

AGENDA ITEM 21

Discuss and consider final plat approval of Teravista Section 9.

Moved: **Commissioner Hays**

Seconded: **Commissioner Boatright**

Motion: To grant final plat approval of Teravista Section 9.

Vote: **5 - 0**

AGENDA ITEM 22

Discuss and consider approval of Amendment to Interlocal Agreement between Williamson County and the City of Austin for Lake Creek Flood Control Project.

Moved: **Commissioner Hays**

Seconded: **Commissioner Boatright**

Motion: To approve of Amendment to Interlocal Agreement between Williamson County and the City of Austin for Lake Creek Flood Control Project.

Vote: **5 - 0**

< Attachment >

**AMENDMENT TO INTERLOCAL AGREEMENT
BETWEEN WILLIAMSON COUNTY AND THE CITY OF AUSTIN
FOR LAKE CREEK FLOOD CONTROL PROJECT**

STATE OF TEXAS

COUNTY OF WILLIAMSON

THIS AMENDMENT TO INTERLOCAL AGREEMENT (this "Amendment") is made and entered into by and between Williamson County, Texas (the "County"), and the City of Austin, Texas (the "City") (hereinafter sometimes collectively referred to as the "Parties").

WHEREAS, on or about October 10, 2000, the Parties entered into that certain Interlocal Agreement (hereinafter referred to as the "Interlocal Agreement") for the Lake Creek Flood Control Project (hereinafter referred to as the "Project"); and

WHEREAS, pursuant to the Interlocal Agreement, the County was responsible for conformance with all City ordinances; and

WHEREAS, the County failed to construct the gabion revetment structure component of the Project to applicable City standards; and

WHEREAS, the County and the City presently desire to amend the Interlocal Agreement to provide for the settlement of all issues related to the construction of the Project and the final payment by the City to the County; and

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, including the recitals set forth above, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Subject to the terms and conditions set forth herein, the Parties do hereby settle, compromise, release and forever discharge each other, their heirs, successors, and assigns from any and all claims, causes of action, including actions for attorneys' fees and other costs, in law or in equity that arise from or are connected to the Interlocal Agreement and the construction of the Project.

2. Pursuant to the Settlement Proposal, a copy of which is attached hereto as Exhibit "A", the City will pay the County the amount of SIX HUNDRED FIFTY NINE THOUSAND SEVEN HUNDRED EIGHTY SEVEN AND NO/100 DOLLARS (\$659,787.00) within thirty (30) calendar days following the execution of this Amendment by both Parties. Such payment shall constitute full and final payment by the City under the Interlocal Agreement or connected in any way to the Project.

3. The County shall provide a copy of this executed Amendment and any Project close-out documentation required by the Interlocal Agreement to the City prior to payment by the City.

4. The Parties agree that the County shall be responsible for the future maintenance, repair and replacement of the Project's gabion revetment structure. The obligation of the County to maintain, repair, and replace the gabion revetment structure will survive any future annexation for the area of the Project by the City. However, such obligation of maintenance, repair, and replacement shall not include damage, which occurs after annexation by the City that is not directly related to the County's non-conformance with applicable City ordinances, such as vandalism, future construction projects by non-County personnel, or any other damage caused by a third party.

5. The Parties do hereby represent and warrant to each other that: (i) they are duly authorized to execute and deliver this Amendment; (ii) they have taken all requisite action necessary or appropriate to authorize the execution and delivery of this Amendment; (iii) this Amendment is their legal, valid, and binding obligation, enforceable against them, in accordance with the respective terms hereof; and (iv) they have the full right to cause the claims and causes of action described above to be settled, compromised and released.

6. The Parties understand and agree that this Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

7. This Amendment shall be binding upon and inure to the benefit of, the Parties hereto and their respective representatives, successors, and assigns. To the extent, but only to the extent, that any representations and warranties are expressly set forth herein, such representations and warranties shall survive the execution of this Amendment and the consummation of the transactions contemplated herein.

8. This Amendment amends the Interlocal Agreement only to the extent set forth herein; otherwise the Interlocal Agreement is hereby ratified approved and confirmed.

9. This Amendment shall not be modified or amended and its provisions may not be waived except in writing duly executed by the Parties.

10. Multiple originals of this Amendment may be executed, each of which shall be deemed an original for all purposes and intents. This Amendment shall be effective as of the latest signature date set forth below.

11. Should one or more provisions of this Amendment be held invalid, illegal, or unenforceable in any respect, this Amendment shall be construed as if it did not contain such invalid, illegal, or unenforceable part, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

12. This Amendment includes the settlement compromise and release of any and all of the issues and claims asserted or not asserted by the Parties arising out of or in connection with the Interlocal Agreement, including but not limited to those issues and claims described in that certain letter dated October 14, 2003, a copy of which is attached hereto as Exhibit "B" and made a part hereof.

13. This Amendment is authorized pursuant to the provisions of the Texas Interlocal Cooperation Act, Texas Government Code, Sections 791.001, et seq. Any payment made pursuant to this Amendment shall be made from current revenues available to the paying party.

EXECUTED this the _____ day of _____, 2004.

THE CITY OF AUSTIN

By: _____

Assistant City Manager

Date: _____

APPROVED AS TO FORM:

Gordon Bowman
Assistant City Attorney

WILLIAMSON COUNTY, TEXAS

By: John C. Daehler
County Judge

Date: 4-6-04

APPROVED AS TO FORM:

Attorney for Williamson County, Texas

EXHIBIT "A"

Williamson County Lake Creek Channel Project Settlement Proposal

12/4/03

Total Project Cost-Phase 1 and Phase 2	\$4,431,049	
Phase 2 Gabion Cost per Bid Tab		
Phase 2 Channel Excavation Cost per Bid Tab	\$699,386	Gross Cost Split Gabions and Channel Excavation
Phase 2 Other Constuction Cost per Bid Tab	\$855,447	45%
Total Phase 2 Cost per Bid Tab	\$271,986	55%
	\$1,826,819	
Total Cost Partition for Gabions=Phase 2 Gabion Cost per Bid Tab+%Split of Other Cost=		\$821,729
Total Gabion Cost as Percentage of Total Phase 1 and Phase 2 Cost=		18.5%
Williamson County Payment Request	\$810,000	
City Offer=Payment Request, less Percentage of Project Cost Associated with Phase 2 Gabions=		\$659,787
Reduction from Payment Request Amount=		\$150,213