

**WEISS LANE ROADWAY IMPROVEMENTS
INTERLOCAL COOPERATION AGREEMENT
CITY OF PFLUGERVILLE AND TRAVIS COUNTY**

This 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

1. Weiss Lane is currently a two-lane rural roadway.
2. A portion of Weiss Lane is located within the corporate limits of the City, and a portion of Weiss Lane is located within the unincorporated area of the County.
3. The City and the County desire to cooperate in the planning, design, and construction of improvements to Weiss Lane by reconstructing Weiss Lane as a two-lane road section with paved four-foot wide shoulders, designated turn lanes, and drainage improvements from East Pecan Street to Cele Road (the "Project" or "Weiss Lane Improvements").
4. The Project location is depicted in attached **Exhibit A**.
5. The Project is comprised of approximately 4300 linear feet located within the corporate limits of the City (the "City Project") and approximately 11,700 linear feet located within the unincorporated area of the County (the "County Project").
6. Bond funds for the County Project were approved by Travis County voters in the November 2011 Travis County Bond Election.
7. Bond funds for the City Project were approved by City of Pflugerville voters in the City's November 2014 Bond Election.
8. The Travis County Commissioners Court and the Pflugerville City Council each finds that the Project will provide increased safety for persons using Weiss Lane, facilitate the movement of people, goods, and services in the City of Pflugerville and Travis County, and benefit the residents of the City of Pflugerville and the residents of Travis County.
9. For purposes of cost efficiency, scheduling, and transportation planning, the Parties desire to combine the development of their respective portions of the Project.
10. The Parties intend to conform this Agreement in all respects to the Interlocal Cooperation Act, Texas Government Code Section 791.001 et seq.

NOW, THEREFORE, the Parties agree as follows:

1. Project Management.

- (a) The City will provide project management services for the development and the construction of the Project, as set forth in this Agreement.
- (b) Brandon Wade (or his successor), the City Manager (the “City Manager”) of the City of Pflugerville 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 Manager may designate a City Project Manager and may designate other representatives to act on behalf of the City with respect to the Project.
- (c) The County Executive of the Travis County Transportation and Natural Resources Department (the “County 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 Executive may designate a County Project Manager and may designate other representatives to act on behalf of the County with respect to the Project.

2. Project Development.

- (a) With the exception of the acquisition of right-of-way and easements for the Project, the City will be responsible for the management of the development and construction of the Project, including (i) development of the engineering design and plans and specifications for the roadway safety improvements, including paved shoulders, designated turn lanes, and associated drainage improvements; (ii) surveying; (iii) obtaining all required permits for the City Project; (iv) performing any required environmental assessments for the Project; (v) obtaining any required environmental clearances associated with the City Project; and (vi) acceptance of the completed work on the City Project.
- (b) The plans and specifications for the Project shall comply with the latest Texas Department of Transportation design and construction standards and applicable County and City design and construction standards, unless otherwise agreed to by the Parties. The plans and specifications will include the scope of design set forth in attached Exhibit A. In addition, the City will ensure that the plans

and specifications will comply with the applicable Texas Accessibility Standards and the Americans with Disabilities Act.

(c) Procurement of Professional Services.

- (1) The City will select and contract for professional services with the most highly qualified engineering consultant(s) in accordance with Subchapter A of Chapter 2254 of the Texas Government Code and in a manner that is consistent with the County's policies regarding procurement of professional services.
- (2) The City will ensure that the design engineer(s) and other consultants provide professional liability, workers compensation, automobile liability, and general liability insurance in accordance with the standard requirements of the City for such projects, and the City will have the County and the City named as additional insureds with respect to such coverage. The City will provide a waiver of subrogation on the auto liability, general liability, and worker's compensation coverages.
- (3) The City will obtain the County's concurrence of the selection of the consultant for the Project prior to awarding the professional services agreement for the design engineer.

(d) Project Schedule.

- (1) The City will ensure that the plans and specifications for the Project are 90% complete within 18 months after the effective date of this Agreement, unless the Parties agree otherwise.
 - (2) The City will ensure that construction of the Project is completed and accepted within 18 months after completion of right-of-way acquisition by the Parties, unless the Parties agree otherwise.
- (e) 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 their respective portions of 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 their respective portions of the Project, during the development and construction of the Project.
- (f) 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.

- (g) Acquisition of Right of Way and Easements. The County will be responsible for the acquisition of the right-of-way and easements for the Project and the City will cooperate in the acquisition of the real property interests required for the Project. The County will expeditiously obtain appraisals, negotiate with landowners, and file and prosecute any necessary condemnation action. The County will inform the City of the progress of negotiations for the acquisition of the right-of-way, including any hearing dates for any necessary condemnation proceedings. The City will provide the County with all of its information relating to the right-of-way and easements required for the Project and will ensure that its engineering consultant is available to participate in any condemnation proceeding requiring testimony or support regarding the Project design. Notwithstanding the foregoing, if the County Executive determines, solely in his discretion, that the County cannot expeditiously acquire right-of-way on behalf of the City, the County Executive will promptly notify the City Manager of his determination, and the Parties will each proceed to acquire all necessary right-of-way and easements within their respective jurisdictions. The City and the County each agree to pay their respective portion of right-of-way and easement acquisition costs.
- (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 provide a designated review team to expedite the review process for their respective portions of the Project.
- (i) The City shall require the consultant to immediately take any appropriate remedial action to correct any deficiencies with the Project design identified by the County.
- (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 City 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. 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 City will notify the County of the lowest responsible bidder and the amount of the bid for the Parties' respective portions of the Project, and the County shall respond within five working days. The County will provide for its portion of the Project in accordance with Section 8, and the City will be responsible for any and all other funding for the Project.

4. Additional Management Duties of the City.

The City hereby covenants and agrees to:

- (a) Provide 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 County's review and approval;
- (b) Provide written responses to the County's initial plan review comments within 14 days of receipt from the County;
- (c) Provide written notice to the County of the schedule for design and the advertisement for bids, award of contract, and construction of the Project;
- (d) Provide written notice to the County of the bid tabs for the Project;
- (e) Coordinate utility relocations for the Project and coordinate 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 the County a written copy of all 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;
- (g) Provide the County a monthly itemized statement of all disbursements made and debts incurred during the preceding month relating to the Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt;
- (h) Provide the County documentation and sufficient notice, not to be less than ten working days of the submittal, for the County to review and jointly approve the construction contractor's application for final payment with accompanying information regarding compliance with the County's minority and women-owned business policy;

- (i) Provide the County's Project Manager a copy of any change order request related to the Project within two working days of its receipt by the City for the County Project Manager's review and approval;
- (j) Provide the County a copy of executed change orders related to the portions of the Project that are located within the unincorporated area of the County;
- (k) Provide the County copies of inspection test results and explanations of how unacceptable results were mitigated;
- (l) Coordinate with the City and County Project Managers, as reasonable and necessary;
- (m) Attend meetings at the request of the County Project Manager;
- (n) Upon satisfactory completion of construction and any applicable warranty or construction performance period, accept the Project and furnish the County a copy of the record drawings of the Project for the County's records in a format specified by the County; and
- (o) Provide the County Project Manager at least 72 hours written notice of any public meetings the City intends to conduct related to the Project.

5. **Additional Management Duties of the County.** The County hereby covenants and agrees to provide:

- (a) Reviews and approvals of the submitted plans and specifications for the Project by providing any initial comments within 14 days of submittal, and follow-up reviews and approvals of the City's responses to those initial comments within seven days, and work in good faith to resolve any outstanding issues;
- (b) Reviews for any applicable permit applications required by the County, issuance of development permits for the County portion of the Project, and good faith efforts to resolve any outstanding issues;
- (c) Reviews of any change order proposal for the County portion of the Project by returning the change order request to the City within seven working days of its receipt by the County's Project Manager, with a written recommendation for its disposition;
- (d) At the option and expense of the County, the County may perform any additional independent inspection and testing on its portion of the Project in coordination with the City's inspectors and as agreed to by the City and County 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 County will designate inspectors to make any such inspections, including any joint final inspection of the completed County portion

of the Project with the City; the County's inspectors shall communicate any issues to the City's inspectors only, and City inspectors will in turn communicate those issues to the construction contractor;

- (e) Reporting of any deficiencies observed in the construction of the Project immediately to the City's Project Manager with an additional written report within two working days;
- (f) 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 County portion of the Project within five working days of receiving them from the City;
- (g) Attendance at meetings at the request of the City's Project Manager;
- (h) Design review comments on the County portion of the Project to the City at appropriate agreed-to intervals of design complete stages within one week of receiving design documents from the City;
- (i) Cooperation with the City to obtain any applicable permits and environmental clearances for the County portion of the Project;
- (j) Utility relocations that are required for the County portion of the Project that are not legally the responsibility of the utility owner; and
- (k) County approval of the construction of the County's portion of the Project upon satisfactory completion of construction and any applicable warranty or construction performance period and acceptance of the completed work.

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 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.

7. **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. In addition, the City must require the construction contractor to provide workers compensation insurance, auto liability and general liability insurance in the standard amounts required by the City. The City will require the construction contractor to include the City and the County as additional insureds on the general liability and auto insurance policies and to provide a waiver of

subrogation on the auto liability, general liability and worker's compensation coverages.

8. Financial Obligations.

- (a) The County and City will provide funding for the actual cost of design, regulatory permitting, utility relocations, construction, construction management, inspection, testing, and other costs for their respective portions of the Project as set forth in attached **Exhibit B.**
- (b) The Parties estimate that the design cost for the County Project is Five Hundred Eighty-Four Thousand Two Hundred Dollars (\$584,200). Within 30 days after the completion of the Project, unless otherwise agreed to by the County and the City in writing, the County will reimburse the City the County's share of design cost. Additional funding for the design cost of the County Project will require the approval of the Travis County Commissioners Court.
- (c) The Parties estimate that the design cost for the City Project is Two Hundred Eighty-Seven Thousand Five Hundred Dollars (\$287,500). Any additional funding for the design cost of the City Project will require the approval of the City Council.
- (d) Within 60 days after the acceptance of a successful bid for the construction of the Project, the County will deposit into an escrow account with the City the successful bidder's estimate of the construction cost for the County's portion of the Project, which amount shall not exceed Five Million Eight Hundred Forty-Two Thousand Dollars (\$5,842,000). Additional funding for the construction cost of the County Project will require the approval of the Travis County Commissioners Court.
- (e) The City shall obtain the written approval of the County for all change orders affecting the design and construction of the County portion of the Project prior to the City issuing the approved change order to the contractor, such approval not to be unreasonably withheld or delayed. The County's Project Manager shall meet with the City's Project Manager to review the contractor's progress reports and invoices for the Project before approval by the City.
- (f) 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 County's portion of the Project to exceed the County's funding, the County shall make its funds available to the City within 90 days of receipt of invoice by the City, such invoice to be accompanied by the change order request from the construction contractor, which has been recommended for

approval by the City and the County's Inspector and Project Manager.

- (g) 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 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 County and which has not been paid within 30 days of the date of submittal by the City.
- (h) The City shall promptly notify the County of any such claim for damages by the construction contractor for non-payment of any acceptable change order as described above and the City and the County shall negotiate with the construction contractor for the resolution of the claim. In the event that a decision is made by the County to litigate such a claim, the County 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.
- (i) The City Finance Director 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 30 calendar days after the completion of the Project. The City shall provide the County with an accounting of the deposits to and disbursements from the County'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.
- (j) The City Finance Director 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. Termination.

- (a) 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 Executive and the City Manager, then either Party may terminate this Agreement by providing written notice of termination to the other Party. In the event of such termination, the Parties shall be without further duty or obligation to each other; provided, however, each Party shall remain responsible for its respective share of the Project costs incurred prior to the date of termination. Payment for such costs shall be rendered within 30 days after receipt of a written invoice for payment unless such costs are the subject of dispute between the Parties.

- (b) Within 30 days after either the completion of the Project or the termination of this Agreement, whichever date is sooner, the City must provide to the County a copy of:
 - (1) all executed change orders and addenda related to the Project;
 - (2) the record drawings of the Project, if any, for the County's records in a format to be specified by the County; and
 - (3) all pay requests and payment records related to the Project.

10. Final Accounting.

- (a) Within 30 days after the Project is complete or this Agreement is terminated, whichever is sooner, 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 Project. 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.
- (b) After the City has sent any corrected or adjusted final accounting to the County, the County will pay any amount it owes no later than 30 days after receipt of such final accounting. The City must refund any amounts due the County within 30 days after delivery of any adjusted final accounting.

11. Inspection of Books and Records.

- (a) The Parties agree to maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and to make such materials available to each other, and their duly authorized representatives,

for review and inspection at their respective office during the period that this agreement is in effect and for four years after the Project is completed or until any impending litigation or claims are resolved, whichever is later.

- (b) The City and the and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

12. 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, City Manager (or successor)
 P.O. Box 589
 Pflugerville, Texas 78691-0589

WITH COPY TO: George Hyde (or successor)
 City Attorney
 Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.
 2500 W. William Cannon, Suite 609
 Austin, Texas 78745

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

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

WITH COPY TO: David Escamilla (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767
File No. 291.486

- (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 until the completion of the Project and any litigation or other matters surviving the completion of the Project, 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 therefor from current revenues available to the paying party.

CITY OF PFLUGERVILLE, TEXAS

By: _____
Brandon Wade, City Manager

Date: _____

Attest: _____
Karen Thompson, City Secretary

Date: _____

TRAVIS COUNTY, TEXAS

By: _____
Samuel T. Biscoe, County Judge

Date: _____

EXHIBIT A
PROJECT LOCATION