

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

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 referred to individually as “Party” and collectively 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 entered into an agreement dated December 16, 2014 (the “Original Agreement”) to reconstruct 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 “Original Project” or “Original Weiss Lane Improvements”).
4. The Original Project location is labeled as “Original County and City Projects (Safety Improvements)” in attached **Exhibit A**.
5. The Original Project was comprised of approximately 4300 linear feet located within the corporate limits of the City (the “Original City Project”) and approximately 11,700 linear feet located within the unincorporated area of the County (the “Original County Project”).
6. Bond funds for the Original County Project were approved by Travis County voters in the November 2011 Travis County Bond Election.
7. Bond funds for the Original City Project were approved by City of Pflugerville voters in the City’s November 2014 Bond Election.
8. City of Pflugerville voters approved bond funds for additional improvements to Weiss Lane in the City’s November 2015 Bond Election.
9. The Weiss Lane Bridge, also known as “Travis County Bridge #229,” is a County-owned, functionally obsolete, one-lane bridge over the South Fork of Wilbarger Creek.
10. The Parties desire to revise the scope of the Original Project to include:
 - (a) widening Weiss Lane to a four-lane urban roadway with curb and gutter from Travis County Bridge #229 to the intersection of Weiss Lane and Kelly Lane (the “4-Lane Improvements”) and

- (b) replacing Travis County Bridge #229 with a new concrete bridge that will be offset and have at least two lanes and shoulders and that will be constructed west of the bridge's current location (the "Weiss Lane Bridge Improvements").
- 11. The County also desires to:
 - (a) make safety improvements to Hodde Lane from the intersection of Hodde Lane and Cele Road, including improvements to the intersection itself, to the "S" curve on Hodde Lane to meet the geometric design standards of the future MAD-4 and current County standards (the "Hodde Lane Improvements"), and
 - (b) make safety improvements to Cele Road from the intersection of Cele Road and Hodde Lane to the westernmost driveway of the Pflugerville Independent School District middle school located on Cele Road (the "Cele Road Improvements)."
- 12. The Original Weiss Lane Improvements and the 4-Lane Improvements are referred to collectively as the "Weiss Lane Roadway Improvements."
- 13. The Weiss Lane Roadway Improvements and the Weiss Lane Bridge Improvements are referred to collectively as the Weiss Lane Project. The Weiss Lane Project does not include the Hodde Lane Improvements or the Cele Road Improvements.
- 14. In attached Exhibit A,
 - (a) the general location of the Original Weiss Lane Improvements is labeled as "Original County and City Projects (Safety Improvements)", and
 - (b) the general location of the 4-Lane Improvements is labeled as "Additional County and City Projects (4-Lane Improvements)."
- 15. The County's total maximum cost contributions for the Weiss Lane Project are set out in attached **Exhibit B**. The City will pay all costs for the Weiss Lane Project that exceed the County's total maximum cost contributions in accordance with this Agreement.
- 16. Except for the Parties' obligation to coordinate as set forth in Section 1(d) herein, the County shall be the sole entity for all management, design review and approval, permitting, construction funding, inspection, property acquisition, utility coordination, and other professional services related to the Hodde Lane Improvements and Cele Road Improvements as stated in Recitals 11(a) and 11(b), referenced above.
- 17. The County currently has funds only for preliminary engineering for the development of the Hodde Lane Improvements and the Cele Road improvements. The County will be recommending providing additional funds for completing the design, right-of-way acquisition, and construction of the Hodde Lane Improvements and the Cele Road Improvements through its next bond referendum, currently anticipated as early as 2017 and as late as 2019.

18. The Travis County Commissioners Court and the Pflugerville City Council each finds that the Weiss Lane Project, the Hodde Lane Improvements, and the Cele Road Improvements will provide increased safety for persons using Weiss Lane, Hodde Lane, and Cele Road, 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.
19. For purposes of cost efficiency, scheduling, and transportation planning, the Parties desire to combine the development of their respective portions of the Weiss Lane Project via this Agreement.
20. 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 to enter into this Amended and Restated Weiss Lane Interlocal Agreement as follows:

1. Project Management.

- (a) The City will provide project management services for the development and the construction of the Weiss Lane 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 Weiss Lane 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 Weiss Lane 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 Weiss Lane 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 Weiss Lane 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 Weiss Lane 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 Weiss Lane Project.
- (d) The Parties agree to coordinate with respect to the design and construction of the Hodde Lane Improvements and the Cele Road Improvements in order to avoid design and construction-related conflicts with the Weiss Lane Project.

2. Project Development.

- (a) The City will be responsible for the management of the development and construction of the Weiss Lane Project, including:
 - (1) Development of the engineering design and plans and specifications for the roadway safety improvements, including paved shoulders, designated turn lanes, and associated drainage improvements;
 - (2) Surveying;
 - (3) Obtaining all required permits for the Weiss Lane Project;
 - (4) Acquiring right-of-way and easements for the Weiss Lane Project;
 - (5) Performing any required environmental assessments for the Weiss Lane Project;
 - (6) Obtaining any required environmental clearances associated with the Weiss Lane Project; and
 - (7) Acceptance of the completed work on the Weiss Lane Project.
- (b) The plans and specifications for the Weiss Lane 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. 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) Pursuant to the Original Agreement, the City selected LJA Engineering, Inc. (“LJA Engineering”) as the engineering consultant for the Original Project. LJA Engineering, or its successor, also is hereinafter referred to as “Project Engineer.”
 - (A) The Parties agree to use LJA Engineering for the Weiss Lane Project.
 - (B) The County anticipates that it will enter into a contract with LJA Engineering to provide design services for the Hodde Lane Improvements and the Cele Road Improvements pursuant to an exemption order that will be submitted to the Travis County Commissioners Court. Notwithstanding any provision to the contrary, nothing in this Agreement requires the County to enter into a contract with LJA Engineering.
 - (2) The City will ensure that the Project Engineer 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 written concurrence for any proposed changes to the City's contract with LJA Engineering regarding the Weiss Lane Project before finalizing those changes if those proposed changes will affect the portions of the Weiss Lane Project that are located within the unincorporated area of the County. If the City does not receive any written objections from the County within five working days after the City notifies the County of a proposed change to the City's contract with LJA Engineering, the County will be deemed to have concurred with the proposed change. Within 30 days after the effective date of this Agreement, the City will provide the County a copy of the City's contract with LJA Engineering (the "LJA Contract") regarding the Weiss Lane Project. The City will provide the County a copy of any amendments to the LJA Contract that affect the Weiss Lane Project within 15 days after the effective date of the amendment.

(d) Project Schedule.

- (1) The City will ensure that the plans and specifications for the Weiss Lane Project are 90% complete within 9 months after the effective date of this Agreement, unless the Parties agree in writing otherwise.
 - (2) The City will ensure that construction of the Weiss Lane Project is completed and accepted within 18 months after completion of right-of-way acquisition by the Parties, unless the Parties agree in writing 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 Weiss Lane 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 Weiss Lane Project, during the development and construction of the Weiss Lane Project.
- (f) A County or City permit shall be required only for any part of the Weiss Lane 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 Weiss Lane Project. The issuance of any permit by either the County or the City shall not be unreasonably delayed or withheld.

(g) Acquisition of Right-of-Way and Easements.

The City will manage the process for acquisition of Weiss Lane Project right-of-way and associated easements in both the corporate limits of the City and unincorporated area of Travis County.

- (1) The County agrees to provide assistance in negotiations with landowners in the unincorporated area of Travis County only in coordination with the City's right-of-way negotiators.
- (2) The Parties agree to comply with applicable federal and state laws, regulations, and procedures in the acquisition of the necessary right-of-way and associated easements for the Weiss Lane Project.
- (3) The City will provide the following services to the County with regard to the acquisition of Weiss Lane Project right-of-way and associated easements located wholly or partially in the unincorporated area of Travis County:
 - (A) In coordination with the County, the City will attempt to obtain donations of as many parcels as reasonably possible.
 - (B) The City will obtain any necessary title commitments, appraisals, land plans, appraisal reviews, and other professional services pursuant to its standard contracts for professional services with title companies, appraisers, land planners, and other professionals.
 - (C) The City will prepare all necessary contracts and documents, subject to the approval of the County, including any closing documents not provided by the landowner or the title company, to include all release of liens as appropriate, and coordinate the closing of all conveyances for all parcels.
 - (D) The City will manage relocation of utilities to provide clear right-of-way for construction of the Weiss Lane Project on a timely basis. The City will work diligently to have all utility conflicts cleared within the construction area before the construction starts
 - (E) If condemnation of a parcel is necessary, the City will prosecute the condemnation of such parcel. The Parties shall approve as required by law the institution of

condemnation proceedings. The City will provide a copy of its file to the Travis County Attorney. In such cases, the County may, but is not required to, join the proceeding as a condemnor.

- (4) If the County finds the City deficient in providing any services, the County shall immediately report the deficiencies either in person, by telephone conversation, or by e-mail to the County Right-of-Way Manager and the City Project Manager, with an additional written notice to be deposited in the U.S. Mail within 24 hours. The County Project Manager shall direct any appropriate remedial action.
- (5) Notwithstanding any provision to the contrary, the Parties acknowledge that the County's maximum contribution for costs related to the acquisition of right-of-way for Weiss Lane Roadway Improvements located in unincorporated Travis County, including costs incurred relating to condemnation proceedings, except for County staff time, will not exceed the sum of \$304,920 and any Design Savings (as defined in Section 8). The City will be responsible for any County right-of-way acquisition costs related to Weiss Lane Roadway Improvements located in unincorporated Travis County that exceed the sum of \$304,920 and any Design Savings (as defined in Section 8).
- (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 Weiss Lane Project.
- (i) The City shall require its Project Engineer to immediately take any appropriate remedial action to correct any deficiencies with the Weiss Lane 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 except that, as set forth in Exhibit B, the County's maximum contribution for construction costs for the Weiss Lane Roadway Improvements located in unincorporated Travis County, which costs include utility relocation costs, will not exceed the sum of \$5,842,000 and any ROW Savings (as defined in Section 8), and the City will be solely responsible for paying any Weiss Lane Roadway Improvements construction costs, including utility relocation costs, that exceed the sum of \$5,842,000 and any ROW Savings.

3. Project Bidding & Award of Construction Contract.

The City will be responsible for overseeing the solicitation of bids for the construction of the Weiss Lane Project based on the approved plans and specifications. Bids shall be solicited by means of a competitive process and in accordance with the City's procurement policy. To the extent applicable, construction costs will be allocated to separate the extent of construction in each Party's respective portion of the Weiss Lane Project and, to the extent feasible, will be calculated on the basis of unit prices and actual quantities of the work, except that (a) the County's maximum contribution to the construction costs for the Weiss Lane Roadway Improvements located in unincorporated Travis County will not exceed the sum of \$5,842,000 and any ROW Savings (as defined in Section 8), (b) the County's maximum contribution for the Weiss Lane Bridge Improvements will not exceed \$700,000, (c) the City is solely responsible for all Weiss Lane Roadway Improvements construction costs that exceed \$5,842,000 and any ROW Savings (as defined in Section 8), and (d) the City is solely responsible for all Weiss Lane Bridge Improvements costs that exceed \$700,000. The City will notify the County of the lowest responsible bidder and the amount of the bid for the Parties' respective portion of the Weiss Lane Project, and the County shall deposit its share of construction costs related to the portions of the Weiss Lane Project that are located within the unincorporated area of the County within fifteen working days in accordance with Section 8 of this Agreement. The City will be responsible for any and all additional funding for the Weiss Lane 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 Weiss Lane 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 Weiss Lane Project;
- (d) Provide written notice to the County of the bid tabs for the Weiss Lane Project;
- (e) Coordinate utility relocations for the Weiss Lane Project and coordinate funding to pay the costs of utility relocations that are required for the Weiss Lane Project and that are not legally the responsibility of the utility owner; before relocating any such facilities, the City must obtain the

County's concurrence to ensure that the facilities are relocated to a place that is not in conflict with the Weiss Lane Project;

- (f) Provide the County a written copy of all contracts and billings and evidence of payment affecting the Weiss Lane 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 Weiss Lane Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt;
- (h) Promptly provide the County copies of the construction contractor's application for partial and final payments;
- (i) Provide the County's Project Manager a copy of any change order request related to the portions of the Weiss Lane Project that are located within the unincorporated area of the County within two working days of its receipt by the City for the County Project Manager's review and concurrence;
- (j) Provide the County a copy of executed change orders related to the portions of the Weiss Lane 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 Weiss Lane Project and furnish the County a copy of the record drawings of the Weiss Lane Project for the County's records in a format specified by the County;
- (o) Provide the County Project Manager at least 72 hours written notice of any public meetings the City intends to conduct related to the Weiss Lane Project; and
- (p) Provide the construction management services set forth in Exhibit C.

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 Weiss Lane 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 Weiss Lane Project, and good faith efforts to resolve any outstanding issues;
- (c) Reviews of any change order proposal for the Weiss Lane 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 Weiss Lane 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 Weiss Lane 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 Weiss Lane 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 Weiss Lane 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 Weiss Lane 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 Weiss Lane Project to the City at appropriate agreed-to intervals of design complete stages or within one week of receiving design documents from the City, whichever period is longer;
- (i) Cooperation with the City to obtain any applicable permits and environmental clearances for the Weiss Lane Project;
- (j) Utility relocations that are required for the Weiss Lane Project that are not legally the responsibility of the utility owner except that, as set forth in Exhibit B, the County's maximum contribution for Weiss Lane Roadway Improvements construction costs located in unincorporated Travis County, which costs include utility relocation costs, is the sum of \$5,842,000 and any ROW Savings (as defined in Section 8), and the City will be solely responsible for paying any construction costs, including utility relocation costs, that exceed the sum of \$5,842,000 and any ROW Savings (as defined in Section 8); and

- (k) County approval of the construction of the Weiss Lane 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 Weiss Lane 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 (1) year from the date of acceptance of the Weiss Lane Project. The City and the County will be named as co-obligees on the bonds.

7. **Liability.**

- (a) 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.
- (b) **Claims Notification.** If the City or the County receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against the City or the County in relation to this Agreement, the Party receiving such notice must give written notice to the other Party of the claim or other action within three working days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action, or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice must be given in the manner provided in Section 12 of this Agreement. Except as otherwise directed, the notifying Party must furnish to the other Party copies of all pertinent papers received by that Party with respect to these claims or actions.
- (c) The City agrees to cause each of its construction contractor(s) for the Weiss Lane Project to agree to indemnify the City and the County against all claims, costs, losses and damages arising out of or resulting from the performance of the work under the City's construction contract, provided the claim, cost, loss or damage is:

- (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting from it; and
- (2) caused in whole or part by any negligent act or omission of the City's construction contractor, any of construction contractor's subcontractor(s), supplier(s), or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of the City or the County or whether liability is imposed upon the City or the County by laws or regulations regardless of the negligence of any such entity.

8. Financial Obligations.

(a) Design Costs.

- (1) As set forth in Exhibit B, the County will contribute a maximum of Five Hundred Eighty-Four Thousand Two Hundred Dollars (\$584,200) for the design of the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County. The County will not be contributing any funding for the design of the Weiss Lane Bridge Improvements pursuant to this Agreement.
- (2) Within 30 days after the completion of the design phase for the Weiss Lane Project, unless otherwise agreed to by the County and the City in writing, the City will submit an invoice to the County for the County's contribution to the design costs for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County, and the County will reimburse the City, within 60 days after the County receives the invoice, for the design costs to the extent the design costs do not exceed \$584,200. Any additional design costs related to the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County that exceed \$584,200 will be borne solely by the City.
- (3) The Parties estimate that the design cost for the Weiss Lane Project is One Million Six Hundred Six Thousand Four Hundred Fifty-Seven Dollars and Ninety-Five cents (\$1,606,457.95). Design costs for the Weiss Lane Project will not exceed \$1,606,457.95 unless the Parties approve additional funding for the design costs.
- (4) If the County's actual design costs related to the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County are less than \$584,200, the difference between the County's actual design costs for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County

and \$584,200 will be referred to in this Agreement as “Design Savings”.

(b) Right of Way Acquisition Costs.

- (1) As set forth in Exhibit B, the County will contribute a maximum of Three Hundred Four Thousand Nine Hundred Twenty Dollars (\$304,920) for acquisition of right-of-way related to the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County, except that if there are Design Savings, the County’s contribution for right-of-way acquisition costs related to the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County will be increased by the amount of the Design Savings above the \$304,920 limit set forth in Exhibit B. Any right-of-way acquisition costs for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County that exceed the sum of \$304,920 and any Design Savings will be borne solely by the City. The County will not be contributing any funding for the right-of-way acquisitions costs for the Weiss Lane Bridge Improvements pursuant to this Agreement.
- (2) Within 60 days after receiving an invoice from the City, the County will pay the right-of-way acquisition costs related to the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County as set forth in Section 8(b)(1).
- (3) If the right-of-way acquisition costs for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County is less than the sum of \$304,920 and the Design Savings, the difference will be referred to in this Agreement as “ROW Savings”.

(c) Construction Costs.

- (1) As set forth in Exhibit B, the County will contribute a maximum of \$5,842,000 for construction costs related to the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County, except that if there are ROW Savings, the County’s contribution for construction costs related to the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County will be increased by the amount of the ROW Savings above the \$5,842,000 limit set forth in Exhibit B. Any construction costs for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County that exceed the sum of \$5,842,000 and any ROW Savings will be borne solely by the City. The County will contribute a maximum of \$700,000 for the construction of the Weiss Lane Bridge Improvements, and any

construction costs that exceed \$700,000 for the Weiss Lane Bridge Improvements will be borne solely by the City.

- (2) Within fifteen working days after receiving notice of the lowest responsible bidder, the County shall deposit into an escrow account with the City:
 - (A) Five Million Eight Hundred Forty-Two Thousand Dollars (\$5,842,000) plus any ROW Savings (if not already paid to the City) as the County's not-to-exceed share of the construction costs for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County and
 - (B) \$700,000 as the County's not-to-exceed share of the construction costs for the Weiss Lane Bridge Improvements..
- (d) The City shall provide the County a copy of all change orders affecting the design and construction of the Weiss Lane Project prior to the City issuing the approved change order to the contractor. If the County does not agree with a change order affecting the design or construction of the Weiss Lane Project, the County shall object in writing to the City within seven working days of receipt of said change order. If the City does not receive any objections within seven working days, the County will be deemed to have approved said change order. The County's Project Manager shall meet with the City's Project Manager to review the contractor's progress reports and invoices for the Weiss Lane Project on a regular basis as determined by the City Project Manager and the County Project Manager.
- (e) The City is solely responsible for paying for any change orders that cause the construction costs related to the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County to exceed the sum of Five Million Eight Hundred Forty-Two Thousand Dollars (\$5,842,000) and any ROW Savings. The City is solely responsible for paying for any change orders that cause the construction costs related to the Weiss Lane Bridge Improvements to exceed \$700,000.
- (f) The City is solely responsible for paying delay damages, statutory interest, de-mobilization costs, Prompt Payment Act claims, re-mobilization costs, and any other associated costs incurred by the City under its construction contract for the Weiss Lane Project.
- (g) 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 attorney's fees, court costs, depositions, experts, the

amount of any damages contained in a judgment or settlement, interest, and the costs of appeal.

- (h) The County shall deposit the sum of \$5,842,000 plus any ROW Savings (if not already paid to the City) (the County's not-to-exceed contribution for construction costs for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County) and \$700,000 (the County's not-to-exceed contribution for construction costs for the Weiss Lane Bridge Improvements) with the City Finance Director, who shall act as Escrow Agent for the management of the County's funds. The City Finance Director 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 Weiss Lane 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.
- (i) Subject to Section 5(f), the City Finance Director shall timely pay submitted invoices for the Weiss Lane Project. The invoices for the Weiss Lane Project will be paid on the basis of work completed in accordance with the approved plans and specifications.
- (j) Notwithstanding any provision to the contrary, all funding provided by the County to the City pursuant to this Agreement will be used solely for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County and the Weiss Lane Bridge Improvements and not any other purpose.
- (k) Notwithstanding any provision to the contrary, the County's total maximum contribution for the portion of the Weiss Lane Roadway Improvements located in unincorporated Travis County will not exceed the sum of \$584,200 plus \$304,920 plus \$5,842,000, which sum is \$6,731,120.

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 costs related to its portion of the Weiss Lane Project 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 Weiss Lane 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 Weiss Lane Project;
 - (2) the record drawings of the Weiss Lane 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 Weiss Lane Project.

10. Final Accounting.

- (a) Within 30 days after the Weiss Lane 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 Weiss Lane 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 Weiss Lane Project is completed or until any impending litigation or claims are resolved, whichever is later.
- (b) The City and the County 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 except that nothing in this Agreement requires the City or the County to waive any applicable exceptions to disclosure under the Texas Public Information Act.

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

- (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 Weiss Lane 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 Weiss Lane Project and any litigation or other matters surviving the completion of the Weiss Lane 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) Definitions and Terms.
 - (1) In this Agreement, *including* means “including but not limited to.”
 - (2) When approval, permission, or concurrence is required in this Agreement, such approval, permission, or concurrence shall not be unreasonably delayed or withheld.
 - (3) “Working day” means any weekday except for a day designated as a holiday by the Travis County Commissioners Court.

- (j) Multiple Counterparts. This Agreement may be executed (original or facsimile) by the Parties in one or more counterparts, each of which shall be considered one and the same agreement.

CITY OF PFLUGERVILLE, TEXAS

By: _____
Brandon Wade, City Manager

Date: _____

Attest: _____
Karen Thompson, City Secretary

Date: _____

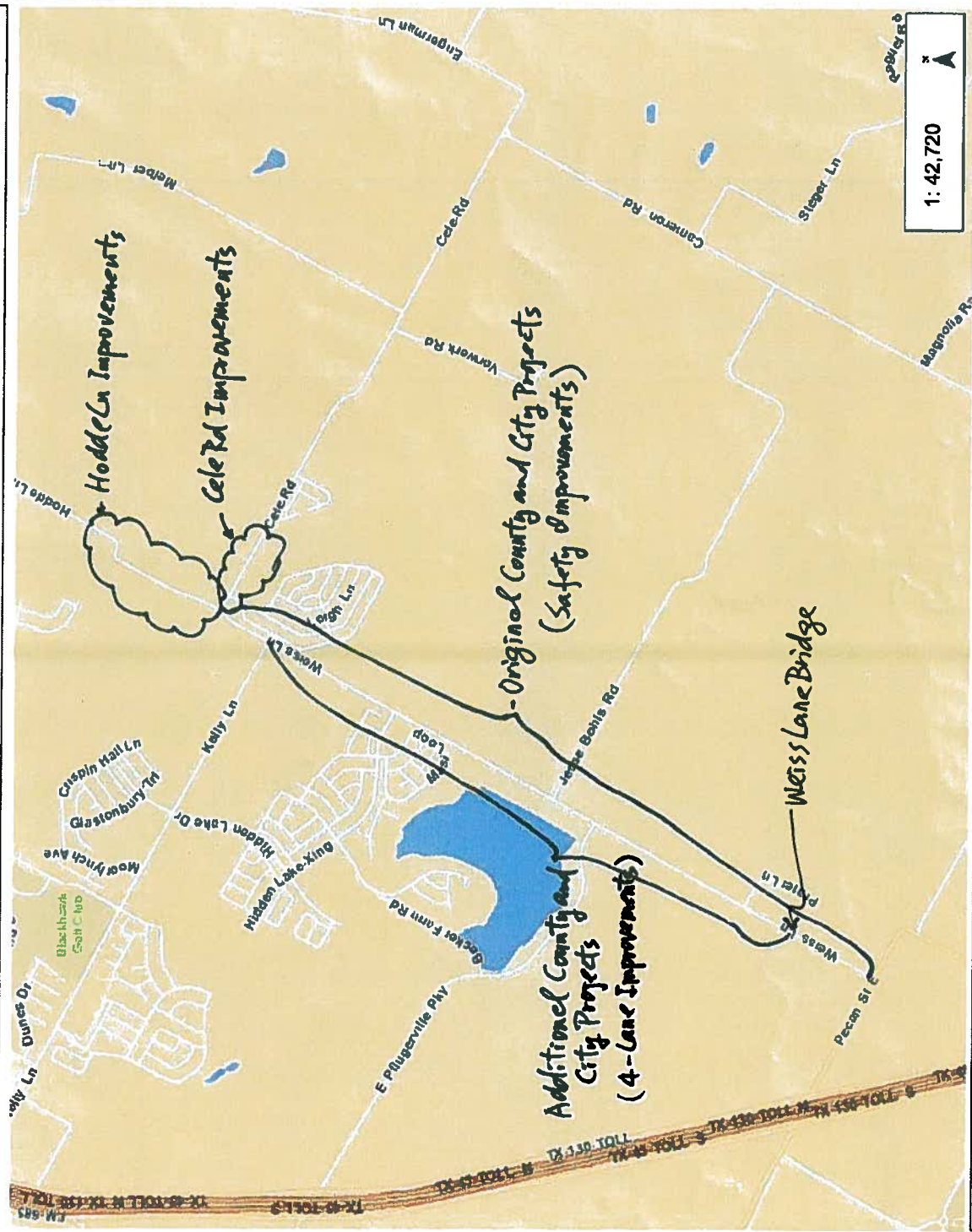
TRAVIS COUNTY, TEXAS

By: _____
Sarah Eckhardt, County Judge

Date: _____

EXHIBIT A
WEISS LANE PROJECT LOCATION

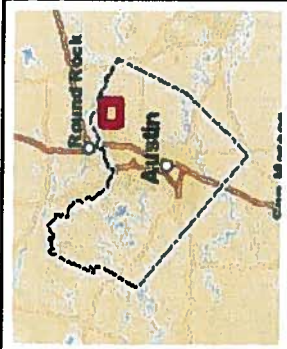
Exhibit A



1: 42,720



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION



Legend

Notes

EXHIBIT B
WEISS LANE FUNDING

Exhibit B -- Travis County's Maximum Cost Contributions for Weiss Lane Project

WEISS LANE ROADWAY IMPROVEMENTS

MAXIMUM DESIGN COST CONTRIBUTION (Design cost also includes regulatory permitting cost.)	\$	584,200.00
MAXIMUM ROW ACQUISITION COST CONTRIBUTION	\$	304,920.00
MAXIMUM CONSTRUCTION COST CONTRIBUTION (Construction cost also includes utility relocation, construction management, inspection and testing costs.)	\$	5,842,000.00

WEISS LANE BRIDGE IMPROVEMENTS

MAXIMUM DESIGN COST CONTRIBUTION (Design cost also includes regulatory permitting cost.)		\$0.00
MAXIMUM ROW ACQUISITION COST CONTRIBUTION		\$0.00
MAXIMUM CONSTRUCTION COST CONTRIBUTION (Construction cost also includes utility relocation, construction management, inspection and testing costs.)	\$	700,000.00

EXHIBIT C

CONSTRUCTION MANAGEMENT SERVICES

The City shall provide the construction management services specified in this Exhibit C using its own staff, LJA Engineering, or both City staff and LJA Engineering.

The City shall ensure that the items below marked with an asterisk (*) are performed or provided by a Texas Licensed Professional Engineer.

1. Coordination and Pre-Construction Meeting Services

(a) Technical Submittals and Samples

Prepares for the coordination meeting with the County and the City a list of all technical submittals required by the construction contractor. This list shall be distributed at the pre-construction meeting among the Project Engineer and the construction contractor and others.

(b) Permits

Prepares for the coordination meeting, a list of all permits to be obtained by the construction contractor. This list shall be distributed at the pre-construction meeting.

(c)* Material Testing and Inspections

Prepares for the coordination meeting recommendations for the project construction and material testing protocols and oversees Project testing and inspection.

(d)* Pre-construction Submittals

Provides review comments on construction contractor's pre-construction submittals to the construction contractor at the pre-construction meeting. Pre-construction submittals include the construction contractor's construction schedule, division of contract, subcontractor list, material supplier list, or any special submittals requested of the construction contractor prior to the pre-construction meeting.

2. Administrative Tasks

(a) Prepares draft agenda for pre-construction meeting;

(b) Determines the project communication, reporting, submittal approval/rejection protocol, and documentation requirements;

(c) Conducts weekly job site meetings; determines the format for scheduling and conducting, and recording construction meeting minutes;

- (d) Reviews and becomes knowledgeable of any required City or County construction administration processes;
- (e) Records meeting minutes;
- (f) Maintains Project construction records consisting of all correspondence related to the construction of the project including but not limited to:
 - (1) all approved technical submittals and a technical submittal checklist;
 - (2) all approved field orders and change orders;
 - (3) contract specifications and drawings;
 - (4) daily log;
 - (5) job meeting minutes;
 - (6) clarifications drawings;
 - (7) daily progress reports; and
 - (8) processed pay requests
- (g) The daily log, as a minimum, shall contain information regarding weather conditions, ambient temperatures, construction contractor manpower levels, sub-construction contractors manpower levels, daily hours of inspection, travel time, conversations, work items being performed, material delivery information and other observations.
- (h) Daily logs must be completed and include a statement as to whether or not the construction contractor is behind schedule or delaying the progress of the work and, if so, the steps the construction contractor should take to get back on schedule. Copies of daily logs shall be made available to the County upon request.
- (i) Maintain complete files of all Project-related documents at the Project site.
- (j)* Upon the completion of each calendar month, furnish the County with a typed statement summarizing the status of the work. In the event the work is behind schedule, the statement shall also delineate what efforts the construction contractor must take to get back on schedule. A copy of this statement shall also be delivered to the construction contractor.
- (k) After the Project has been completed, submit a copy of the Project files, along with the copies of daily logs to the County.

3. Construction Phase Services

(a)* Submittals

Process submittals, including receipt, review of, and appropriate action on shop drawings, samples and other submittals. Provide recommendations for the County and City approvals of "or equal" substitutions along with any recommended cost adjustments.

(b)* Contract Modifications

For modifications required by the County and/or the City to resolve design errors or omissions, the Project Construction Manager shall coordinate with the Project Engineer to provide the following services: Provide recommendations to the County and/or the City concerning potential changes and modifications to the project, which are encountered during construction. Identify and investigate feasible alternatives, to the extent practical, and prepare necessary plans, details, etc. required to obtain firm cost and schedule impact statements from the construction contractor. Evaluate the construction contractor's impact statements and in conjunction with the City and the County negotiate costs for any contemplated changes with the construction contractor. The Project Construction Manager shall prepare and distribute change orders and jointly sign all Change Orders with the County and the City

(c)* Construction Contractor Pay Requests

Upon receipt of a pay request from a construction contractor, jointly review each line item with the construction contractor and advise the construction contractor's representative of any discrepancies or conflicts in the pay requests. Verify the accuracy of quantities of installed, delivered, and stored materials. Advise the City and County of any issues that may warrant withholding, reducing, or delaying payment to the construction contractor and provide supporting documentation.

(d)* Interpretation of the Contract Documents

Upon request, provide interpretation or clarification of the construction documents to the County, the City, or the construction contractor. Determine an acceptable method for communicating interpretations and clarifications directly to the construction contractor beforehand.

(e)* Observation

Site visits are to be performed to the extent necessary to:

- (1) Observe, document, and report to the County, the City, and the construction contractor whether the project is being constructed in accordance with the contract documents.
- (2) Observe, document, and report to the County, the City, and the construction contractor whether the proper measure of unit price bid quantities is being implemented, and confirm percentage completion of lump sum items.
- (3) Observe, document, and report to the County and the City the progress of the construction contractor and resources committed to the project by the construction contractor.

(f)* Materials Testing and Inspections

- (1) Establish and administer a materials sampling and testing program to provide quality control and compliance with the construction plans and specifications. Utilizing the list of required testing developed from the construction documents, jointly develop with the Project Engineer and the construction contractor a testing program for the project. The testing program must designate what services are to be provided by the Project Engineer and the construction contractor. Services shall include, but not be limited to soils compaction testing, concrete cylinder compression strength tests, gradation analysis, miscellaneous shop inspection, and other testing required by the construction contract documents, or as specifically requested by the County and the City. A copy of the proposed testing program shall be prepared for review by the County and the City prior to beginning work.
- (2) Review all laboratory and field-testing results to determine whether results are in compliance with the construction contract documents and provide recommendations for correction of substandard materials and workmanship revealed during testing.

(g)* Claims

Assist the County and the City with claim reviews and negotiations upon request and with the preparation of related correspondence and documentation.

(h)* Contract Enforcement

Examine construction contractor workmanship, materials, progress, and overall compliance with requirements of the contract documents and immediately report any observed deficiencies to the construction contractor, the County, and the City. Communicate to the construction contractor, the County, and the City what may be necessary to effect corrective action. Document deficiencies and actions taken by construction contractor to correct them. Assist the County and the City with evaluating impacts of potential contract termination upon project costs and schedule.

(i)* Contract Termination

Upon request, assist the County and the City with completion of an assessment of the status of the construction contractor's contract, the development of an agreement with the construction contractor's Surety to complete the work, and preparing and holding a pre-construction meeting

with the replacement construction contractor. Unless otherwise specified in the contract, these services shall be considered additional scope of work for which the scope, methodology, and fee must be negotiated with the County and the City before proceeding.

(j)* Project Acceptance and Close-out

- (1) Jointly perform with the County the City, and the construction contractor substantial completion and final inspections and compile and distribute related punch requiring correction. When properly completed, submit O&M manuals to lists.
- (2) Compile and review for completeness all Operation and Maintenance Manuals to be submitted by the construction contractor and inform construction contractor of any deficiencies.
- (3) Review and comment on final pay request and supporting close-out documents, and provide recommendation for approval or rejection to the County and the City.
- (4) Upon Project completion, obtain the original drawings from the Project Engineer, incorporate all as-built conditions on the original drawings and provide copies to the County and the City at project close-out.

4.* Post Construction Services

(a) Warranty Period Services

- (1) Meet with County and the City upon request during the warranty period to investigate problems with material, equipment, and/or workmanship that may arise. Determine whether or not such problems are warranty issues or design issues and recommend solutions.
- (2) Coordinate and attend with the County and the City a final warranty inspection no less than sixty days prior to expiration of construction contractor warranty period. Develop list of deficiencies, if any, and determine if deficiencies are caused by inferior workmanship, equipment, and/or materials or caused by other reasons. Provide recommendations for resolving each deficiency. Complete a follow-up inspection with the County to determine whether deficiencies have been corrected by the construction contractor prior to expiration of the warranty period.