

**INTERLOCAL COOPERATION AGREEMENT
CITY OF AUSTIN AND TRAVIS COUNTY**

STATE OF TEXAS

COUNTY OF TRAVIS

This Agreement is made and entered into by and between City of Austin, Texas (the “City”) and Travis County, Texas (the “County”), hereinafter collectively referred to as the “Parties”, upon the premises and for the consideration stated herein.

WHEREAS, the County intends to perform certain roadway and drainage improvement to a portion of _____ (the “County Project”); and

WHEREAS, the City desires to provide for the necessary City utility adjustments and relocations within the Project’s limits (the “City Project”); and

WHEREAS, the Parties desire to cooperate in the development of the combined _____, hereinafter collectively referred to as the “_____ Project”; and

WHEREAS, the Parties intend to conform to this Agreement in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001, et. seq.;

NOW, THEREFORE, the Parties agree as follows:

1. Project Management.
 - (a) The County will manage the development and construction of the _____ Project, as described in Exhibit A. The Executive Manager of the Travis County Transportation and Natural Resources Department (the “Executive Manager”) will act on behalf of the County with respect to the County Project, coordinate with the City, receive and transmit information and instructions, and will have complete authority to interpret and define the County’s policies and decisions with respect to the County Project. The Executive Manager will designate a Project Manager and may designate other representatives to transmit instructions and act on behalf of the County with respect to the County Project.

- (b) The City will manage the development and construction of the City Project, as described in Exhibit B. The Austin Water Utility Director of the City (the “City’s Director”) will act on behalf of the City with respect to the City Project, coordinate with the County, receive and transmit information and instructions, and will have complete authority to interpret and define the City’s policies and decisions with respect to the City Project. The City’s Director may designate a City Project Manager and may designate other representatives to transmit instructions and act on behalf of the City with respect to the City Project.

2. Project Development.

- (a) With the exception of the engineering, construction inspection and construction testing of the City Project, the County will be responsible for the development and completion of the _____ Project, including the development of the engineering design, plans and specifications for the roadway improvements and sidewalks, the surveying, right-of-way acquisition, construction, and any required permitting and environmental assessments and clearances associated with the _____ Project. The plans and specifications for the County’s Project shall be in accordance with the design and construction standards of the County.
- (b) The City will be responsible for the development of the engineering design, plans and specifications and construction inspection, and testing for the City Project. The plans and specifications for the City Project shall be in accordance with the design and construction standards of the City. The City will be responsible for any required modifications to the engineering design, plans, and specifications for the City Project, during the development and construction of the Project. The City will ensure that its design engineer provides professional liability insurance in accordance with the standard requirements of the City for such projects, during the term of the design and construction of the City Project. The County will transfer legal title to the constructed water utility facilities to the City when the City Project is completed and accepted for operation and maintenance by the City.

3. Project Integration, Design, Bidding, & Award of Construction Contract

- (a) Upon approval and execution of this Interlocal Agreement by both the County and the City, the County shall modify its contract with its engineering consulting firm for the County’s Project to include the integration of the City’s engineering design and construction documents (“PS&E”) into the Project. The fee for the professional services required to prepare the PS&E documents is \$_____. The engineering fee proposal and scope of services is set forth in Exhibit C, which is attached

hereto. The County shall submit any proposed revisions to the PS&E for the City Project to the City for its review and approval.

- (b) Bid items for the City's Project will be included in the bid documents for the County's Project, as an additive, alternate set of bid items, and each contractor submitting a bid on the _____ Project will be required to include within the bid those costs, itemized by line item number, attributable to the City's Project. The County will solicit bids for the construction of the _____ Project based on the combined plans and specifications and in accordance with applicable state and local bidding laws, practices, and procedures. The County will notify the City of the lowest responsible bid and the amount of the bid component for the City Project, and upon written agreement of the City, the County will enter into a firm unit-price contract with the successful bidder.

4. Management Duties of the County. The County hereby covenants and agrees to provide to the City:

- (a) written notice of the schedule for design and the advertisement for bids, award of contract, and construction of the _____ Project;
- (b) written copy of all contracts affecting the City Project;
- (c) a monthly itemized statement of all disbursements made and debts incurred during the preceding month relating to the City Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt;
- (d) executed change orders, jointly approved by the City and the County, related to the City Project;
- (e) a copy of any change order request related to the City's Project within two (2) working days of its receipt by the County, by delivery to the City's Project Manager for review and approval; and,
- (f) upon completion of bidding, the County will furnish the City a copy of the combined plans and specifications for the City's records.

5. Management Duties of the City. The City hereby covenants and agrees to:

- (a) review any change order proposal or request for information for the City Project and return the change order request to the County within three (3) working days of its receipt by the City's Project Manager, with a written recommendation for its disposition;
- (b) perform any independent inspection and testing on the City Project in coordination with the County's inspectors or as agreed to by the County and City, and in a timely manner;

- (c) inform the County's Project Manager immediately of any problems observed during the construction of the _____ Project; and
 - (d) attend meetings at the request of the County's Project Manager.

- 6. Bonds and Guarantee. All construction contracts affecting the _____ Project shall include a payment and performance bond acceptable to and in favor of and benefiting the County and the City, for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting the County and the City, for a period of one year from the date of acceptance of the _____ Project. The City shall be included as a third party beneficiary on the payment and performance bond.

- 7. Liability. To the extent allowed by Texas law, the County and the City Agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions. In addition, the construction contractor shall be required to provide workers compensation insurance and general liability insurance acceptable to the County and the City. The City shall be included as an additional insured on the above-referenced insurance policy.

- 8. Financial Obligations:
 - (a) The County agrees to pay all costs of the _____ Project, except those attributable to the City's Project. The City agrees to pay all agreed costs for the City Project including the cost of surveying, design, construction, inspection, testing, and the cost of any change orders made necessary by field changes to address unanticipated conditions under the terms and conditions in this Agreement. The City shall pay design and construction costs through an escrow account with Travis County at an amount equal to the cost of the design plus the construction bid amount, unless otherwise agreed to by the City and the County in writing. This amount is currently estimated at \$_____, including a construction contingency amount of \$_____. The County shall obtain the written approval of the City for all change order requests for the City Project prior to the County issuing the approved change order to the contractor. The City's Project Manager shall meet with the County's Project Manager to review the contractor's progress reports and invoices for the City Project before approval by the County.

 - (b) The City shall place the City's funds into an approved County construction escrow account for the City Project within 21 calendar days of notification to the City by the County, as described below:
 - (i) The proposed design fees for the City Project shall be placed into escrow within 21 calendar days following the execution of this Agreement.

- (ii) The funds for the construction of the City Project shall be placed into escrow with the County within 21 calendar days, following notification by the County of the successful bidder and the bid amount.
- (c) The County Treasurer shall act as Escrow Agent for the management of the City's funds and shall deposit the funds in an interest bearing escrow account. The County shall invest the funds in accordance with the Public Funds Investment Act, Tex. Rev. Civ. Stat. Ann. Art. 842-A, and other applicable laws, or bond covenants. The interest and any unused portion of the public funds provided by the City under this Agreement shall be returned to the City within 30 calendar days after the completion of the Project. The County shall provide the City, at least quarterly, with an accounting of the deposits to and disbursements from the City's escrow account. The County will make its records available, at reasonable times, to the City's auditors, or its independent financial advisors or other professionals who provide arbitrage rebate calculations to the City.
- (d) The County Treasurer shall timely pay submitted invoices for the City Project, which have been approved as required by this Agreement.

9. City Inspection and Testing.

The City shall be responsible for the final inspection of the City Project and any testing of the construction of the City Project in addition to any performed by the County. The City shall designate inspectors to make the final inspection of the completed City Project. The City's inspectors shall coordinate with the City and County Project Managers, the County's inspectors, and the construction contractor, as reasonable and necessary, in making inspection(s). Any deficiencies in the construction of the utility relocation identified by the City shall be immediately reported in writing to the County's Project Manager and the contractor with an additional written notice to the Executive Manager to be deposited in the U.S. Mail within two days of the identification of any such deficiencies. The Executive Manager shall require the contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the City.

10. Miscellaneous.

- (a) Force Majeure. In the event that the performance by the County or the City of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an Act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act of conduct of any person or persons not a party of privity hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.

- (b) Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY:

City of Austin
Austin Water Utility
P.O. Box 1088
Austin, Texas 78701

WITH COPY TO:

Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78701

COUNTY:

Joe Gieselman, Executive Manager, TNR
P.O. Box 1748
Austin, Texas 78767

WITH A COPY TO:

David Escamilla
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Attention: File No. _____

- (c) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
- (d) Entire Agreement. This Agreement contains the complete and entire Agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting the joint construction of the Projects. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the parties hereto. No official, representative, agent or employee of Travis County, Texas, has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners Court of Travis County, Texas.
- (e) Effective Date. This Agreement takes effect upon the last date of due execution of the Agreement by the County and the City.

- (f) Other Instruments. The parties hereto covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (g) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (h) Current Funds. The party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party.

CITY OF AUSTIN, TEXAS

By: _____
Name: _____
Title: _____
Authorized Representative
Date: _____

Approved as to Form:

Assistant City Attorney

Date

TRAVIS COUNTY, TEXAS

By: _____
Samuel T. Biscoe, County Judge

Date: _____