

**INTERLOCAL COOPERATION AGREEMENT  
CITY OF PFLUGERVILLE AND TRAVIS COUNTY  
FOR IMPROVEMENTS TO BECKER FARM ROAD**

This Interlocal Cooperation Agreement (the "Agreement") is made and entered into by and between the City of Pflugerville, 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 City desires to construct certain improvements to Becker Farm Road; and

WHEREAS, Becker Farm Road is maintained by the City;

WHEREAS, Silent Harbor Loop is a County-maintained roadway;

WHEREAS, the City has acquired a roadway easement that is located in the unincorporated area of the County;

WHEREAS, the City desires to construct a roadway that connects a portion of Becker Farm Road to Silent Harbor Loop (the "Project");

WHEREAS, the Project is generally described and depicted in attached **Exhibit A**; and

WHEREAS, the City will provide for the design, construction, operation, and maintenance of that portion of the Project (the "Improvements") that is located in the unincorporated area of the County and is more particularly described in attached **Exhibit B**;

WHEREAS, construction of the Improvements will facilitate the movement of people and goods to and from the City and the County;

**WHEREAS**, all aspects of the Project will be completely funded by the City; and

**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. Grant.

Subject to the conditions in this Agreement, the County grants to the City permission to construct, maintain, and repair the Improvements as of the effective date of this Agreement.

2. Consideration.

The County and the City each acknowledge the receipt and sufficiency of good and valuable consideration for the execution of this Agreement, including but not limited to the following:

- (a) The safety of the citizens of the City and County to be afforded to the community by the Improvements;
- (b) Increased convenience for the traveling public; and
- (c) The agreement by the City and the County to provide the indemnification and claims notification as specified in Section 9.

3. Project Management.

- (a) The City will provide the project management services for the development and construction of the Project.
- (b) The County Executive of the Travis County Transportation and Natural Resources Department (the "County's Executive") 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 Executive may designate other representatives to act on behalf of the County with respect to the Project.
- (c) The City's Engineering 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 act on behalf of the City with respect to the Project.
- (d) If a disagreement between the Parties 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 County and either the City's Project Manager or the City's Director, it shall be referred as soon as possible to the to the City Manager responsible for Engineering and the County Executive of the Travis

County Transportation and Natural Resources Department for resolution.

4. Project Development.

- (a) The City 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 Improvements, (ii) the surveying, (iii) the construction, (iv) the inspection and testing and any required permitting and environmental assessments and clearances associated with the Project, and (vi) acceptance of the completed work.
- (b) The plans and specifications for the Project shall be in accordance with the City's applicable standard design and construction standards, and as approved by the County, unless otherwise agreed by the Parties. The plans and specifications are included as attached **Exhibit A**. In addition, the City will ensure that the plans and specifications will comply with any applicable Texas Accessibility Standards.
- (c) The City will ensure that the design engineer provides insurance in accordance with the standard requirements of the City for such projects, and the City will have the County named as an additional insured with respect to such coverage.
- (d) The City will be responsible for any relocation of existing County facilities required by the construction of the Improvements. Before relocating any such facilities, the City must obtain approval from the County to ensure that the facilities are relocated to a place that is acceptable to the County;
- (e) The City shall require the contractor to take any appropriate remedial action to correct any deficiencies with the Project design identified by the County.

5. Additional Management Duties of the City.

The City hereby covenants and agrees to the following:

- (a) Before constructing or making repairs to the Improvements, the City will provide four sets of the construction plans and specifications for the Project to the County for review and approval to ensure, among other things, that the construction or repairs do not impede roadway drainage or create traffic safety issues; the City agrees to make whatever changes are requested by the County to ensure that

roadway drainage is not impeded, traffic safety issues are not created, and the safety of the public is not jeopardized;

- (b) The City must correct any deficiencies with the Project design identified by the County;
- (c) The City is solely responsible for the costs and the securing of any required permits;
- (d) The City will coordinate utility relocations for the Project and 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;
- (e) The City will provide a copy to the County of the record drawings of the Project for the County's records;
- (f) The City will maintain the Improvements, including all public infrastructure and roadway drainage facilities; and
- (g) Before construction or repair of the Improvements, the City must provide its traffic control plans to the County for review and approval.

6. Management Duties of the County.

The County hereby covenants and agrees to the following:

- (a) The County will review any applicable permit applications required by the County for the Project and work in good faith to resolve any outstanding issues;
- (b) At the option and expense of the County, the County may perform any additional independent inspection and testing of the Project. Any such additional testing shall be scheduled to avoid delaying the construction of the Project to the maximum extent practical;
- (c) The County will accept the Project upon satisfactory completion of construction and any applicable warranty or construction performance period; and
- (d) The County consents to continued City maintenance of the Project except for any portion of the Project located in the unincorporated area of the County for which the County has requested to assume maintenance responsibilities.

7. 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 City and the County for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting the City and the County for a period of one year from the date of acceptance of the Project. The City and the County will be named as co-obligees on the bonds.

8. Insurance.

- (a) The County understands and agrees that the City is self-insured and will provide a letter of self-insurance to the County in accordance with City practices.
- (b) The City agrees to cause the design engineer for the Project to obtain and maintain in force throughout the term of this Agreement insurance in accordance with the standard requirements of the City for such projects, and the City will have the County named as an additional insured with respect to such coverage. The policy must contain a provision requiring the insurer to give at least 30 calendar days' prior written notice before any termination or expiration of such policy for any reason.
- (c) The City agrees to cause City's contractor(s) installing, repairing, or maintaining the Improvements to agree under its City contract to obtain and maintain in force throughout the term of this Agreement commercial general liability insurance coverages A&B with minimum combined bodily injury and property damage limit of \$500,000 per occurrence, Texas Workers' Compensation and Employers' Liability Insurance with minimum policy limits of \$100,000 bodily injury per accident, \$500,000 bodily injury by disease and \$100,000 bodily injury by disease each employee, and business automobile liability insurance with either (a) minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage, or (b) \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability each accident. The policy must name the County and City as additional insureds and must contain a provision requiring the insurer to give at least 30 calendar days' prior written notice before any termination or expiration of such policy for any reason.

9. Indemnification.

- (a) **INDEMNIFICATION.** To the extent permitted by law, the City agrees to and must indemnify and hold harmless the County, its officers, agents, and employees, from and against any and all claims, losses, damages, negligence, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person , for any act or omission by the City, or for damage to any property, arising out of or in connection with the work done by the City under this Agreement, whether such injuries, death or damages are caused by the City's sole negligence or the joint negligence of the City and any other third party.
- (b) Claims Notification. If the City or the County receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against the City or the County in relation to this Agreement, the Party receiving such notice must give written notice to the other Party of the claim or other action within three working days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action, or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice must be given in the manner provided in Section 18 of this Agreement. Except as otherwise directed, the notifying Party shall furnish to the other Party copies of all pertinent papers received by that Party with respect to these claims or actions.
- (c) The City agrees to cause City's contractor(s) installing, repairing, or maintaining the Improvements to agree under its City contract to indemnify the County and the City against all claims, costs, losses and damages arising out of or resulting from the performance of the work under the City contract, provided the claim, cost, loss or damage is:
- (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting from it; and
  - (2) caused in whole or part by any negligent act or omission of City contractor, any of City contractor's subcontractor(s), supplier(s), or any person or organization directly or indirectly employed by any of them to perform or furnish any

of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of the County or City or whether liability is imposed upon the County or City by laws or regulations regardless of the negligence of any such entity.

10. Financial Obligations.

- (a) The City will provide funding for the cost of design, regulatory permitting, utility relocations, construction, construction management, inspection, and testing for the Project.
- (b) The City 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.

11. Continued Maintenance.

- (a) The City agrees to maintain the completed Project, including the Improvements and will provide periodic maintenance, repair, and reconstruction of the Project at regular intervals to be agreed to by the Directors and on an as-needed basis. Any City maintenance contractor will provide general liability, automobile, and workers compensation insurance coverage in the standard amounts required for similar City projects and will name the County as an additional insured. The City will coordinate any entry into County right-of-way for maintenance purposes with the County's Transportation and Natural Resources Department.
- (b) The County has the right to request to assume maintenance responsibility for any portion of the Improvements located within the unincorporated territory of the County with the understanding that the City will grant any such request.

12. Binding Effect.

The terms and conditions of this Agreement will be binding on any successors and assigns in interest to the City or the County.

13. Default.

In the event that the City fails to maintain the Improvements, then the County will give the City written notice thereof by registered or certified mail, return receipt requested, to the addresses set forth below.

14. Commencement; Termination by Abandonment.

This Agreement will begin on the date of full execution and continue thereafter for so long as the Improvements are used for the purposes set forth herein, unless terminated under other provisions of this Agreement. If the City abandons its easement rights then this Agreement, will expire and terminate following 30 days' written notice by the County to the City.

15. Termination.

- (a) Termination by the City. This Agreement may be terminated by the City by delivering written notice of termination to the County not later than 30 days before the effective date of termination.
- (b) Termination by County. Subject to providing at least 30 days' prior written notification to the City or its successors in interest, this Agreement is revocable by the County if:
  - (1) The Improvements or a portion of them constitute a danger to the public which the County deems not to be remediable by alteration or maintenance of such Improvements;
  - (2) Despite 30 days' written notice to the City, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
  - (3) The City fails to substantially comply with the terms and conditions of this Agreement.

16. Assignment.

The City must not assign, sublet, or transfer its interest in this Agreement without the written consent of the County. If such consent is granted, it will then be the duty of the City, its successors and assigns, to give prompt written notice to the County of any assignment or transfer of any of the City's rights in this Agreement, giving name, date, address, and contact person.

17. Annexation by the City.

If the total area within the Roadway Easement is annexed for full purposes by the City of Pflugerville, then this Agreement will terminate without the need for any action by the County.

18. Miscellaneous.



- (a) Force Majeure. In the event that the performance by the City or the County 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 or 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:                    Brandon Wade, P.E. (or successor)  
                              City Manager  
                              PO Box 589  
                              Pflugerville, TX 78691

WITH COPY TO:      Floyd Akers (or successor)  
                              City Attorney  
                              PO Box 589  
                              Pflugerville, TX 78691

COUNTY:                Steven M. Manilla, P.E. (or successor)  
                              County Executive, TNR  
                              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  
                              File Number 291.33

- (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, 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 execution of the Agreement by the City and the County. This Agreement will automatically renew from year to year, unless terminated earlier by the Parties.
- (f) Other Instruments. The Parties 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.

CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
Authorized Representative

TRAVIS COUNTY, TEXAS

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

Date: \_\_\_\_\_