



Travis County Commissioners Court Agenda Request

Meeting Date: May 20, 2014

Prepared By: Chiddi N'Jie, P.E. **Phone #:** 512-854-7585

Division Director/Manager: Morgan Cotten, P.E.

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

Sponsoring Court Member: Commissioner Davis, Precinct One

AGENDA LANGUAGE: Consider and take appropriate action on a request to approve the Second Amendment to an Interlocal Cooperation Agreement with the City of Austin for the extension of Howard Lane between Cameron Road and SH 130, in Precinct One.

BACKGROUND/SUMMARY OF REQUEST:

This Howard Lane project was authorized under the 2005 Bond Program. Additional funding is with Travis County Certificate of Obligation funds and 1984 bond savings, the City of Austin (City) under the approved Interlocal Agreement being amended here for the section of the road within the City's jurisdiction, and Texas Department of Transportation under an approved Advance Funding Agreement.

The proposed design is a four-lane divided roadway (MAD4) with a bicycle lane and a sidewalk on each side of the street. The Howard Lane limits are from Cameron Road to SH 130. The Cameron Road limits are from just south of Howard Lane to Gregg Lane. The design will also include subsurface storm drainage systems, two bridges, and associated utility relocations.

With this amendment, the City is increasing their allotted funds from \$12,760,297.92 to \$13,218,385.93. This will fund the construction of the relocation and extension of the waterline, as well as the construction of the remaining section of Cameron Road (Harris Branch Road) within the City (in addition to the section of Howard Lane between Cameron Road and SH 130 that is within the City's jurisdiction).

STAFF RECOMMENDATIONS:

Staff recommends approval of the amendment to the Interlocal Agreement.

ISSUES AND OPPORTUNITIES:

This additional funding is to cover the expected shortfall in the current budget due to unexpected construction change orders.

The City may realize some savings due to the benefits of economies of scale, and the combined projects may also be done in less time than if procured separately. This project is another demonstration of the desired beneficial collaboration between Travis County and the City.

FISCAL IMPACT AND SOURCE OF FUNDING:

The engineering and construction costs of all work related to work within the City, is being paid for by the City. The total amount of money authorized under this Interlocal Agreement is being increased under this amendment from \$12,760,297.92 to \$13,218,385.93. Any cost in excess of this total amount for the City's portion will be paid for by the City, if approved by the City Council; any amount remaining at the end of the construction will be refunded to the City.

ATTACHMENTS/EXHIBITS:

1. Location Map
2. Second Amendment to Howard Lane II Interlocal Cooperation Agreement

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steve Manilla	County Executive	TNR	(512) 854-9429
Tom Nuckols	Asst. County Attorney	County Attorney	(512) 854-9642

CC:

Julie Joe	Asst. County Attorney	Tawana Gardner, Isabelle Lopez	TNR
Cyd Grimes	Purchasing Agent	Morgan Cotten	TNR
Hannah York	Auditor's Office	Steve Sun	TNR
Donna Williams-Jones	TNR	Chiddi N'Jie	TNR

: :
3101 - Public Works/CIP -

LOCATION MAP

**AERIAL LAYOUT FOR ADDITIONAL ROADWAY IMPROVEMENTS
ALONG CAMERON ROAD - LENGTH = 2,130 FEET**



Google earth



2ND AMENDMENT TO THE INTERLOCAL AGREEMENT

**SECOND AMENDMENT TO THE HOWARD LANE II
INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND TRAVIS COUNTY**

THIS Second Amendment to the Howard Lane II Interlocal Cooperation Agreement between the City of Austin and Travis County (“Second Amendment”) is made and entered into by and between the City of Austin, Texas (“City”) and Travis County, Texas (“County”) for the purposes and consideration in this Amendment. The City and the County are collectively referred to as “the Parties.”

RECITALS

1. In April 2009, the City and County entered into an Interlocal Cooperation Agreement in order to allocate the Parties’ respective responsibilities regarding the design and construction of the project described as Howard Lane II and as further detailed in the Agreement itself (the “Agreement”).
2. In August 2013, the Parties executed the First Amendment to the Agreement in order to expand the project limits and scope of work described in the Agreement to include an extension north up Harris Branch Parkway (Cameron Road) and west up Howard Lane, design and construction of a waterline within the scope of the original project and expanded area, and street reconstruction to include drainage improvements.
3. Due to unknown subsurface conditions and possible utility conflicts, City and the County desire to enter into this Second Amendment to allow for a 5% project contingency for change orders to address such conditions and costs for potential design updates associated with permitting revisions.
4. Except as set forth in this Second Amendment, the Parties’ responsibilities will remain the same as in the Agreement.
5. The Parties intend to conform this Second Amendment in all respects with the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

AMENDMENTS

In consideration of these recitals and mutual covenants in this Amendment, the Parties agree as follows:

1. Paragraph 8(b) of the Interlocal is deleted and replaced with the following:
 - 8(b) The City shall pay its estimated portion of the costs through a series of deposits into an escrow account with Travis County, the first payment of \$200,000.00 for design phase services will be due no later than thirty (3) days after the execution of this Agreement, unless otherwise agreed to by the City and the County in writing. The

estimated total amount for completion of the City portion of the Project and to be funded by the City will not exceed the amount of \$13,218,385.93 (the "Estimated City Contribution"), without the further approval of the City Council. The estimated total amount for completion of the County portion of the Project and to be funded by the County will not exceed the amount of \$7,500,000 (the "Estimated County Contribution"), without the further approval of the County's Commissioners Court. City and County funds will be expended in proportion to the work performed on the City and County portions of the Project, respectively.

2. The Agreement is amended only as set forth herein. In all other respects, the Agreement is hereby ratified, approved, and confirmed.
3. This Second Amendment may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same Second Amendment.

EFFECTIVE AS OF THE LATER DATE SET FORTH BELOW.

CITY OF AUSTIN, TEXAS

TRAVIS COUNTY, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form:

Assistant City Attorney

1ST AMENDMENT TO THE INTERLOCAL AGREEMENT

**FIRST AMENDMENT TO THE HOWARD LANE II
INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND TRAVIS COUNTY**

THIS First Amendment to the Howard Lane II Interlocal Cooperation Agreement between the City of Austin and Travis County ("Amendment") is made and entered into by and between the City of Austin, Texas, ("City") and Travis County, Texas ("County"), hereinafter collectively referred to as the "Parties," upon the premises and for the consideration stated herein.

RECITALS

1. On April 29, 2009, the City and County entered into that certain Howard Lane II Interlocal Cooperation Agreement (the "Interlocal");
2. Under the Interlocal, the Parties intend to develop and construct the extension of Howard Lane II as a four lane divided CAMPO Arterial Roadway between Cameron Road and SH 130, (referred to in the Interlocal as the "Project" and as the "Howard Lane II Project");
3. In addition to the improvements described in the Interlocal, the Parties presently desire to expand the project limits and scope of work described in the Interlocal to include an extension north up Harris Branch Parkway (Cameron Road) and west up Howard Lane, design and construction of a waterline within the scope of the original project and expanded area, and street reconstruction to include drainage improvements (together, the "Cameron Roadway Extension"); and
4. The Parties desire to cooperate in the development of the Cameron Roadway Extension; and
5. The Parties intend to conform this Amendment in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001 et seq.

In consideration of these recitals and mutual covenants in this Amendment, the Parties agree as follows:

1. The Project limits and work are expanded to include the Cameron Roadway Extension described above in the Recitals and shown in the attached Exhibit A-1.
2. Paragraph 2(b) of the Interlocal is deleted and replaced with the following:
 - (b) The plans and specifications for the City portion of the Project shall be in accordance with the design and construction standards applicable under Title 30, Austin City Code (Austin/Travis County Subdivision Regulations), or the design and construction standards of the Texas Department of Transportation (TxDOT),

whichever is more stringent, unless otherwise agreed by the Parties. The plans and specifications for the County portion of the Project shall be in accordance with the current design and construction standards used by the County for its roadway and bridge projects, except where the use of TxDOT standards is a requirement of the AFA. The plans and specifications will include the scope of design set forth in attached Exhibits A-1 and B. In addition, the County will ensure that the plans and specifications will comply with applicable Texas Accessibility Standards.

3. Paragraph 8(a) of the Interlocal is deleted and replaced with the following:

- (a) The City and County will provide funding for the actual cost of design, regulatory permitting, real property interests, utility relocations, construction, construction management, inspection, and testing for their respective portions of the Project set forth in attached Exhibits A-1 and B. The property owners obligated under the Road Construction Agreements will pay a portion of the County's costs and the State of Texas, through TxDOT, will pay \$6,000,000 of the County's costs. The Project may be developed in phases, which may require multiple bids and multiple financial contributions, by the County and the City.

4. Paragraph 8(b) of the Interlocal is deleted and replaced with the following:

- (b) The City shall pay its estimated portion of the costs through a series of deposits into an escrow account with Travis County. The first payment of \$200,000.00 for design phase services will be due no later than thirty (30) days after the execution of this Agreement, unless otherwise agreed to by the City and the County in writing. The estimated total amount for completion of the City portion of the Project and to be funded by the City will not exceed the amount of \$12,760,297.92 (the "Estimated City Contribution"), without the further approval of the City Council. The estimated total amount for completion of the County portion of the Project and to be funded by the County will not exceed the amount of \$7,500,000 (the "Estimated County Contribution"), without the further approval of the County's Commissioners Court. City and County funds will be expended in proportion to the work performed on the City and County portions of the Project, respectively.

5. Paragraph 8(d) of the Interlocal is deleted and replaced with the following:

- (d) 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 specific Project elements set forth in attached Exhibits A-1 and B to exceed the Estimated City Contribution, the City shall make its funds available to the County within ninety (90) days of receipt of invoice by the County, such invoice to be accompanied by the change order request from the construction contractor,

which must be authorized by the County's and the City's Project Manager prior to implementation of the change order.

6. Paragraph 9(b) is deleted and replaced with the following:

(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: Howard Scott Lazarus, Director
City of Austin Public Works Department
505 Barton Springs Road
Austin, Texas 78704

WITH COPY TO: City Attorney
City of Austin Law Department
301 W. 2nd Street
Austin, Texas 78701

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

AND: Cyd V. Grimes, C.P.M., CPPO (or successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

WITH A COPY TO: David Escamilla (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767

7. The Interlocal is amended only as set forth herein. In all other respects, the Interlocal is hereby ratified, approved, and confirmed.

8. This Amendment may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same Amendment.

EXECUTED AS OF THE LATER DATE SET FORTH BELOW.

CITY OF AUSTIN, TEXAS

By: Robert Goode 

Name: _____

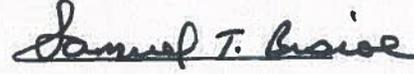
Title: Assistant City Manager

Date: 8/2/13

Approved as to Form:

Crosby
Assistant City Attorney

TRAVIS COUNTY, TEXAS

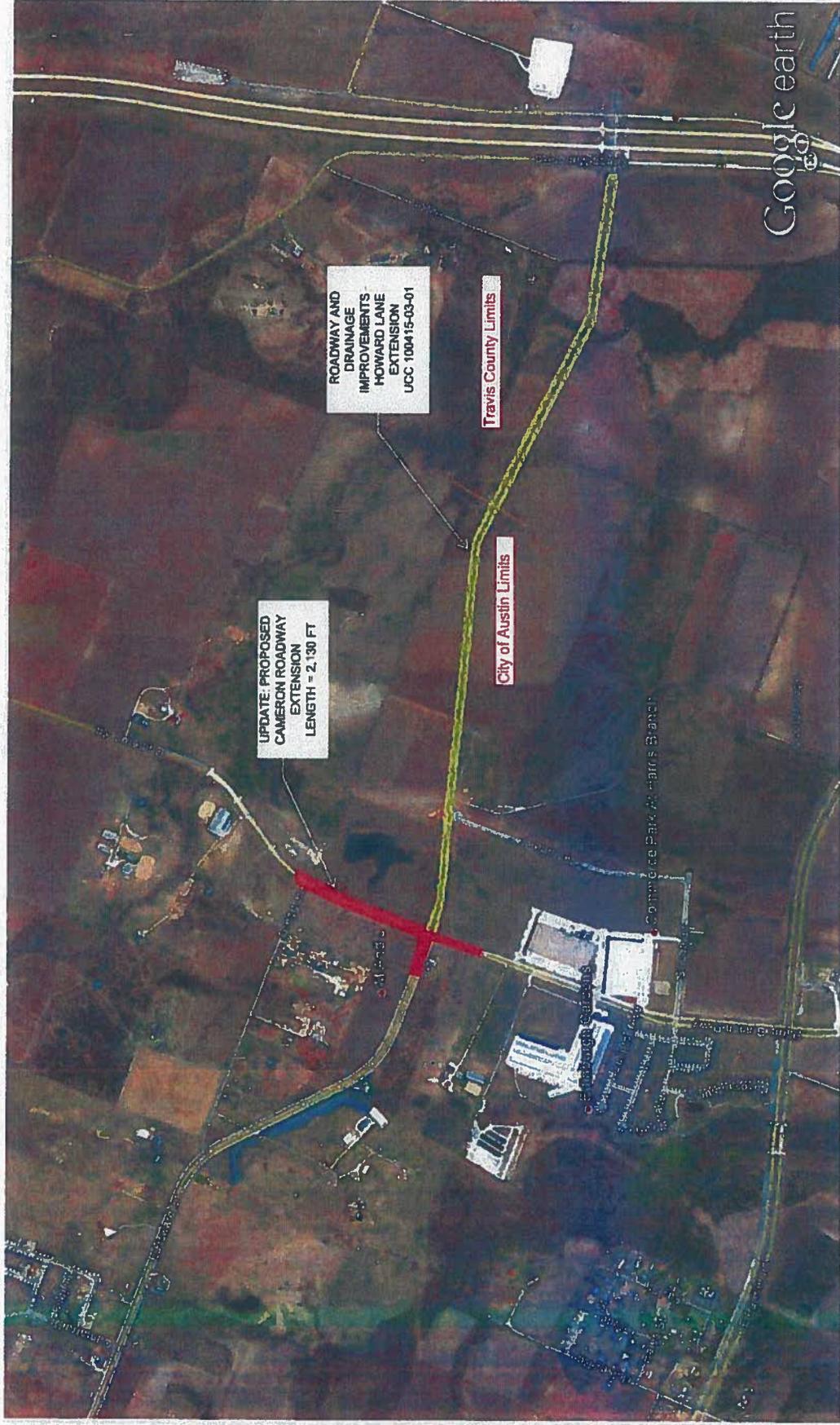
By: Samuel T. Busio 

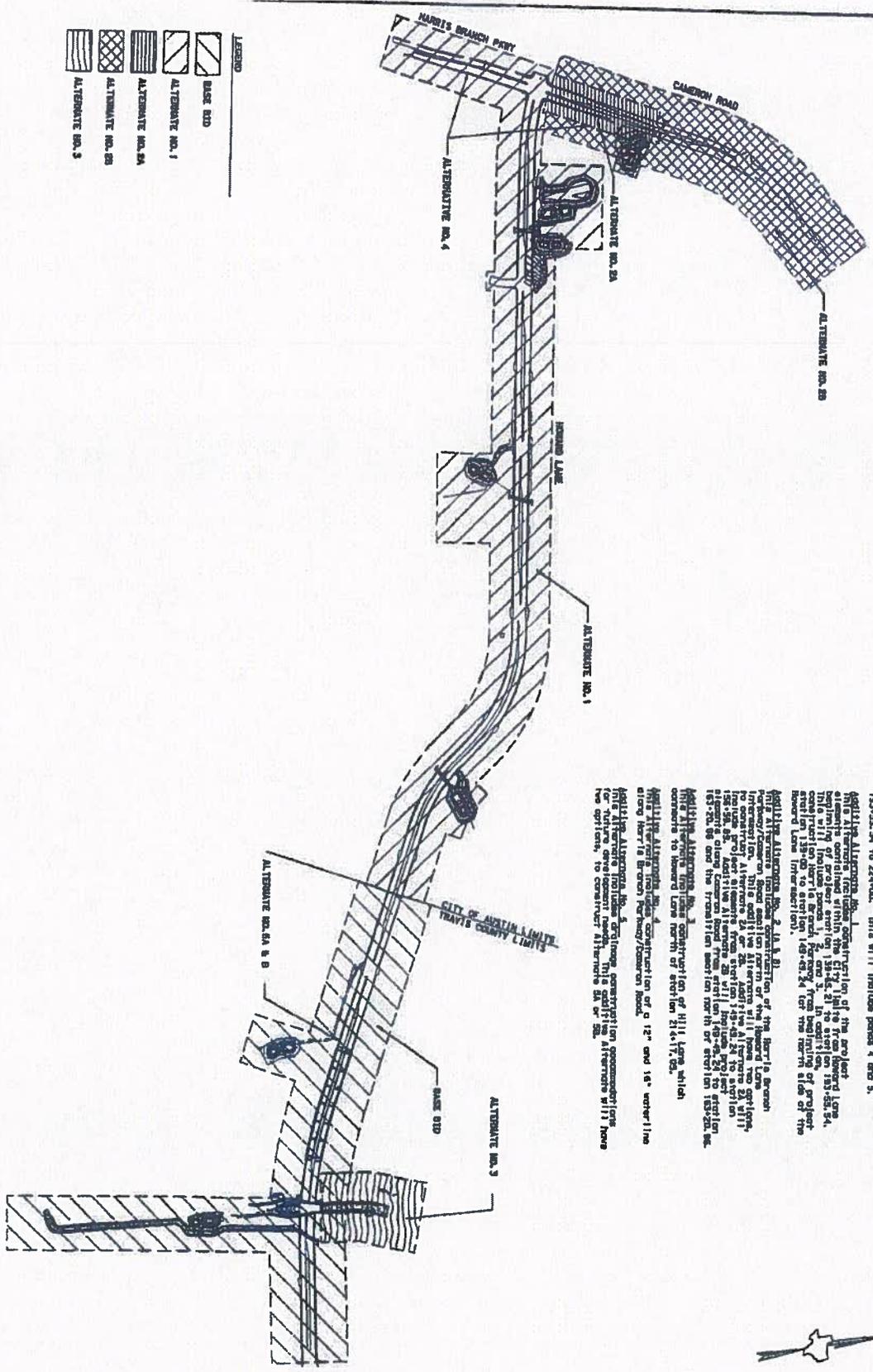
Name: _____

Title: _____

Date: 8-27-13

Howard Lane Ext. II from Harris Branch Parkway (Cameron Road) to SH 130 - Exhibit A-1





- LEGEND**
- BASE BID
 - ALTERNATIVE NO. 1
 - ALTERNATIVE NO. 2A
 - ALTERNATIVE NO. 2B
 - ALTERNATIVE NO. 3
 - ALTERNATIVE NO. 4

Pg#2

Base Bid includes construction of the project elements from station 137+00 to 224+00. This will include points 4 and 5.

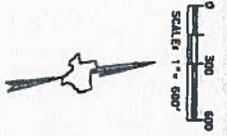
Alternative No. 1 includes construction of the project elements from station 137+00 to 224+00. This will include points 4 and 5. The alignment will follow the centerline of the existing road.

Alternative No. 2A includes construction of the project elements from station 137+00 to 224+00. This will include points 4 and 5. The alignment will follow the centerline of the existing road.

Alternative No. 2B includes construction of the project elements from station 137+00 to 224+00. This will include points 4 and 5. The alignment will follow the centerline of the existing road.

Alternative No. 3 includes construction of the project elements from station 137+00 to 224+00. This will include points 4 and 5. The alignment will follow the centerline of the existing road.

Alternative No. 4 includes construction of the project elements from station 137+00 to 224+00. This will include points 4 and 5. The alignment will follow the centerline of the existing road.



05/17/2013

<p>TRAVIS COUNTY, TEXAS TRANSPORTATION AND NATURAL RESOURCES DEPARTMENT</p>	<p>CITY OF AUSTIN</p>	PRECINCT: 1 SCALE: HORIZ: _____ VERT: _____	TITLE: HOWARD LANE PHASE II HARRIS BRANCH PARKWAY TO SH 130 ADDITIVE ALTERNATIVE LAYOUT	REVISION NO. 5 <p>JACOBS</p>	DATE: 05-17-2013 SHEET: 1 OF 1
		PROJECT NO.: _____ SHEET NO.: _____		PROJECT NO.: _____ SHEET NO.: _____	PROJECT NO.: _____ SHEET NO.: _____

INTERLOCAL AGREEMENT

**HOWARD LANE II
INTERLOCAL COOPERATION AGREEMENT
CITY OF AUSTIN AND TRAVIS COUNTY**

This Interlocal Cooperation Agreement is made and entered into by and between the 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 and the City desire to develop and construct the extension of Howard Lane II, as a four lane divided CAMPO Arterial Roadway between Cameron Road and SH 130, (hereinafter referred to as the "Project" and as the "Howard Lane II Project"); and

WHEREAS, approximately 5,300 linear feet of the Howard Lane II Project is located within the corporate limits of the City (the "City portion") and approximately 2,900 linear feet of the Project is located within the unincorporated area of the County (the "County portion"); and

WHEREAS, the County has entered into those certain Howard Lane II Road Construction Agreements with Anne B. Schryver, Carol Schryver-Bloom, Brian B. Schryver and Jeffrey E. Schryver and with Trafalgar I, L.P. (collectively the "Road Construction Agreements"); and

WHEREAS, the County has entered into the State of Texas-Travis County Local Transportation Project Advance Funding Agreement for a SH 130 Comprehensive Development Agreement Concession Payment Project (the "AFA"), for the design and construction of the County portion; and

WHEREAS, for purposes of cost efficiency, scheduling, and transportation planning, the City and the County desire to combine the development and construction of their respective portions of 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 provide the project management services for the development and construction of the Project, as set forth herein.
 - (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's Public Works Director (the "City's Director") 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 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 Project.
- (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 Assistant City Manager responsible for public works and the Executive Manager 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 development and construction of the Project, including (i) the development of the engineering design, plans and specifications for the roadway improvements and sidewalks, (ii) the surveying, (iii) the right-of-way and easement acquisition, (iv) the construction, (v) the inspection and testing and any required permitting and environmental assessments and clearances associated with the Project, and (vi) acceptance of the completed work on the County portion.
- (b) The plans and specifications for the City portion of the Project shall be in accordance with the design and construction standards applicable under Title 30, Austin City Code (Austin/Travis County Subdivision Regulations), or the design and construction standards of the Texas Department of Transportation (TxDOT), whichever is more stringent, unless otherwise agreed by the Parties. The plans and specifications for the County portion of the Project shall be in accordance with the current design and construction standards used by the County for its roadway and bridge projects, except where the use of TxDOT standards is a

requirement of the AFA. The plans and specifications will include the scope of design set forth in attached Exhibits "A" and "B." In addition, the County will ensure that the plans and specifications will comply with the applicable Texas Accessibility Standards.

- (c) The County will ensure that the design engineer provides professional liability, automobile liability, and general liability insurance in accordance with the standard requirements of the County for such projects, during the term of the design and construction and the County and will have the County and the City named as an additional insured with respect to such general liability and automobile liability coverage. The County will select and contract for professional services with the most highly qualified engineering consultant in accordance with the requirements of Chapter 2254 of the Texas Government Code, using County procurement procedures. The County will obtain the City's concurrence of the selection of the consultant prior to awarding the professional services agreement for the design engineer. Within five (5) days of receiving notification of the County's determination of the most highly qualified consultant, the City will approve the consultant to be used for the project design and construction documents. Prior to awarding the professional services agreement, the City Project Manager and the County Project Manager shall agree on a method for tracking City and County Project design costs.
- (d) The County and, to the extent set forth herein, the City will be responsible for the review and approval of the engineering design, plans and specifications and for construction inspection and testing for their respective portions of the Project. In addition, the County and, to the extent set forth herein, the City will be responsible for the review and approval of any modifications to the engineering design, plans, and specifications for their respective portions of the Project, during the development and construction of the Project.
- (e) City permit and associated fees shall be required only for the City portion of the Project, provided that any fees in lieu of compliance with City Standards will be required within any portion of the City's jurisdiction. The application review process and fees for any such permit shall be the same as the process and fee requirements that the City applies to its own road projects, provided that City will by separate ordinance waive such fees as may be waived by Council action. The City shall coordinate the City's review of any permit application and issuance of the permit concurrently with the City's review and approval of engineering design and plans and specifications for the Project.
- (f) 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 will provide a designated

review team to expedite the review process for the City portion of the Project.

- (g) The County shall require the consultant to immediately take any appropriate remedial action to correct any deficiencies with the development of the City portion of the Project identified by the City.

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. Prior to bids being solicited, the City Project Manager and the County Project Manager shall agree on a method of tracking City and County construction costs. To the extent applicable, construction costs will be allocated to the separate construction in each Party's respective portion of the Project and, to the extent feasible, will be calculated on the basis of unit prices and actual quantities of the work. The County will notify the City of the lowest responsible bidder and the amount of the bid for the Project and for the Project improvements to be funded by the City and the City shall respond within five (5) working days. Upon written agreement of the City, the County will approve a firm unit-price or lump sum contract for the construction of the Project with the successful bidder. If determined necessary to fulfill obligations in its Road Construction Agreements and AFA, the County may bid the County and City portions of the Project separately.

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

- (a) four (4) sets of the plans and specifications for the construction of the Project at the thirty percent (30%), sixty percent (60%), ninety percent (90%) and one hundred percent (100%) design complete stages for the City's review and approval;
- (b) written responses to the City's initial plan review comments within fourteen (14) working days of receipt from the City;
- (c) written notice to the City of the schedule for design and the advertisement for bids, award of contract, and construction of the Project;
- (d) written notice to the City of the bid tabs for the Project;
- (e) design and construction contract administration services;
- (f) written copy to the City of all contracts affecting the Project, including accompanying information regarding compliance with the County's historically underutilized businesses ("HUB") policy;

- (g) a monthly itemized statement to the City of all disbursements made and debts incurred during the preceding month relating to the City portion of the Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt and accompanying information regarding compliance with the County's HUB policy;
- (h) executed change orders to the City, jointly approved by the City and the County, related to the City portion of the Project;
- (i) sufficient notice, documentation and opportunity for the City to review and jointly approve the construction contractor's application for final payment with accompanying information regarding compliance with the County's HUB policy;
- (j) a copy to the City's Project Manager of any change order request related to the City portion of the Project within two (2) working days of the County receiving them from the Contractor;
- (k) the opportunity for the City to verify compliance with its design standards for the City portion of the Project at the 30%, 60%, 90%, and 100% design complete stages;
- (l) a waiver of all County permit and associated fees applicable to the City portion of the Project;
- (m) approval of all construction contractor pay requests and change orders that pertain to the City portion of the Project within five (5) days of receiving the approved Pay Applications and Change Order documents from the City;
- (n) utilization of the County's eminent domain authority as needed to complete any right-of-way acquisitions as expeditiously as possible;
- (o) coordination of utility relocations for the Project and funding to pay the costs of utility relocations that are required for the County portion of the Project and that are not legally the responsibility of the utility owner;
- (p) to the extent required by the AFA, TxDOT approval of the development and construction of the Project;
- (q) to the extent required by TxDOT, completion of the National Environmental Policy Act (NEPA) process for the Project;

- (r) County acceptance of the portion of the Project which is located within the County upon satisfactory completion of construction and any applicable warranty or construction performance period; and
- (s) a copy to the City of the record drawings of the Project for the City's records.

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

- (a) reviews and approvals of the submitted plans and specifications for the City portion of the Project by providing any initial comments within fourteen (14) working days of submittal, and follow-up reviews and approvals of the County's responses to those initial comments within seven (7) working days, and work in good faith to resolve any outstanding issues;
- (b) reviews for any applicable permit applications required by the City for the City portion of the Project and work in good faith to resolve any outstanding issues;
- (c) reviews of any change order proposal for the City portion of the Project by returning the change order request to the County within seven (7) working days of its receipt by the City's Project Manager, with a written recommendation for its disposition, and expeditious responses to requests-for-information and shop drawings review requests by responding to requests for information within three (3) working days and requests for approval of shop drawings within ten (10) working days;
- (d) at the option and expense of the City, the City may 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. Any such additional testing shall be scheduled to avoid delaying the construction of the Project to the maximum extent practical. 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;
- (e) coordination between the City and County Project Managers, as reasonable and necessary to facilitate the completion of the Project;
- (f) reporting of any deficiencies observed in the construction of the Project immediately to the County's Project Manager with an additional written report within two (2) working days;

- (g) reviews and joint approvals of the construction contractor's application for partial and final payments by completing, executing, and returning pay requests related to the City portion of the Project within five (5) working days of receiving them from the County;
- (h) attendance at meetings at the request of the County's Project Manager;
- (i) upon satisfactory completion of construction and any applicable warranty or construction performance period, City acceptance of the City portion of the Project and any additional portions of the Project located within the City's corporate jurisdiction at the time of completion of the Project;
- (j) design review comments on the City portion of the Project to the County at the 30%, 60%, 90%, and 100% design complete stages within two (2) weeks of receiving design documents from the County;
- (k) cooperation with the County to obtain any applicable permits and environmental clearances for the City portion of the Project;
- (l) acquisition of any real property interests required for the City portion of the Project and utilization of the City's eminent domain authority as needed to complete the acquisitions;
- (m) utility relocations that are required for the City portion of the Project that are not legally the responsibility of the utility owner; and
- (n) City acceptance of the portion of the Project that is located within the City corporate limits upon satisfactory completion of construction and any applicable warranty or construction performance period.

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 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 County and the City 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 an 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) The City and County will provide funding for the actual cost of design, regulatory permitting, real property interests, utility relocations, construction, construction management, inspection, and testing for their respective portions of the Project set forth in attached Exhibits "A" and "B." The property owners obligated under the Road Construction Agreements will pay a portion of the County's costs and the State of Texas through the Texas Department of Transportation ("TxDOT") will pay \$6,000,000 of the County's costs. The Project may be developed in phases, which may require multiple bids and multiple financial contributions, by the County and the City.
- (b) The City shall pay its estimated portion of the costs through a series of deposits into an escrow account with Travis County. The first payment of \$200,000.00 for design phase services will be due no later than thirty (30) days after the execution of this Agreement, unless otherwise agreed to by the City and the County in writing. The estimated total amount for completion of the City portion of the Project and to be funded by the City will not exceed the amount of \$10,000,000 (the "Estimated City Contribution"), without the further approval of the City Council. The estimated total amount for completion of the County portion of the Project and to be funded by the County will not exceed the amount of \$7,500,000 (the "Estimated County Contribution"), without the further approval of the County's Commissioners Court. City and County funds will be expended in proportion to the work performed on the City and County portions of the Project, respectively.
- (c) The County shall obtain the written approval of the City for all change orders affecting the design and construction of the City portion of the Project prior to the County issuing the approved change order to the contractor, such approval not to be unreasonably withheld or delayed. The City's Project Manager shall meet with the County's Project Manager to review the contractor's progress reports and invoices for the Project before approval by the County.
- (d) 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 specific Project elements set forth in attached Exhibits "A" and "B" to exceed the Estimated City Contribution, the City shall make its funds available to the County within ninety (90) 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.

- (e) The City agrees to pay delay damages, statutory interest, de-mobilization costs, Prompt Payment Act claims, re-mobilization costs, and any other associated costs incurred by the County under its construction contract for the improvements by reason of the non-payment of any acceptable change order for the construction of a portion of the improvements which is the sole responsibility of the City and which has not been paid within 30 days of the date of submittal by the County
- (f) The County shall promptly notify the City of any such claim for damages by the construction contractor for non-payment of any acceptable change order as described above and the County and the City shall negotiate with the construction contractor 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, 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.
- (g) 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. The City will deposit its portion of the construction contract bid within thirty (30) days of approval of the bid by the City.
- (h) 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 thirty (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.
- (i) 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.

9. 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 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: Howard Scott Lazarus, Director
City of Austin Public Works Department
505 Barton Springs Road
Austin, Texas 78704

WITH COPY TO: Gordon Bowman (or successor)
Assistant City Attorney
City of Austin Law Department
301 W. 2nd Street
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

(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 construction of the Project. 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. No official,

TRAVIS COUNTY, TEXAS

By: Samuel T. Biscoe
Samuel T. Biscoe, County Judge

Date: 4-28-09