



Travis County Commissioners Court Agenda Request

Meeting Date: February 19, 2013

Prepared By/Phone Number: Jason G. Walker/44562; Marvin Brice, CPPB, Assistant Purchasing Agent

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Consider and take appropriate action on an Interlocal Cooperation Agreement between Travis County and the City of Lakeway for improvements to Flint Rock Road, a 2011 County Bond Project.

- **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.
- Flint Rock Road is a public-public partnership approved by Travis County voters in the 2011 bond referendum. Upon the approval by Travis County voters from the 2011 bond referendum, the City of Lakeway placed this project in its 2012 bond referendum in which approval for segments of the project located within its jurisdiction was received.
- This project is to improve Flint Rock Road from west of R.R. 620 to the recently improved four-lane Serene Hills Drive. Currently, Flint Rock Road, approximately 2 (two) miles total length, is a narrow and winding two-lane road with no shoulder, and drainage ditches are adjacent to the road pavement. The eastern segment of Flint Rock Road will be improved to a four-lane road, allowing for the increased capacity for future developments including the new Lakeway Regional Medical Center. The project's remaining improvements include betterment of the existing geometry, lane width widening, shoulder paving, increasing the clear zone, and constructing turn lanes at certain intersections.
- Through an Interlocal Agreement, the City of Lakeway will complete the engineering design and construction document preparation, and Travis

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

County will solicit bids for the construction of these improvements as well as provide construction management. The engineering and construction costs will be shared equally by the City of Lakeway and Travis County. Travis County's estimated share of engineering costs is \$278,292, and the total estimated budget for this project is \$4,127,365

- TNR is recommending approval of this Interlocal Agreement.
- **Contract Expenditures:** Within the last N/A months \$0.00 has been spent against this contract/requirement.

- **Contract-Related Information:**

Award Amount: \$278,292

Contract Type: Interlocal

Contract Period: Through project completion

- **Contract Modification Information: N/A**

Modification Amount:

Modification Type:

Modification Period:

- **Solicitation-Related Information: N/A**

Solicitations Sent:

Responses Received:

HUB Information:

% HUB Subcontractor:

- **Special Contract Considerations:**

Award has been protested; interested parties have been notified.

Award is not to the lowest bidder; interested parties have been notified.

Comments: N/A

- **Funding Information:**

Shopping Cart/Funds Reservation in SAP: 300000500

Fund Center(s): 1490190000

Comments:

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.



Meeting Date: February 19, 2013

Prepared By: Steve Sun, P.E. **Phone #:** 854-4660

Division Director/Manager: Steve Sun, P.E., Assistant Public Works Director

Department Head: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Daugherty, Precinct Three

AGENDA LANGUAGE: Consider and take appropriate action on an Interlocal Cooperation Agreement between Travis County and City of Lakeway for improvements to Flint Rock Road, a 2011 County Bond Project.

BACKGROUND/SUMMARY OF REQUEST:

Flint Rock Road is a public-public partnership project approved by voters in the 2011 bond referendum. This project will improve Flint Rock Road from west of RR 620 to the newly improved 4-lane Serene Hills Drive. The total length is about 2 miles. The existing road is a narrow and winding two-lane road with no shoulder. Drainage ditches are adjacent to the road pavement. Since the opening of the Serene Hills Drive, Flint Rock Road becomes a major entrance roadway to the southern part of City of Lakeway from Highway 71. Traffic on Flint Rock Road continues to increase along with many new developments in the vicinity. Flint Rock Road straddles both Travis County and City of Lakeway jurisdictions between Serene Hills Road and RR 620. After this project was approved by Travis County voters in the 2011 bond referendum, City of Lakeway placed this project in its 2012 bond referendum and received voter approval for segments of project located within its jurisdiction. A draft Interlocal agreement between Travis County and City of Lakeway has been developed. Both parties agree to cooperate with each other to achieve a cost effective implementation of the improvements between RR 620 and Serene Hills Drive. Exhibits A and B of the Interlocal Agreement show segments of the roadway improvements under each party's jurisdictions. Under Lakeway's improvements plan, the eastern segment of the Flint Rock Road will be improved from 2-lane road to 4-lane road to provide needed capacity for the new developments including the new Lakeway Regional Medical Center. The rest of the project includes improving the geometry of the existing 2-lane road and including wider lane width, paved shoulder, clear zone, and turn lanes at certain intersections. Since City of Lakeway has already performed a preliminary engineering study on the road improvements through an engineering consultant, City of Lakeway agrees to take on completing the engineering design and construction document preparation. Travis County will then take the lead on construction bid solicitation and construction management. Since the costs of roadway improvements located with the County and City are relatively

close, each party agrees to pay for 50% of the engineering and construction costs. However, each party will be responsible to use its own authority to acquire ROW within each party's jurisdiction and pay for ROW within its own jurisdiction. The County and City further agree to true up their actual respective project costs upon completion of the improvements.

STAFF RECOMMENDATIONS:

Staff recommends approval of this Interlocal Agreement.

ISSUES AND OPPORTUNITIES:

This project will provide safety improvements by widening existing lane width, adding paved shoulders, increasing clear zone, and construction of turn lanes at certain intersections. A segment of Flint Rock Road west of RM 620 will be rerouted to avoid steep grade in a deep draw. This segment of roadway will also be improved from 2 lanes to 4 lanes to provide additional capacity needed close to the Lakeway Regional Medical Center. Through this public-public partnership, Flint Rock Road within both County and City's jurisdictions will be improved between Serene Hills Drive and RM 620.

FISCAL IMPACT AND SOURCE OF FUNDING:

Total 2011 bond funds approved for Flint Rock Road is \$4,127,365. \$394,405 has been budgeted for FY 12 and is currently available for engineering services. Estimated amount of County's share of engineering cost is \$278,292. The \$278,292 has been encumbered on funds reservation 300000500. The actual amount of the engineering cost will be reserved after this interlocal agreement becomes effective and a professional service agreement is negotiated with the selected engineering consultant. Funds needed for ROW acquisition and construction have been cash flowed for FY 13 and FY 14 and actual needed amounts will be reserved during the ROW acquisition process and after a successful construction bid is received. Based on the preliminary project cost estimate, the total project budget of \$4,127,365 is sufficient to cover the County's share of project costs.

ATTACHMENTS/EXHIBITS:

Flinck Roack Road Interlocal Agreement

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Cyd Grimes	Purchasing Officer	Purchasing Office	
Tom Nuckols/Chris Gilmore		CAO	
Jessica Rio		PBO	
Hannah York		Audito's Office	

**FLINT ROCK ROAD
INTERLOCAL COOPERATION AGREEMENT
CITY OF LAKEWAY & TRAVIS COUNTY**

This Interlocal Cooperation Agreement is made and entered into by and between the City of Lakeway, 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 develop and construct roadway improvements to Flint Rock Road within unincorporated Travis County, a project approved in the County's 2011 Bond referendum (the "County Project"), as depicted in attached Exhibit A; and,

WHEREAS, the City intends to develop and construct roadway improvements to Flint Rock Road within the City's corporate limits (the "City Project"), as depicted in attached Exhibit B; and

WHEREAS, the City Project and the County Project (together, the "Project") are contiguous and will generally enhance, preserve, and protect the public health and safety of the citizens of Lakeway, Texas, and Travis County, Texas; and

WHEREAS, the City and the County desire to cooperate in the design, construction, and funding of the Project;

WHEREAS, the Parties intend to conform 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 provide the project management services for construction of the Project. The County and City are jointly responsible for reviewing and verifying engineering compatibility and consistency for their respective projects.

(b) The Director of Public Works of the Travis County Transportation and Natural Resources Department (the "County's Director") will act on behalf of the County with respect to the 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 Project. The County's Director will designate a County Project Manager and may designate other representatives to transmit instructions and act on behalf of the County with respect to the Project.

- (c) The City Manager will act on behalf of the City with respect to the 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 Project. The City's Manager will designate a City Project Manager and may designate other representatives to transmit instructions and act on behalf of the City with respect to the Project. The City's Manager will act as a single point of contact for the City and will coordinate with the City's Public Works Director with respect to the portion of the Project located within the City.
- (d) If a disagreement between City and County arises regarding engineering design, design and construction standards, plans and specifications, inspection and testing, deficiencies and remedial action, change orders, or any other requirement or provision of this Agreement, and the disagreement is not resolved by the City Project Manager and the County Project Manager, it shall be referred as soon as possible to the City's Director and the County's Director for resolution. If the Directors do not resolve the issue, it shall be referred as soon as possible to the City Manager and the County Executive of the Travis County Transportation and Natural Resources Department for resolution.

2. Project Development.

- (a) The County will be responsible for the management of the construction of the Project, including (i) the inspection and testing associated with the Project, and (ii) to the extent provided by this Agreement, acceptance of the completed work.
- (b) The City will be responsible for the management of the development of the Project, including (i) the development of the engineering design, plans and specifications for the roadway improvements and sidewalks, (ii) the surveying, (iii) any required permitting and environmental assessments and clearances, (iv) managing the public meetings during the design phase, and (v) to the extent provided by this Agreement, acceptance of the completed work.
- (c) The County will be responsible for acquiring all right-of-way and easements necessary for the County Project, and the City will be responsible for acquiring all right-of-way and easements necessary for the City Project.

- (d)** The plans and specifications for the County Project shall be in accordance with the design and construction standards applicable under County projects and the plans and specifications for the City Project shall be in accordance with the design and construction standards applicable under City projects, unless otherwise agreed by the Parties. The plans and specifications will include the scope of design set forth in attached Exhibits “A” and “B”. In addition, the City will ensure that the plans and specifications will comply with any applicable Texas Accessibility Standards.
- (e)** The City will ensure that the design engineer provides professional liability, automobile liability, and general liability insurance in accordance with the standard requirements of the County and City for such projects during the term of the design and construction, and the City will have the County and the City named as additional insureds with respect to such general liability and automobile liability coverage.
- (f)** The City and, to the extent set forth herein, the County will be responsible for the review and approval of the engineering design, plans and specifications for the Project. In addition, the City and, to the extent set forth herein, the County will be responsible for the review and approval of any modifications to the engineering design, plans, and specifications for the Project, during the development and construction of the Project.
- (g)** A County or City permit shall be required only for any part of the County Project or City Project within the unincorporated County or City’s full purpose corporate limits, respectively. The application review process for any such permit shall be the same as the process that the County or City applies to its own road and drainage projects. The Parties agree to waive any applicable review and permitting fees within their respective jurisdictions. The County and City shall coordinate their review of any permit application and issuance of the permit concurrently with the review and approval of engineering design and plans and specifications for the Project.
- (h)** The Parties will participate in joint review meetings with representatives from all affected City and County Departments in order to avoid and resolve conflicts in review comments. The City and County will provide a designated review teams to expedite the review process.

- (i) As applicable, the Parties shall require the design engineer or contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the Parties within their respective jurisdictions.
- (j) The City and the County each agree to pay applicable utility relocation costs that are incurred within their respective jurisdictions.

3. Project Bidding & Award of Construction Contract.

The County will be responsible for overseeing the solicitation of bids for the construction of the Project based on the approved plans and specifications. Bids shall be solicited by means of a competitive process and in accordance with the County's minority and women-owned businesses policy. The County will notify the City of the lowest responsible bidder and the amount of the bid for the Project, the City will provide for its portion of the Project in accordance with Section 8, and the County will be responsible for any and all other funding for the Project.

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

- (a) review the submitted plans and specifications at the 30%, 60%, and 90% design complete states and review and approve the plans and specifications at the 100% design complete stage by providing any initial comments within ten working days of submittal, review and approve the City's satisfactory responses to those initial comments within five working days, and work in good faith to resolve any outstanding issues;
- (b) expeditiously review any applicable permit applications required by the County and work in good faith to resolve any outstanding issues;
- (c) respond to requests for information within five working days of receipt;
- (d) respond to requests to review and approve shop drawings within ten working days of receipt;
- (e) coordinate with the City and County Project Managers, as reasonable and necessary;

- (f) provide written notice of the schedule for the advertisement for bids, award of contract, and construction of the Projects;
- (g) provide written notice of the bid tabs for the Project;
- (h) provide a written copy of all construction contracts and billings and evidence of payment affecting the Project, including a monthly progress report with a schedule update and status of all tasks, and construction progress photographs;
- (i) provide a monthly itemized statement of all disbursements made and debts incurred during the preceding month relating to the construction of the Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt;
- (j) provide documentation and reasonably sufficient notice, not to be less than ten (10) working days of the submittal for the City to review and jointly approve the construction contractor's application for final payment;
- (k) provide a copy of executed change orders related to the portions of the Project that are located within the City's full purpose corporate limits, unless otherwise agreed by the Parties;
- (l) provide a copy of any change order request related to the Project within two working days of its receipt by the County, by delivery to the City's Project Manager; and
- (m) upon satisfactory completion of construction and any applicable warranty or construction performance period, accept the portion of the Project located outside of the full purpose limits of the City.

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

- (a) four hard copies and one electronic copy of the plans and specifications for the construction of the Project at the 30%, 60%, 90%, and 100% design complete stages for the County's review and approval;

- (b) written responses to the County's initial plan review comments within 14 working days of receipt from the City;
- (c) written notice of the schedule for design of the Project;
- (d) expeditiously review any applicable permit applications and work in good faith to resolve any outstanding issues;
- (e) coordination of utility relocations for the Project and coordination of funding to pay the costs of utility relocations that are required for the Project and that are not legally the responsibility of the utility owner; before relocating any such facilities, the City must obtain the County's approval to ensure that the facilities are relocated to a place that is acceptable to the County;
- (f) provide a written copy of all engineering services contracts and billings and evidence of payment affecting the Project, including a monthly progress report with a schedule update and status of all tasks;
- (g) provide a monthly itemized statement of all disbursements made and debts incurred during the preceding month relating to engineering services for the Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt;
- (h) review any change order proposal for any portion of the Project located within the City's full purpose corporate limits and return the change order request to the County within five working days of its receipt by the City's Project Manager, with a written recommendation for its disposition;
- (i) promptly pay the costs of utility relocations that are required for the City's portion of the Project and that are not legally the responsibility of the utility owner;
- (j) at the option and expense of the City, perform any additional independent inspection and testing on the Project in coordination with the County's inspectors and as agreed to by the County and City Project Managers, and in a timely manner; and in connection therewith, the City will designate inspectors to make any such inspections, including any joint final inspection of the completed Project with the County. The City's

inspectors shall communicate any issues to the County's inspectors only, and County inspectors will in turn communicate those issues to the construction contractor. The City's inspection and testing for acceptance of the portion of the Project located within the City for perpetual maintenance will be performed within specific times reasonably agreed upon with the County. The City agrees to pay any delay damages caused solely by its independent testing and inspection, which actually cause delays to the critical path of the Contractor's approved and accepted work schedule and which are performed more than three days after the stipulated times. The City will not be responsible for delay claims caused solely by the County on the portion of the Project that lies within the City's full purpose jurisdiction or for any delay on work outside the City's full purpose jurisdiction;

- (k) coordinate with the City and County Project Managers, as reasonable and necessary;
- (l) immediately report any deficiencies observed in the construction of the Project in writing to the County's Project Manager;
- (m) review and jointly approve the construction contractor's application for final payment within five working days after the County delivers to the City a copy of the construction contractor's application for payment from the County;
- (n) attend meetings at the request of the County Project Manager;
- (o) upon satisfactory completion of construction and any applicable warranty or construction performance period and after the County's acceptance of the Project, the City will accept the portion of the Project that is located within the City and furnish the County a copy of the record drawings of the Project for the County's records and the County will specify the format for the delivery of the working drawings; and
- (p) provide the County Project Manager at least 72 hours written notice of any public meetings the City intends to conduct related to the Project.

- 6. Bond 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 and maintenance bond 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 their respective projects. The City and the County will be named as co-obligees on the bonds.
- 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, auto liability and general liability insurance in the standard amounts required by the County. The County and the City will be included as additional insureds on the above-referenced insurance policies and a waiver of subrogation will be provided on the auto liability, general liability and worker's compensation coverages.
- 8. Financial Obligations.**
- (a) Construction Costs.**
- (1) The Parties estimate that the construction cost for the City's portion of the Project is \$3,291,155. Within 60 days after the effective date of this Agreement, the City will pay the County \$3,291,155 as the City's initial financial contribution to the construction cost of the Project, and this payment will be deposited into an escrow account with the County.
- (2) The Parties estimate that the construction cost for the County's portion of the Project is \$3,409,072.
- (b)** Before issuing to the construction contractor a change order that relates to the portion of the Project located within the City's full purpose corporate limits, the County shall obtain the written approval of the City for the change order.
- (c)** For any such construction change orders, which are the responsibility of the City, as described above, and which cause the actual costs of design and construction of the City's portion of the Project to exceed the cumulative amount the City has paid to the County under Subsection (a), the City shall make additional funds available to the County within 20 days

of receipt of invoice by the County, such invoice to be accompanied by the change order request from the construction contractor, which has been recommended for approval by the County and the City's Inspector and Project Manager.

- (d)** The City agrees to pay all liquidated damages, delay damages, de-mobilization costs, re-mobilization costs, and any other associated costs of the construction contract for the Project due to the City's non-payment of any change order, which has been approved by the City, within 90 days of the date of submittal by the County. The City is not responsible for any liquidated damages, delay damages, de-mobilization costs, re-mobilization costs, and any other costs resulting from the County's performance as project manager that are not directly related to the City's actions.
- (e)** The County shall promptly notify the City of any such claim for damages and the County and the City shall negotiate for the resolution of the claim. In the event that a decision is made to litigate such a claim, the City shall be solely responsible for any or all costs recited above in Section 8(d) and the costs of litigation, including, but not limited to, attorney's fees, court costs, depositions, experts, the amount of any damages contained in a judgment or settlement, interest, and the costs of appeal.
- (f)** Engineering Costs. The City will take responsibility for the design of the Project.

 - (1) The Parties estimate that the engineering cost for the City's portion of the Project is \$268,666.
 - (2) The Parties estimate that the engineering cost for the County's portion of the Project is \$278,292.
- (g)** Upon the City's receipt and approval of a payment application for engineering costs for the Project, it will submit an invoice to the County that details the sums paid by the City and due to be reimbursed by the County, including:

 - (1) copies of all draw requests from contractors included in the invoice, a detailed summary of the work completed and an affidavit of bills paid and partial lien waiver;
 - (2) the cumulative amount of all draw requests to date;
 - (3) the County and the City's respective portions of the current draw requests, and the calculations used to arrive at that allocation;

- (4) the cumulative amounts paid by the City and reimbursed by the County under this Agreement through the date of the accounting; and
 - (5) documentation evidencing the City's payments, if any, to contractors during the previous month, and an itemization of what was paid.
- (h) Reimbursement of Engineering Costs by the County.**
- (1) If the County determines that the services and work described in the invoice were rendered in compliance with this Agreement, the County will make payment to the City within 30 days of receipt of each invoice from the City.
 - (2) In the event changes or corrections are required to any invoice prior to payment, a request for additional information will be made by the County within 10 days of receipt of the invoice.
- (i)** The Parties agree to and shall provide their respective shares for the development of the Project on a timely basis in order to meet the Project schedule.
- (j)** 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, and any 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 60 days after the completion of the Project. The County shall provide the 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
- (k)** The County Treasurer shall timely pay submitted invoices for the Project. The invoices for the Project will be paid on the basis of work completed in accordance with the approved plans and specifications.
- (l)** To simplify the design and construction contract administration for the Project, the Parties agree:

- (1) to each pay 50% of the amount of each construction invoice and each engineering invoice as the invoice is submitted, and
- (2) after rendering the final accounting to determine each Party's actual share of costs in accordance with Section 9, to pay any amounts owed to, or refund any amounts due, the other Party as determined by the final accounting.

9. Final Accounting.

- (a) Notwithstanding any provision to the contrary, the Parties agree that the City is responsible for construction and engineering costs that are incurred within the City's full corporate limits, and the County is responsible for construction and engineering costs that are incurred within unincorporated Travis County. Within 30 days after the Project is complete or this Agreement is terminated, the Parties shall each render a final written accounting of any and all costs to be paid or borne by, or credited or refunded to, any Party under this Agreement, taking into account any amount the Parties have previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the Project. The Parties shall send each other a copy of their respective accounting report. Each Party has the right to audit the records of the other Party and may request any such audit, or any adjustments or corrections, within 30 days of receipt of the accounting.
- (b) After the Parties have sent to any corrected or adjusted final accounting to each other, each Party will pay any amount it owes to the other Party no later than 30 days after receipt of such final accounting. A Party must refund any amounts due the other Party within 30 days after delivery of any adjusted final accounting.

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 or privy hereto, then it shall be excused from such performance for such period of time as it 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: Steven Jones
City Manager
1102 Lohman's Crossing
Lakeway, Texas 78734

WITH COPY TO: Alan J. Bojorquez
Interim City Attorney
City of Lakeway
c/o Bojorquez Law Firm, PLLC
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

COUNTY: Steven M. Manilla, P.E. (or successor)
County Executive, TNR
P. O. Box 1748
Austin, Texas 78767

WITH A COPY TO: Cyd Grimes, C.P.M. (or successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

AND WITH A COPY TO: David Escamilla (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767
Attn: File No. 291.253

- (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. The recitals set forth above and the attached exhibits are incorporated herein.
- (e) **Effective Date.** This Agreement takes effect upon the last date of due execution of the Agreement by the County and the City. This Agreement will automatically renew from year to year until the completion of the warranty period for the Project and any litigation or other matters surviving the completion of the Project.
- (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.

- (i) **Venue.** TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN TRAVIS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.
- (j) **Interpretation.** In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either party.
- (k) **Application of Law.** This Agreement is governed by the laws of the State of Texas.
- (l) **Taxpayer Identification.** The City must provide the COUNTY with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations and a statement of entity status in a form satisfactory to the County Auditor before any funds are payable under this Agreement.
- (m) **Interpretation.** In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either party.
- (n) **Mediation.** When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation are to remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.
- (o) **Chapter 2251.** Interest on overdue payments is governed by Chapter 2251 of the Texas Government Code.

- (p) **Working Day.** In this Agreement, “working day” means a calendar day that is not a Saturday, Sunday, or a holiday designated by the Travis County Commissioners Court.

- (q) **Third Party Rights Not Created.** This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and the Parties are not waiving any defense or immunity to which they are entitled against any person or legal entity that is not a party to this Agreement.

Each of the signatories to this Agreement represents and warrants that he is duly authorized to sign this in the capacity indicated.

CITY OF LAKEWAY, TEXAS:

By: _____
David P. DeOme, Mayor

Date: _____

APPROVED AS TO FORM:

Alan J. Bojorquez, Interim City Attorney

TRAVIS COUNTY, TEXAS:

By: _____
Samuel T. Biscoe, County Judge

Date: _____

CC:

Tony Valdez		TNR	
Donna Williams-Jones		TNR	

: :
0101 - Administrative -