

**E. PFLUGERVILLE PARKWAY/JESSE BOHLS  
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. Both the City’s Transportation Master Plan and the County’s Transportation Blueprint show a regionally significant 4-lane divided east-west corridor extending within the City from IH35/TX-45 along Pflugerville Parkway, and continuing within the County generally along Jesse Bohls Drive with an ultimate connection to FM 1100 and Elgin, Texas.
2. The City and the County desire to cooperate in the planning, design, and construction of improvements to a segment of this corridor extending from TX-130 to Cameron Rd.
3. Most of the corridor is within existing right-of-way with exceptions for a portion within the City east of the intersection of E. Pflugerville Parkway and Weiss Lane, and within the County from the 90 degree turn to Cameron Rd. The Project conceptual location is depicted in attached **Exhibit A**.
4. The project will ultimately include obtaining the required 120’ right-of-way, design and construction of the curb and gutter 4-lane divided roadway with storm sewer, street lights and 10 foot wide hike and bike paths. The Parties anticipate applying for federal funding for this Project and intend for the Project to comply with the National Environmental Policy Act (“NEPA”).
5. The financial obligation for this Agreement is for a 30 percent design. The Parties intend to amend this Agreement to address funding for the remaining engineering design, plans and specifications and construction for the Project.
6. The Project is comprised of approximately 2.5 miles located within the corporate limits of the City (the “City Project”) and approximately 1.8 miles located within the unincorporated area of the County (the “County Project”).
7. Bond funds for the County Project were approved by Travis County through Certificates of Obligation for Safety Projects.
8. For the City Project, both General Obligation Bond funds approved by City of Pflugerville voters in the City’s November 2018 Election, and Certificates of Obligation for FY2019 and FY2020 are programmed for use.

9. The Travis County Commissioners Court and the Pflugerville City Council each finds that the Project will provide increased safety for persons using this corridor, 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.
10. For purposes of cost efficiency, scheduling, and transportation planning, the Parties desire to combine the development of their respective portions of the Project.
11. The Parties intend to conform to 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) Sereniah Breland (or her successor), 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) 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 and intersection improvements, including curb and gutter, storm sewer, hike/bike trail, and associated drainage improvements; (ii) surveying; (iii) obtaining all required permits; (iv) obtaining any required

environmental clearances; and (v) acceptance of the completed work.

- (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) 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, the City has selected LJA Engineering (the "Consultant") as the most highly qualified engineering consultant(s) and is negotiating a professional engineering agreement for a 30% detailed schematic design. The City will ensure that its contract with the Consultant contains a provision that the Consultant will look solely to the City for all sums coming due thereunder and that the County will have no obligation to the Consultant. The City will provide the County a copy of the City's contract with the Consultant no later than five business days after the effective date of the City's contract with the Consultant.
  - (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 has obtained the County's concurrence of the selection of the Consultant and will ensure the County's concurrence of the Consultant's scope and fee for the Project.
- (d) 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.

- (e) 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.
- (f) Acquisition of Right of Way and Easements. The Parties will be responsible for the acquisition of the right-of-way and easements within their own jurisdiction for the Project. Through the City's agreement with LJA, the City will provide the County metes and bounds descriptions for all right-of-way and easements required for the Project. The City and the County each agree to pay their respective portion of right-of-way and easement acquisition costs.
- (g) 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.
- (h) 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.
- (i) The City and the County each agree to pay applicable utility relocation costs that are incurred within their respective jurisdictions.

**3. 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 right-of-way acquisition;

- (d) Provide the County a copy of all contracts and billings and evidence of payment affecting the Project, including monthly progress reports with a schedule update and status of all tasks;
- (e) 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;
- (f) 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;
- (g) Coordinate with the City and County Project Managers, as reasonable and necessary;
- (h) Attend meetings at the request of the County Project Manager; and
- (i) Provide the County Project Manager at least 72 hours written notice of any public meetings the City intends to conduct related to the Project.

4. **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) Attendance at meetings at the request of the City's Project Manager;
- (e) 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; and
- (f) Cooperation with the City to obtain any applicable permits and environmental clearances for the County portion of the Project;

5. **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.

**6. 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. The County will compensate the City for costs to manage the County's portion of the project.
- (b) The Parties estimate that the 30% detailed schematic design cost (the "Design Cost") for the County Project will not exceed \$450,000, and management (the "Management Cost" will be 5% of that cost or \$22,500. Within 30 days after this Agreement is fully executed by the Parties, the County will deposit into an escrow account with the City the County's share of Design and Management Cost. The County is under no obligation to provide additional funding for the design cost of the County Project unless the additional funding is approved by the Travis County Commissioners Court.
- (c) The Parties estimate that the design cost for the City Project will not exceed \$450,000. Any additional funding for the design cost of the City Project will require the approval of the City Council.
- (d) The City shall obtain the written approval of the County for all change orders affecting the design of the County portion of the Project prior to the City issuing the approved change order to the design engineer, such approval not to be unreasonably withheld or delayed.
- (e) For any change orders that are the responsibility of the County, as described above, and that cause the actual costs of design 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.
- (f) The Parties anticipate submitting the Project for construction funding through the US Build Grant and the Capital Area Metropolitan Organization. Once funds are secured, this Agreement will be amended to provide detail regarding financial obligations for full design and construction.
- (g) 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.

- (h) 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 contract.

## **7. Termination.**

- (a) If a disagreement between the Parties arises regarding engineering design, design and construction standards, plans and specifications, 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.

## **8. 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.

**9. 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.

**10. 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:                               Seremiah 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, Rocha, Bernal, Hyde & Zech, P.C.  
2500 W. William Cannon, Suite 609  
Austin, Texas 78745

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

AND: Bonnie S. Floyd, MBA, CPPO, CPPB (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. 356.177

- (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: \_\_\_\_\_  
Sereniah Breland, City Manager

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

Attest: \_\_\_\_\_  
Karen Thompson, City Secretary

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

**TRAVIS COUNTY, TEXAS**

By: \_\_\_\_\_  
Sarah Eckhardt, County Judge

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