, this agreement is made and entered into on the 1st day of October, 2014 by and between Wise County, Texas (COUNTY), through its Commissioners Court and the City of Newark (CITY), under and pursuant to the Interlocal Cooperation Act, Chapter 791 Texas Government Code; and

WHEREAS, CITY and COUNTY represent that each is independently authorized to perform the functions contemplated by this Agreement; and

WHEREAS, the CITY currently has a need for road maintenance, enhancements, repairs and other projects located within its boundaries within Wise County and the CITY is not equipped to render such services; and

WHEREAS, each party has sufficient funds available from current revenues to perform the function contemplated by this Agreement; and

NOW, THEREFORE in consideration of the above recitals, mutual benefits and promises each to the other made herein, the parties named above do hereby agree as follows:

PUBLIC PURPOSE

The purpose of this contract is for the COUNTY to provide assistance with public projects to construct, improve, or repair a public road, alleyway, parking lot (to include planned “pothole repair” of specific roadway areas), building or other facility, all being within the CITY’s annexed and/or other type of defined legal boundaries within said Precinct of the County Commissioner that is sponsoring the public project.

PUBLIC PROJECT PROCEDURE

Before any work can start on any and all public projects covered by this agreement the following process must be completed in accordance with Texas Government Code 791.014:

1. After establishing an agreed public project, The Wise County Commissioner must submit the proposed project to the Wise County Auditor. The Wise County Auditor will in turn complete an “Approval of Project Agreement” from the information provided and returned to the Wise County Commissioner from the CITY.
2. The Wise County Commissioner will then present the “Approval of Project Agreement” to the appropriate or designated CITY representative for Project submission to/and for approval from its governing board.
3. If approval is granted by the CITY, the CITY must return the signed Project Agreement for the public project to the Wise County Commissioner. The Wise County Commissioner will then submit the approved Project Agreement to the County Judge to be placed on the

Court's Agenda for a recommendation and vote by the Wise County Commissioner's Court.

4. If approved by the COUNTY, then and only then, may work commence on the public project. After completion of the work, "Exhibit A" of the Approval of Project Agreement must be completed and returned to the County Auditor.
5. All repairs will be done in a workmanlike manner as measured by Wise County's usual practice in such projects. The COUNTY shall be in charge of all control procedures, means, coordination and final inspection of the Public Projects contemplated under this agreement.
6. Nothing herein shall alter or change the legal responsibility under existing law for maintenance and repairs from a party, nor will this agreement cause Wise County to incur additional liability other than the liability it would have without this agreement.

CONSIDERATION

Total Charges for this agreement for the services and process mentioned above:

1. COUNTY, at its discretion, may furnish labor and/or equipment up to \$15,000 per project each County fiscal year, beginning October 1st and ending September 30th of said years that this agreement is in full force and effect. The funds used on each public project will be furnished from the current year's revenues.
2. Notwithstanding the foregoing, it is understood that each party paying for the performance of the mutual governmental functions, services, goods and materials must make those payments from the current fiscal year revenues available to the paying party.
3. The CITY shall pay the vendors directly for the materials used on the approved public projects.
4. At the end of every fiscal year, the CITY shall submit a copy of any and all vendor invoices from the approved projects to the Wise County Auditor.

NOTICE OF NONAPPROPRIATION

If, for any fiscal year, a party fails to appropriate funds in amounts sufficient to pay or perform its obligations under this Agreement, such party shall endeavor to provide thirty (30) days notice of its intent not to appropriate the necessary funds for its performance of obligations under this Agreement.

TERM AND RENEWAL

The effective date of this agreement shall be from October 1, 2014, or the date that both parties have signed within the 2014-2015 fiscal year, whichever is the later, and this contract shall expire at midnight of September 30, 2015. This agreement shall automatically renew yearly at midnight on October 1st. **The fiscal year of the COUNTY is from October 1 through September 30 of the next calendar year.**

TERMINATION

By Mutual Agreement: This Agreement may be terminated by mutual agreement of the CITY and the COUNTY, as evidenced by a written termination agreement.

For Nonappropriation of funds: As mentioned above, if a party fails to appropriate funds necessary for performance of the obligations under this Agreement, the other party may terminate this Agreement.

By Either party: This agreement may be terminated at any time for convenience or fault upon thirty (30) days written notice to the other party.

DISPUTE RESOLUTION

Dispute Resolution Process. Before commencing formal legal proceedings concerning any dispute arising under or relating to this Agreement, or any breach thereof, the Parties agree to observe the following Dispute Resolution Process.

Notice. A written complaint which contains sufficient detail to clearly identify the problem(s) giving rise to the dispute, and the responding Party shall have a reasonable opportunity to respond.

First Resolution Meeting. After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution, the Parties shall schedule a meeting and designate representatives to attend such meeting to attempt to facilitate an agreed resolution.

Second Resolution Meeting. If the Parties' designated representatives cannot reach an agreed resolution, the following representatives shall meet to discuss the matter: CITY: Superintendent; COUNTY: County Commissioner and/or County Judge.

Successful Resolution. If resolution is made, it shall be reduced to a written agreement to be approved by each side's governing body. If approved, the written agreement will become an amendment to the original agreement. However, it will not supersede any term or condition except those dealing with the subject matter of the dispute.

Unsuccessful Resolution. If all above options are completed and the Parties are unable to reach a resolution, either Party may pursue all legal and equitable remedies available to it under Texas law.

GENERAL PROVISIONS

Severability Clause: The Parties intend for the various provisions of this Agreement to be severable so the invalidity, if any, of one or more sections of this Agreement shall not affect the validity of the remaining provisions of the Agreement.

Counterparts: This document may be executed in any number of original signature counterparts, each of which shall for all purposes be deemed an original, and all such counterparts shall constitute one and the same document.

Notices:

To COUNTY: Any Notice permitted or required to be given to the COUNTY hereunder must be in writing and may be given by Certified United States Mail, Return Receipt Requested, postage prepaid, addressed to:

County Judge
P.O. Box 393
Decatur, Texas 76234

To CITY: Any notice permitted or required to be given to the CITY hereunder must be in writing and may be given by Certified United States Mail, Return Receipt Requested, postage prepaid, addressed to:

CITY OF NEWARK
P.O. Box 156 Address
NEWARK, Texas 76 071

Any notice permitted or required to be given hereunder shall be deemed to have been given upon deposit of the notice in the United States Mail as aforesaid.

Authority to Contract: Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

Governing Law/Venue: This Agreement shall be interpreted in accordance with the laws of the State of Texas and Wise County is the proper venue for any action regarding this contract.

Limitation of Liability: By entering into this agreement, neither party waives sovereign immunity defenses or any other limitation of liability. No provision of this agreement is intended to modify or waive any provision of the Texas Tort Claims Act as amended. The CITY agrees to accept full responsibility for the acts, negligence and/or omissions of all CITY employees, agents, subcontractors and/or contract laborers and for all persons doing work under a contract or agreement with the CITY. The County agrees to accept full responsibility for the acts, negligence and/or omissions of all County employees, agents, subcontractors and/or contract laborers and for all persons doing work under a contract or agreement with Wise County.

Entire Agreement: This Agreement represents the entire agreement of the parties and supersedes any verbal or written representations of, to or by the parties to each other.

Amendment: If the Parties desire to modify this Agreement during or after the initial term, any modifications may be either incorporated herein by a written amendment or set forth in an entirely new written agreement. Any modifications must be properly approved and signed by authorized representatives of the Parties.

DATED to be effective this the 15th day of October, 2014

WISE COUNTY

BY: [Signature]

Wise County Judge

Date: 9-15-14

CITY OF NEWARK

BY: [Signature]

Title: MAYOR

Date: 11-21-14