

**Amendment to Interlocal Cooperation Agreement
Between City of Pflugerville and Travis County
For Placement of Encasement Pipe
For the Secondary Colorado River Raw Waterline**

This Amendment to Interlocal Cooperation Agreement (this “Amendment”) 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.

Recitals

1. On December 21, 2022, the Parties entered into an interlocal agreement for the placement of encasement pipe for the secondary Colorado River raw waterline along Wells Branch Parkway (the “Original Agreement”).
2. Due to changes in circumstances, the Parties desire to amend and restate the Original Agreement.
3. The Parties intend to conform this Amendment in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001 et seq.

NOW, THEREFORE, the Parties agree as follows:

1. The Parties desire to amend and restate the Original Agreement by replacing the Original Agreement in its entirety with agreement in Attachment 1 (the “Agreement”).
2. No later than 30 days after this Amendment takes effect, the County shall render and send to the City a refund in the amount of \$1,035,070.00 as previously paid by the City as provided in the Original Agreement, and any interest that has accrued thereon. Any written accounting of any and all alleged costs of the County under the Original Agreement shall be provided before the date of approval of this Amendment by the City. The City has the right to audit the County’s records and may request any such audit, or any adjustments or corrections, within 30 calendar days of receipt of the accounting, and the County will refund any amounts due the City within 30 days after delivery of any adjusted final accounting.

3. Effective Date. This Amendment takes effect upon the last date of execution of the Amendment.
4. Multiple Counterparts. This Amendment may be executed by the Parties in one or more counterparts, each of which shall be considered one and the same. Signatures transmitted electronically by e-mail in a "PDF" format or by DocuSign or similar e-signature service shall have the same force and effect as original signatures in this Amendment.

CITY OF PFLUGERVILLE, TEXAS

By: _____

Name: _____

Title: _____
Authorized Representative

Date: _____

TRAVIS COUNTY, TEXAS

By: _____
Andy Brown, County Judge

Date: _____

**Amended and Restated Interlocal Cooperation Agreement
Between City of Pflugerville and Travis County
for Relocation of Raw Waterline
Crossing Wells Branch Parkway Phase 3 Extension**

This Amended and Restated Interlocal Cooperation Agreement (this “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.

Recitals

3. The County intends to construct certain roadway and drainage improvements to Wells Branch Parkway Road from Killingsworth Lane to Cameron Road (the “Roadway Project”), a project approved by Travis County voters in the County’s 2011 bond referendum.
2. The Travis County Commissioners Court and the Pflugerville City Council each finds that the Roadway Project will provide increased safety for persons using Wells Branch Parkway, facilitate the movement of people, goods, and services in the City and Travis County, and benefit the residents of the City and the residents of Travis County.
3. The City has an existing raw waterline crossing that conflicts with the storm water system for the Roadway Project, and that conflict cannot be mitigated. Thus, the Roadway Project requires the relocation of the existing City raw waterline (the “Raw Waterline Relocation”), and by virtue of a pre-existing easement, the County will be responsible for 100% of the costs for the Raw Waterline Relocation.
4. As part of the City’s project entitled “Secondary Colorado River Raw Waterline Project”, the City desires to construct a new raw waterline encasement pipe and add a new valve to the existing raw waterline (the “Raw Water Encasement Project” and, together with the Raw Waterline Relocation, collectively referred to as the “Waterline Improvements”) within the limits of the Roadway Project. The City will be responsible for 100% of the costs for the Raw Water Encasement Project.
5. The County’s design consultant has prepared design plans for the Raw Waterline Relocation to resolve the conflict with the Roadway Project’s proposed storm sewer system has been prepared by the County’s design consultant for the Roadway Project, and the plans have been reviewed by

County and City staff and incorporated into the City's design for its Secondary Colorado River Raw Waterline Project.

6. The County will pay for the Raw Waterline Relocation, currently estimated to be \$636,021.13, but subject to change.
7. For purposes of cost efficiency, scheduling, and transportation planning, the City will include the Raw Waterline Relocation in the City's solicitation for construction bids for the City's Secondary Colorado River Raw Waterline Project.
8. 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:

2. Project Management.

- (a) 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 Roadway Project and the Waterline Improvements (which are more particularly described in **Exhibit A**), 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 Waterline Improvements and the Roadway Project. The County's Director may designate a County Project Manager and may designate other representatives to act on behalf of the County with respect to the Waterline Improvements and the Roadway Project.
- (b) The City's Engineer (the "City's Director") will act on behalf of the City with respect to the Waterline Improvements, 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 Waterline Improvements. 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 Waterline Improvements.
- (c) 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 Parties' Project Managers, it shall be referred as soon as possible to the Parties' Directors 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.

3. Project Development.

- (a) The County has submitted the design, plans, and specifications for the Raw Waterline Relocation to the City.
- (b) The County shall provide the City an electronic copy of the engineering design (native format), plans (dgn/.pdf), specifications (Word/.pdf), and final Engineer's Opinion of Probable Cost Estimate for the Raw Waterline Relocation no later than 30 days after the effective date of this Agreement unless the time period for providing the information is extended by the County's Director at the County's Director's sole discretion.
- (c) The County will be responsible for any required modifications to the engineering design, plans, and specifications for the Raw Waterline Relocation during the development and construction of the Waterline Improvements.
- (d) The County has used a qualified engineering consultant to design the Raw Waterline Relocation.
- (e) The City will be responsible for the review and approval of the engineering design, plans and specifications and for construction inspection and testing for the Raw Waterline Relocation. In addition, the City, will be responsible for the review and approval of any modifications to the engineering design, plans, and specifications for the Raw Waterline Relocation during the development and construction of the Waterline Improvements.
- (f) The City will obtain permits for the Raw Waterline Relocation as required by City rules and regulations.
- (g) Because the Raw Water Encasement Project will be located under the County's road, the City will require the contractor to immediately

take any appropriate remedial action to correct any deficiencies in the Waterline Improvements identified by the County's representative.

- (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 Parties will each provide a designated review team to expedite the review process.

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

- (a) Upon receipt of the County's Plans, Specifications, and Engineering ("PS&E") documents for the Raw Waterline Relocation, the City will review the PS&E documents with the City's engineering consultant. If the City determines that the County's PS&E documents need to be revised, the County shall revise the design documents to comply with the City's specifications. The costs for additional work on the plans, specifications, and estimates for the Raw Waterline Relocation shall be borne by the County.

- (c) After the City determines that no further revisions to the PS&E documents are necessary, the City will include bid items for the Raw Waterline Relocation in the City's bid documents for the Secondary Colorado River Raw Waterline Project, so that each contractor submitting a bid on the Secondary Colorado River Raw Waterline Project will be required to include within the bid those costs, itemized by line item number, attributable to the Raw Waterline Relocation. The City will notify the County of the lowest responsible bid and the amount of the bid component for the Raw Waterline Relocation and, upon written approval from the County, the City will enter into a firm unit-price contract with the successful bidder. Because the City will be responsible for the costs of the Raw Water Encasement Project, the City will not be seeking the County's approval for those costs.

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

- (a) Provide the County written notice of the schedule for integration of the Raw Waterline Relocation PS&E documents for the Waterline Improvements and the City's schedule for the advertisement for bids, award of contract, and construction of the Waterline Improvements;

- (b) Ensure that the contractor or the subcontractor awarded the construction contract has experience in construction of waterlines and is familiar with the City's specifications and standard details for construction of waterlines;
- (c) Provide the County a copy of all contracts affecting the Raw Waterline Relocation;
- (d) Provide the County a monthly itemized statement of all disbursements made and debts incurred during the preceding month relating to the Raw Waterline Relocation, including copies of invoices, statements, vouchers, or any other evidence of payment of debt;
- (e) Provide the County a written copy of all field changes, supplemental agreements, or revisions to the design plans for the Raw Waterline Relocation;
- (f) Provide the County executed change orders, jointly approved by the City and the County, relating to the Raw Waterline Relocation;
- (g) Provide the County a copy of any change order request related to the Raw Waterline Relocation no later than 14 days after the City receives the request;
- (h) Provide the County sufficient notice, documentation, and opportunity for the County to assist in the final review of the construction services performed by the construction contractor with respect to the Raw Waterline Relocation;
- (i) Provide to the County notice, upon satisfactory completion of construction and any applicable warranty or construction performance period, that the City will accept the Raw Waterline Relocation;
- (j) Upon satisfactory substantial completion of the Waterline Improvements, conditionally accept the Raw Waterline Relocation and finally accept the Waterline Improvements upon completion of any applicable warranty or construction performance period; and

- (k) Within 60 days after satisfactory completion of construction of the Waterline Improvements, furnish the County a copy of the record as-built drawings of the for the County's records.
5. Additional Management Duties of the County. The County hereby covenants and agrees to:
- (a) Review and address the City's initial review comments within ten days, and work in good faith to resolve any outstanding issues;
 - (b) Review any change order proposal for the Raw Waterline Relocation by returning the change order request to the City within 45 days of its receipt by the County's Project Manager, with a written recommendation for its disposition; respond to requests for information within ten days and requests for approval of shop drawings within ten days; if the County does not respond to a change order proposal or a request for shop drawing approval within the time-frames set forth in this Subsection, the County will be deemed to have approved the applicable change order proposal or shop drawing.
 - (c) At the option and expense of the County, perform independent inspection and testing on the Raw Waterline Relocation in coordination with the City's inspectors or Project Manager and as agreed to by the City and County Project Managers. Any testing by the County must be scheduled to avoid delaying the Raw Waterline Relocation to the maximum extent practical. In connection therewith, the County will designate inspectors to make any such inspections, including any joint final inspection of the completed Raw Waterline Relocation with the City; the County's inspectors shall communicate any issues to the City Project Manager only;
 - (d) Report any deficiencies observed in the construction of the Raw Waterline Relocation immediately to the City's inspectors and the City Project Manager; and
 - (e) Attend meetings at the request of the City's Project Manager.
6. Liability. To the extent allowed by Texas law, the City and the County agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions.

7. Financial Obligations.

- (a) The County agrees to pay all costs for the Raw Waterline Relocation, including the cost of surveying, design, integration of the Raw Waterline Relocation PS&E documents into the Secondary Colorado River Raw Waterline Project, construction, inspection, testing, and the cost of any change orders made necessary by field changes to address unanticipated conditions under the terms and conditions in this Agreement. The Parties acknowledge that the services for the integration of the County's PS&E documents for the Raw Waterline Relocation will include the review of the plans for any conflicts with the design of the Waterline Improvements and the Roadway Project. The County shall pay project integration and construction costs for the Raw Waterline Relocation through an escrow account with the City. The design and integration cost and estimated construction cost of the Raw Waterline Relocation is set forth in **Exhibit B**, attached hereto.
- (b) As set forth in **Exhibit B**, the project integration cost amount for the Raw Waterline Relocation is \$25,817.00, and the County shall deposit this amount in a City-approved escrow account no later than 30 days after the effective date of this Agreement.
- (c) As set forth in **Exhibit B**, the County's cost estimate for construction costs of the Raw Waterline Relocation is \$553,061.85, plus a 15% contingency, for an estimated total construction cost amount of **\$636,021.13 (which does not include the estimated project integration cost described in Subsection (b) above)**, and the County shall deposit this estimated total construction cost amount in a City-approved escrow account at least 60 days before the anticipated bid advertisement date. If the bid component for the Raw Waterline Relocation exceeds the estimated construction costs, the County will deposit the difference with the City Treasurer no later than 30 days after the City provides notice to the County.
- (d) The City shall obtain the written approval of the County for all change order requests for the Raw Waterline Relocation. The City's Project Manager shall meet with the County's Project Manager to review the contractor's progress reports and invoices for the Raw Waterline Relocation before approval by the City. The City shall return to the County any and all unused portion of the escrow account no later

than 60 days after the Parties' acceptance of the Raw Waterline Relocation.

- (e) For any change orders that are the responsibility of the County, as described above, and that cause the actual costs of design and construction of specific elements of the Raw Waterline Relocation to exceed the County's funding, the County shall make its funds available to the City no later than 60 days after receipt of invoice by the City, such invoice to be accompanied by the change order request from the construction contractor.
- (f) **The County agrees to pay delay damages, statutory interest, demobilization costs, Prompt Payment Act claims, re-mobilization costs, and any other associated costs incurred by the City by reason of the non-payment of any acceptable change order relating to the Raw Waterline Relocation which has not been paid within 60 days of the date of submittal by the City, or within 90 days, if the County has to secure additional funding approval from the Commissioners Court if the initial contingency is already expended.**
- (g) The City Treasurer shall act as Escrow Agent for the management of the County's funds and shall deposit the funds in an interest bearing escrow account. The City 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 County under this agreement shall be returned to the County within 60 days after the completion of the Raw Waterline Relocation. The City shall provide the County with an accounting of the deposits to and disbursements from the City's escrow account. The City will make its records available, at reasonable times, to the County's auditors, or its independent financial advisors or other professionals who provide arbitrage rebate calculations to the County.
- (h) The City Treasurer shall timely pay approved invoices for the Raw Waterline Relocation. The invoices for the Raw Waterline Relocation will be paid based on work completed in accordance with the approved plans and specifications.
- (i) Final Accounting.

- (1) No later than 30 days after the Raw Waterline Relocation are complete or this Agreement is terminated under Section 9(d), the City shall render and send to the County 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 County has previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the Raw Waterline Relocation. The County has the right to audit the City's records and may request any such audit, or any adjustments or corrections, within 30 days of receipt of the accounting.
- (2) After the City has sent any corrected or adjusted final accounting to the County, either (1) the County will pay any amount it owes no later than 60 days after receipt of such final accounting, or (2) the City must refund any amounts due the County within 60 days after delivery of any adjusted final accounting.

8. City Inspection and Testing.

The City shall be responsible for the inspection of the Waterline Improvements, the testing of the construction of the Waterline Improvements, and the final acceptance of the Waterline Improvements. The City shall designate inspectors to make interim and final inspections of the Waterline Improvements. The City's inspectors shall coordinate with the City Project Manager, the County Project Manager and the County inspectors, as reasonable and necessary, in making inspection(s). Notwithstanding any provision to the contrary, the City will promptly perform inspection and testing of the Waterline Improvements and agrees to pay for any delay damages resulting from the City's failure to promptly perform inspection and testing of the Waterline Improvements. Any deficiencies in the construction of the Waterline Improvements identified by the County shall be immediately reported to the City's inspector and then in writing to the City's Project Manager, and be deposited in the U.S. Mail within five days of the identification of any such deficiencies. The City Project Manager shall require the contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the County.

9. Miscellaneous.

- (a) Force Majeure. Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of (1) circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation (but not pending litigation between the Parties), acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), or (2) COVID-19 or any pandemic or other event declared a disaster (including a disaster declared by the County Judge), the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing “force majeure” events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a “force majeure” event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this section. Notwithstanding any provision to the contrary, Force Majeure will not excuse any obligation to make payment under this Agreement unless the event of Force Majeure affects the ability of financial institutions generally to transfer funds in the normal course of business.
- (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: Sereniah Breland, City Manager (or successor)
P.O. Box 589
Pflugerville, Texas 78691-0589

WITH COPY TO: Charles E. Zech (or successor)
City Attorney
Denton Navarro Rodriguez Bernal Santee & Zech
P.O. Box 589
Pflugerville, Texas 78691

COUNTY: Cynthia C. McDonald (or successor)
County Executive, TNR
P. O. Box 1748
Austin, Texas 78767

AND: C.W. Bruner, PMP, CPPB (or successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

WITH COPY TO: Delia Garza (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767
File No. 356.440

- (c) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neutral 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 Waterline Improvements and the Roadway 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 until the completion of the warranty period for the Raw Waterline Relocation and any litigation or other matters surviving the completion of the Raw Waterline Relocation, 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 section 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 section 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 therefor from current revenues available to the paying Party.
- (i) No Third-Party Beneficiary. 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.
- (j) Multiple Counterparts. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be considered one and the same agreement. Signatures transmitted electronically by e-mail in a "PDF" format or by DocuSign or similar e-signature service shall have the same force and effect as original signatures in this Agreement.

[Signatures on following page]

CITY OF PFLUGERVILLE, TEXAS

By: _____

Name: _____

Title: _____
Authorized Representative

Date: _____

TRAVIS COUNTY, TEXAS

By: _____
Andy Brown, County Judge

Date: _____

EXHIBIT A

**Construction Plans for Wells Branch Parkway Extension Phase 3,
Street and Drainage Improvements**

Exhibit B
Raw Waterline Relocation
Estimated Design and Integration Cost and Estimated Construction Cost

DESCRIPTION	Estimated TOTAL COST
7(b) ESTIMATED PROJECT INTEGRATION COSTS	\$25,817.00
7(c) TOTAL ESTIMATED CONSTRUCTION COST	
RAW WATERLINE RELOCATION	
REMOVE STR (SMALL FENCE)	\$ 2115.00
TRENCH EXCAVATION SAFETY PROTECTIVE SYSTEMS (ALL DEPTHS)	\$ 7689.85
30" DUCTILE IRON PIPE CL-250 WITH RESTRAINED JOINTS	\$ 286,250.00
DUCTILE IRON FITTINGS (C-110)	\$ 2007.00
30"X30" WET CONNECTION	\$ 15,000.00
ENCASEMENT PIPE 48" DIA STEEL (1/2" THICK)	\$ 240,000.00
SUBTOTAL	\$ 553,061.85
15% CONTINGENCY	\$82,959.28
7(c) TOTAL ESTIMATED CONSTRUCTION COST	\$636,021.13
7(b) ENGINEERING COST	\$9,388.00
7(b) INSPECTION AND MATERIAL TESTING COST	\$15,204.00
7(b) Construction Management	\$1,225.00
TOTAL Estimated Costs	\$661,838.13