

EXHIBIT 1

INTERLOCAL COOPERATION AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF AUSTIN FOR SUBDIVISION REGULATION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF AUSTIN

THIS INTERLOCAL COOPERATION AGREEMENT (this “Agreement”) is made and entered into by and between Hays County, Texas, a political subdivision of the State of Texas (hereinafter referred to as “COUNTY”), by and through its County Judge, Elizabeth Sumter, and the City of AUSTIN, a municipal corporation of the State of Texas (hereinafter referred to as “CITY”), by and through its City Manager, Marc Ott.

WHEREAS, the CITY has duly identified its corporate limits and the areas of its extraterritorial jurisdiction (hereinafter referred to as “ETJ” or the “CITY’s ETJ”) within the COUNTY; and

WHEREAS, the CITY has adopted and is enforcing subdivision regulations pursuant to TEX. LOCAL GOV’T CODE Subchapter A of Chapter 212 and other statutes applicable to municipalities; and

WHEREAS, the COUNTY has adopted and is enforcing subdivision regulations pursuant to TEX. LOCAL GOV’T CODE sections 232.001-232.005 and other statutes applicable to counties; and

WHEREAS, the COUNTY and the CITY, pursuant to TEX. LOCAL GOV’T CODE Section 242.001, both enforced their subdivision regulations in the CITY’s ETJ and, in those situations where the CITY’s regulation conflicted with the COUNTY’s regulation, the more stringent provisions have prevailed; and

WHEREAS, the Texas Legislature revised TEX. LOCAL GOV’T CODE Chapter 242 to limit subdivision regulation within the ETJ to one entity; and

WHEREAS, under TEX. LOCAL GOV'T CODE Chapter 242, the COUNTY and the CITY entered into a written agreement effective January 24, 2004, and the parties wish to renew the Agreement on substantially similar terms; and

WHEREAS, to the extent that the CITY's execution of this Agreement and related agreements with other counties in other areas of the CITY's ETJ, or the CITY's adoption, administration or enforcement of ordinances, rules, regulations or plans in reasonable furtherance of this Agreement or the related agreements results in requirements or restrictions that are not identical throughout the CITY's entire ETJ, the parties jointly acknowledge that the actions of the CITY are "reasonably taken to fulfill an obligation mandated by state law" within the meaning of TEX. GOV'T CODE Section 2007.003(b)(4), and are therefore not subject to TEX. GOV'T CODE Chapter 2007; and

WHEREAS, both the COUNTY and the CITY desire to enter into an Interlocal Cooperation Agreement, pursuant to TEX. GOV'T CODE Section 791.011(a), whereby the COUNTY and the CITY shall agree upon the terms of said written agreement;

NOW, THEREFORE, the COUNTY and the CITY mutually agree as follows:

I. TERM OF AGREEMENT AND CERTIFICATION

- A. The COUNTY and the CITY mutually agree that the term of this Agreement shall be from the date it is formally and duly executed by both the COUNTY and the CITY until December 31, 2008. This Agreement shall automatically renew annually on the anniversary date, unless earlier terminated by mutual agreement of the parties.
- B. Notwithstanding the foregoing, this Agreement may be terminated by either party by giving thirty (30) days' written notice of intent to terminate this Agreement to the other party. Any notice of intent to terminate must be

delivered by deposit in the United States mail, certified, return receipt requested, to the other party at the addresses set out herein. Upon termination of this Agreement, neither party shall have any obligations to the other party under this Agreement, except with respect to payment for services already rendered under this Agreement, but not yet paid.

- C. The COUNTY and the CITY mutually certify that this Agreement complies with the requirements of Texas Local Government Code, Chapter 242.

II. COUNTY RESPONSIBILITIES

- A. The COUNTY assigns and delegates to the CITY the COUNTY's authority to approve subdivision plats and to issue related permits within the ETJ of the CITY, pursuant to TEX.. LOCAL GOV'T CODE Section 242.001(d), so that the CITY has exclusive jurisdiction to regulate subdivision plats and approve related permits in the CITY's ETJ. The County further agrees to the enforcement of the Capitol Area Metropolitan Planning Organization (CAMPO) Plan, as amended from time to time, within the ETJ of the City.

III. CITY RESPONSIBILITIES

- A. The CITY shall enforce its subdivision regulations, including review and approval processes and design and construction standards, within its ETJ.
- B. The CITY shall enforce in the ETJ the COUNTY's interim subdivision regulations attached hereto and referenced parenthetically and incorporated as Attachment "A"(Article II, Article III Sections 3.12 and 3.13, Article V Sections 5.1 (b) and (d) and Section 5.3, Article VII Sections 7.4, 7.5, 7.6, 7.7, 7.8, and 7.9, Article VIII, Article IX, Article X, Table 7.3, and Appendices III and IV), unless the CITY has existing ordinances establishing

substantially similar, or more stringent, standards for the subject areas of such COUNTY subdivision regulations. All City subdivision regulations not in conflict with Attachment A, and City regulations establishing more stringent standards for the subject areas in Attachment A, may be enforced. If either party wishes to propose revisions in the future to subdivision regulations that apply in the ETJ, the party will notify the other party of the proposed change. The parties will cooperate in determining the need for the change and its effect on this Agreement, and will adopt any change agreed to by official action of their respective governing bodies.

- C. The CITY agrees to require developers to dedicate public right-of-way pursuant to the CAMPO Plan as currently revised or amended, subject to applicable constitutional and statutory limitations. For subdivisions in which it appears to the CITY that a requirement for dedication of right-of-way pursuant to such CAMPO Plan may exceed an applicable constitutional or statutory limitation, the CITY will notify the COUNTY, and the parties will cooperate to determine the extent of right-of-way dedication to be required, or an alternative method of securing the needed right-of-way. When enforcing subdivision regulations in the City's ETJ, the City shall facilitate the County's road maintenance program by requiring a road standard no less than the standards set out in Attachment A.
- D. The COUNTY expressly delegates to the CITY the authority, in accordance with the COUNTY's subdivision regulations, to require the preparation of a subdivision plat for the division of any property into two or more lots if any

lot in the subdivision is 10 acres or less in size.

- E. The CITY shall deliver two copies of all recorded plats for subdivisions within the CITY's ETJ to the COUNTY within 10 working days of the recording of the subdivision plat. The CITY shall also provide to the COUNTY a digital file of each subdivision plat, including at least two ground control GPS points in a format approved by the COUNTY.
- F. The CITY shall confer with the Hays County 911 Addressing Division concerning street names prior to final plat approval.
- G. The CITY shall allow COUNTY inspectors access to road construction sites of subdivisions within the ETJ and the CITY shall timely submit copies of all road design materials and road construction test results to the COUNTY during road construction. COUNTY inspectors shall have inspection and approval authority over the road construction, stormwater drainage construction, and water and wastewater facility construction within the right-of-way and easements. However, COUNTY inspectors may, from time to time, collaborate with CITY inspectors and delegate to CITY inspectors specific inspections duties related to road construction, stormwater drainage construction, and/or water and wastewater facility construction with the right-of-way and easements. The COUNTY may request that the CITY issue a stop-work notice if the applicable construction standards are not being met.
- H. Prior to acceptance of new streets or other improvements in a subdivision, the CITY shall require of the applicant/developer a Certificate of Deposit, a Letter of Credit, or a warranty or cash bond as required by the Subdivision

Regulations of Hays County, payable to Hays County, which shall be binding and in effect for two (2) years from the date of acceptance of the streets and improvements. The CITY shall require the applicant/developer to be responsible for maintenance of the streets and improvements as also required by the Hay County Subdivision Regulations. The CITY shall require the applicant/developer to post a utility bond or other improvements bond, payable to the CITY, if required by the subdivision regulations of the CITY. The CITY shall not be liable for failure to require any such utility bond.

- I. The CITY shall collect and forward to the COUNTY all COUNTY subdivision fees as presently authorized or amended by the COUNTY, for services to be performed by COUNTY. The CITY shall have the right to charge applicants/developers reasonable fees, sufficient to cover the full cost of services provided by the CITY under this Agreement and otherwise in the administration of regulations that apply to subdivisions in the CITY's ETJ.
- J. If a fee, Certificate of Deposit, Letter of Credit, warranty or bond is to be forwarded to Hays County in accordance with this Agreement, the City shall promptly forward the fee, Certificate of Deposit, Letter of Credit, warranty or bond to Ms. Sandy Irvin (or her successor), Hays County Environmental Health Department, 1251 Civic Center Loop, San Marcos, Texas 78666.
- K. In addition to the City's fees and in consideration of the County's performance under this Agreement, the City shall collect \$600 per application (\$500 for filing and \$100 for approval) and a \$320.00 per-lot fee for every subdivision subject to this Agreement. Subject to other taxes, fees, fines and

penalties permitted by law, said \$600 application fee and \$320 per-lot fee shall be forwarded to the County and shall constitute full and complete compensation for County services under this Agreement, including application approval, plat review and approval, and construction review and inspection. Other than the fees mentioned in this paragraph, the City shall not be required to collect and forward any other fees under this Agreement.

- L. As an attachment to this Agreement, the CITY shall provide a current map defining the legal boundaries of its corporate limits and areas of ETJ. The CITY shall notify the COUNTY of any changes to the CITY's ETJ within 10 days of the effective date of the change, and the area covered by this agreement shall be deemed by the parties to be amended accordingly. Notice may be provided by letter or email to mark.kennedy@co.hays.tx.us. A change in the area covered by this Agreement shall not, however, affect any rights accrued under TEX. LOCAL GOV'T CODE Chapter 245 prior to the effective date of the change.
- M. The CITY shall submit for review by the COUNTY facility planning reports supporting the proposed subdivision as required in 30 TAC Chapter 285.
- N. The CITY shall review floodplain drainage analyses of FEMA regulated floodplains that are submitted in connection with proposed subdivision plats for compliance with the Hays County Flood Damage Prevention Order.
- O. The CITY shall provide the County with a copy of any complete subdivision application for its review, and shall consider all written comments and recommendations, if any, received from the COUNTY within 21 days of

receipt of the application, and shall integrate all such written comments and recommendations into any comments that are provided to applicant/developer.

IV. GENERAL PROVISIONS

A. General Administration: Administering this Agreement and the contact person for the COUNTY shall be the Hays County Director of Resource Protection, Transportation and Planning, or his/her representative. Administering this Agreement and the contact person and representative for the CITY shall be the CITY Manager, or his/her designee. The City hereby designates the City's Assistant City Manager with authority over the City's subdivision planning staff as the designee for purposes of this Agreement.

B. Alteration, Amendment or Modification: This Agreement may not be altered, amended, or modified except in a subsequent writing signed by all parties to this Agreement. No official, agent, employee, or representative of either the COUNTY or the CITY has the authority to alter, amend, or modify the terms of this Agreement, except in accordance with express authority as may be respectively granted by either the Hays County Commissioners Court or the CITY of Austin City Council.

C. Notice: All notices sent pursuant to this Agreement shall be in writing and must be sent by registered or certified mail, postage prepaid, return receipt requested.

(a) Notices sent pursuant to this Agreement shall be sent to the Hays County Subdivision Coordinator's Office at the following address:

Ms. Sandy Irvin (or her successors)
Hays County Environmental Health Department

1251 Civic Center Loop
San Marcos, Texas 78666

(b) Notices sent pursuant to this Agreement may be delivered or sent to the CITY at the following address:

Ms. Sue Edwards, or successor
Assistant City Manager
City of Austin
P.O. Box 1546
Austin, TX 78767

(c) To be effective, a copy of any notices sent to the COUNTY shall be sent to the Special Counsel's Office at the following address:

Mark Driscoll Kennedy
A.D.A. -- Special Counsel
Hays County, Texas
111 E. San Antonio, Suite 204
San Marcos, TX 78666

(d) To be effective, a copy of any notice sent to the CITY shall be sent to the CITY Attorney at the following address:

Deborah Thomas, Ass't City Attorney (or successor in office)
City Attorney's Office
P.O. Box 1546
Austin, TX 78767

(e) When notices sent pursuant to this Agreement are mailed by registered or certified mail, notice shall be deemed effective three (3) days after deposit in a U.S. mail box or at a U.S. post office.

D. Severability: If any provision of this Agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining provisions of this Agreement.

E. Breach: The failure of either party to comply with the terms and conditions of this Agreement shall constitute a breach of this Agreement. However, the parties agree to work together to resolve disputes arising under this agreement, including a breach, and neither party shall be liable to the other party for any errors or omissions in the review or approval of an application or in the inspection of infrastructure installations. In the event of an alleged breach or other dispute, notice shall be provided to the other party as provided in Section IV.C, and the parties shall cooperate in an attempt to resolve such breach or dispute for a period of at least 60 days, prior to sending notice of termination under Section I.B, or taking any other remedial action.

F. Non-Waiver: The waiver by either party of a breach of this Agreement shall not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision. Nothing in this Agreement is intended by either party to constitute a waiver of any immunity from suit or liability to which it is entitled under applicable law.

G. Entire Agreement; Third Parties: This Agreement constitutes the entire agreement between the COUNTY and the CITY. No other agreement, statement, or promise relating to the subject matter of this Agreement and which is not contained in this Agreement or incorporated by reference in this Agreement shall be valid or binding. This Agreement is not intended to confer any rights on any third parties, and it shall not be construed as conferring any rights on any third parties.

H. Terms used in Document: As used in this document, the terms

“Interlocal Cooperation Agreement”, “Interlocal Agreement”, “Agreement”,
and “Contract” are synonymous.

I. Non-Defined Terms: If not specifically defined in this Agreement, words
and phrases used in this Agreement shall have their ordinary meaning as
defined by common usage.

EXECUTED THIS _____ day of _____, 2009.

HAYS COUNTY

By: _____
HONORABLE LIZ SUMTER
HAYS COUNTY JUDGE

ATTEST:

LINDA C. FRITSCH, HAYS COUNTY CLERK

DATE: _____

EXECUTED THIS _____ day of _____, 2009.

CITY OF AUSTIN

By: _____
_____, CITY MANAGER