

**PLACEMENT OF ENCASEMENT PIPE FOR THE SECONDARY
COLORADO RIVER RAW WATERLINE
ALONG WELLS BRANCH PARKWAY
INTERLOCAL COOPERATION AGREEMENT
BETWEEN CITY OF PFLUGERVILLE AND TRAVIS COUNTY**

This Interlocal Cooperation 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. 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 Roadway Project requires the relocation of an 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. The City desires to construct a new raw waterline encasement pipe (the “Raw Water Encasement Project,” and, together with the Raw Waterline Relocation, 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 Roadway Project and the Waterline Improvements are referred to collectively in this Agreement as the “Combined Projects.”
6. For purposes of cost efficiency, scheduling, and transportation planning, the Parties desire to cooperate in the development of the Combined Projects.
7. The County will include the Waterline Improvements in the County’s solicitation for construction bids for the Roadway 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:

1. 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 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.

2. Project Development.

- (a) The City will be responsible for the development of the design, plans, specifications, construction inspection, and testing for the Raw Water Encasement Project. The plans and specifications for the Raw Water Encasement Project shall be in accordance with the design and construction standards of the County.

- (b) The City shall provide the County three hard copies and one electronic copy of the engineering design (native format), plans (dgn/.pdf), specifications (Word/.pdf), and final Engineer's Opinion of Probable Cost Estimate ("OPCC") for the Raw Water Encasement Project no later than 30 calendar days after the City executes this Agreement, which date may be extended by the County's Director at the County's Director's sole discretion.
- (c) The City will be responsible for any required modifications to the engineering design, plans, and specifications for the Raw Water Encasement Project during the development and construction of the Roadway Project.
- (d) The City will use its own staff or a qualified engineering consultant to design the Raw Water Encasement Project.
- (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 and for construction inspection and testing for the Raw Water Encasement 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 the Raw Water Encasement Project during the development and construction of the Raw Water Encasement Project.
- (f) The City will obtain permits for the Raw Water Encasement Project as required by City and County rules and regulations and be responsible for any associated fees required for the Raw Water Encasement Project.
- (g) The County will require the contractor to immediately take any appropriate remedial action to correct any deficiencies in the Waterline Improvements identified by the City'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 City will provide a designated review team to expedite the review process.

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

- (a) Upon receipt of the City's Plans, Specifications, and Engineering ("PS&E") documents for the Raw Water Encasement Project, the County will review the PS&E documents with the County's

engineering consultant. If the County determines that the City's PS&E documents need to be revised, the City shall revise the design documents to comply with the County's specifications. The costs for additional work on the plans, specifications, and estimates for the Raw Water Encasement Project shall be borne by the City.

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

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

- (a) Provide the City written notice of the schedule for integration of the Raw Water Encasement Project PS&E documents into the Roadway Project and the County's schedule for the advertisement for bids, award of contract, and construction of the Roadway Project;
- (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 City a copy of all contracts affecting the Raw Water Encasement Project;
- (d) Provide the City a monthly itemized statement of all disbursements made and debts incurred during the preceding month relating to the Raw Water Encasement Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt;
- (e) Provide the City a written copy of all field changes, supplemental agreements, or revisions to the design plans for the Raw Water Encasement Project;

- (f) Provide the City executed change orders, jointly approved by the City and the County, relating to the Waterline Improvements;
- (g) Provide the City a copy of any change order request related to the Waterline Improvements no later than 14 days after the County receives the request;
- (h) Provide the City sufficient notice, documentation, and opportunity for the City to assist in the final review of the construction services performed by the construction contractor with respect to the Waterline Improvements;
- (i) Provide to the City a recommendation, upon satisfactory completion of construction and any applicable warranty or construction performance period, that the City accept the Waterline Improvements; and
- (j) Within 60 calendar days after satisfactory completion of construction of the Roadway Project, furnish the City a copy of the record as-built drawings of the Waterline Improvements for the City's records.

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

- (a) Review and address the County's initial review comments within five calendar days, and work in good faith to resolve any outstanding issues;
- (b) Review any change order proposal for the Raw Water Encasement Project by returning the change order request to the County within five calendar days of its receipt by the City's Project Manager, with a written recommendation for its disposition; respond to requests for information within three calendar days and requests for approval of shop drawings within ten calendar days; if the City does not respond to a change order proposal or request shop drawing approval within the time-frames set forth in this Subsection, the City will be deemed to have approved the applicable change order proposal or shop drawing.
- (c) At the option and expense of the City, perform independent inspection and testing on the Waterline Improvements in coordination with the County's inspectors or Project Manager and as agreed to by the City and County Project Managers. Any testing by the City must be scheduled to avoid delaying the construction of the Roadway Project to the maximum extent practical. In connection

therewith, the City will designate inspectors to make any such inspections, including any joint final inspection of the completed Waterline Improvements with the County; the City's inspectors shall communicate any issues to the County Project Manager only;

- (d) Report any deficiencies observed in the construction of the Waterline Improvements immediately to the County's inspectors and the County Project Manager;
 - (e) Attend meetings at the request of the County's Project Manager; and
 - (f) Upon satisfactory substantial completion of the Waterline Improvements, conditionally accept the Waterline Improvements and will finally accept the Waterline Improvements upon completion of any applicable warranty or construction performance period.
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 City agrees to pay all costs for the Raw Water Encasement Project, including the cost of surveying, design, integration of the Raw Water Encasement Project PS&E documents into the Roadway 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 City's PS&E documents will include the review of the plans for any conflicts with the design of the Roadway Project. The City shall pay project integration and construction costs for the Raw Water Encasement Project through an escrow account with Travis County. The design and integration cost and estimated construction cost of the Raw Water Encasement Project is set forth in **Exhibit B**, attached hereto.
 - (b) As set forth in **Exhibit B**, the project integration cost amount for the Raw Water Encasement Project is currently estimated to be \$2,860.00, and the City shall deposit this amount in a County-approved escrow account no later than 30 calendar 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 Water Encasement Project is \$897,574.00, plus a

15% contingency, for an estimated total construction cost amount of **\$1,032,210.10 (which does not include the estimated project integration cost described in Subsection (b) above)**, and the City shall deposit this estimated total construction cost amount in a County-approved escrow account at least 60 calendar days before the anticipated bid advertisement date. If the bid component for the Raw Water Encasement Project exceeds the estimated construction costs, the City will deposit the difference with the County Treasurer no later than 30 calendar days after the County provides notice to the City.

- (d) The County shall obtain the written approval of the City for all change order requests for the Raw Water Encasement Project. 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 Water Encasement Project before approval by the County. The County shall return to the City any and all unused portion of the escrow account no later than 60 calendar days after the City's acceptance of the Raw Water Encasement Project.
- (e) For any change orders that are the responsibility of the City, as described above, and that cause the actual costs of design and construction of specific elements of the Raw Water Encasement Project to exceed the City's funding, the City shall make its funds available to the County no later than 60 calendar days after receipt of invoice by the County, such invoice to be accompanied by the change order request from the construction contractor.
- (f) The City agrees to pay delay damages, statutory interest, demobilization costs, Prompt Payment Act claims, re-mobilization costs, and any other associated costs incurred by the County by reason of the non-payment of any acceptable change order which has not been paid within 60 calendar days of the date of submittal by the County, or within 90 calendar days, if the City has to secure additional funding approval from the City Council if the initial contingency is already expended
- (g) The County Treasurer shall act as Escrow Agent for the management of the City's funds and shall deposit the funds in an interest bearing escrow account. The County shall invest the funds in accordance with the Public Funds Investment Act, and any other applicable laws or bond covenants. The interest and any unused portion of the public funds provided by the City under this agreement shall be returned to the City within 60 calendar days after the completion of the Roadway Project. The County shall provide the City with an accounting of the deposits to and disbursements from

the County's escrow account. The County will make its records available, at reasonable times, to the City's auditors, or its independent financial advisors or other professionals who provide arbitrage rebate calculations to the City.

(h) The County Treasurer shall timely pay approved invoices for the Raw Water Encasement Project. The invoices for the Raw Water Encasement Project will be paid based on work completed in accordance with the approved plans and specifications.

(i) Final Accounting.

(1) No later than 30 calendar days after the Roadway Project is complete or this Agreement is terminated, the County shall render and send to the City 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 City has previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the Raw Water Encasement Project. 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.

(2) After the County has sent any corrected or adjusted final accounting to the City, the City will pay any amount it owes no later than 60 calendar days after receipt of such final accounting. The County must refund any amounts due the City within 60 calendar 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 City shall be immediately reported to the County's inspector and then in writing to the

County's Project Manager, and be deposited in the U.S. Mail within five calendar days of the identification of any such deficiencies. The County Project Manager shall require the contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the City.

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 calendar 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 Article. 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 Rocha Bernal & 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: Bonnie Floyd, MBA, CPPO, 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 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 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 Roadway Project and any litigation or other matters surviving the completion of the Roadway 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.
- (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 3, Street and
Drainage Improvements**

Exhibit B
Raw Water Encasement Project
Estimated Design and Integration Cost and Estimated Construction Cost

DESCRIPTION	Estimated TOTAL COST
7(b) ESTIMATED PROJECT INTEGRATION COSTS	\$ 2,860.00
7(c) TOTAL ESTIMATED CONSTRUCTION COST	
RAW WATER LINE ENCASEMENT	
431 LF ENCASEMENT PIPE 66" DIA STEEL (5/8" THICK)	\$ 804,074.00
30" GATE VALVE	
1 - GATE VALVE, AWWA C509, 30" DIA	\$ 93,500.00
	\$ 897,574.00
15% CONTINGENCY	\$ 134,636.10
7(c) TOTAL ESTIMATED CONSTRUCTION COST	\$ 1,032,210.10
TOTAL Estimated Costs	\$ 1,035,070.10

