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MEMORANDUM

TO: Don Norrell and Robin Cross *via email*
FROM: Monte Akers
DATE: September 25, 2018
RE: Executive Summary—City Authority Over Streets and MUDS

Public streets: After incorporation, all public streets, dedicated to public use on a subdivision plat, will be the responsibility of the new city and will be considered city streets over which the city has exclusive control and jurisdiction.

Following incorporation the new city will be responsible for maintaining all public streets within its boundaries with the exception SH 242, which will be the TXDOT’s responsibility and will be subject to its standard “Municipal Maintenance Agreement” with the city that specifies the roles and authority of each in regard to issues such as traffic regulations, signs and lights, encroachments, curb cuts, mowing, sweeping, and the like. Additionally, the county and the city may, but are not required to, enter into an interlocal agreement whereby the county agrees to provide street maintenance, repair, and similar services.

State law is specific that a county may spend public funds on streets and rights-of-way within a city, but the county must first grant obtain permission from the city to do so. The requirement for city consent applies to any extension or improvement of existing streets as well as construction of new streets, as provided in this section of the Texas Transportation Code:

Sec. 251.012. COUNTY AUTHORITY IN MUNICIPALITY.

(a) With the approval of the governing body of a municipality, the commissioners court of a county may spend county money to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located in the municipality, including the provision of:

- (1) necessary roadbed preparation or material;
- (2) paving or other hard covering of the street or alley;
- (3) curbs, gutters, bridges, or drainage facilities; or
- (4) any construction, improvement, maintenance, or repair

allowed under Section [791.032](#), Government Code, if the commissioners court finds that the county will receive benefits as a result of the work on the street or alley.

(b) County work authorized by this section may be done or financed:
 (1) by the county through the use of county equipment;
 (2) by an independent contractor with whom the county has contracted;
 (3) by the county as an independent contractor with the municipality; or
 (4) by the municipality, with the municipality to be reimbursed by the county.

(c) A county acting under this section has, to the extent practicable, the same powers and duties relating to imposing assessments for the construction, improvement, maintenance, or repair as the municipality would have if the municipality were to finance and undertake that activity.

(d) A county acting under Subsection (b) may not spend bond proceeds for the construction of a new road in a municipality unless the construction is specifically authorized in the election approving the issuance of the bonds, regardless of the source of the money used to acquire the equipment used to construct the road.

(e) The authority granted by this section is in addition to the authority of a county provided by a local road law. (emphasis added)

These principles have also been stated in hornbooks and legal treatises, as with the following quote from *Texas Practice*:

A county may improve, construct, or maintain a public road within a *city only with the consent or acquiescence of the city* and only if the road constitutes a connecting link in the county road system. Historically, a county may contract with the city for the maintenance of the latter's streets but only if they form connecting links within the county roadway system. Legislation enacted in 1985, however, permits the county to construct and maintain city streets with city consent without reference to a county road system. A city may annex territory including a county road and thereby deprive the county of its authority to maintain such road without the county's consent.

Abolishment or continuation of MUDs: State law authorizes the newly incorporated city the right, by 2/3 vote of its governing body, to unilaterally abolish a MUD located entirely within the corporate boundaries of the city and to assume the MUD's assets, liabilities, powers, and duties. The city is not required to abolish the MUDs, nor is there a deadline following incorporation when the decision must be made. For MUDs that are not located entirely within the limits of the city, state law allows the city and the MUD to enter into agreements regarding overlapping authorities, duties, and functions, including city operation of MUD utility systems and disposition of corresponding assets, debts, liabilities, and obligations of the MUD.