

POND SPRINGS ROAD
INTERLOCAL COOPERATION AGREEMENT
CITY OF AUSTIN AND WILLIAMSON COUNTY

This Interlocal Cooperation Agreement is made and entered into by and between the City of Austin, Texas (the "City") and Williamson County, Texas (the "County"), hereinafter collectively referred to as the "Parties", upon the premises and for the consideration stated herein.

WHEREAS, the Parties intend to participate in the development and construction of improvements to a portion of Pond Springs Road from approximately 200 feet north of its southern intersection with US 183 to approximately 200 feet south of its northern intersection with US 183 as a three lane, forty-six foot (46') wide, undivided urban arterial located within the City (the "Project"); and

WHEREAS, the Project is generally described and depicted in attached Exhibit "A", and

WHEREAS, the County has funded a total of \$6,000,000 for the Project including all direct and indirect costs as a part of its 2006 bond election; and

WHEREAS, the Project is scheduled to start construction on June 3, 2009 in order to minimize construction impact on school traffic; and

WHEREAS, it is not anticipated or intended that this Project will require the acquisition of additional easements, or right-of-way;

WHEREAS, the Parties intend to conform to 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 County will provide the project management services for the development and construction of the Project, as set forth herein.
- (b) The Williamson County Engineer (the "County Engineer") 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 Engineer will designate a County Project Manager and may designate other representatives to transmit instructions and act on behalf of the County with respect to the Project.
- (c) The City's Public Works Director (the "City's Director") 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's Director will designate a City Project Manager and may designate other representatives to transmit instructions and act on behalf of the City with respect to the Project.

- (d) If a disagreement between City and County 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 City Project Manager and the County Project Manager, it shall be referred as soon as possible to the City's Director and the County Engineer for resolution. If the City's Director and the County Engineer do not resolve the issue, it shall be referred as soon as possible to the Assistant City Manager responsible for Public Works and the Precinct One Williamson County Commissioner for resolution.

2. Project Development.

- (a) The County will be responsible for the management of the development of the design and construction of the Project, including (i) the development of the engineering design, plans and specifications for the roadway improvements and sidewalks, (ii) the surveying, (iii) the construction, and (iv) the inspection and testing and any required permitting and environmental assessments and clearances associated with the Project.
- (b) The plans and specifications for the Project shall be in accordance with the City of Austin's applicable design and construction standards (the "City Standards"), unless otherwise agreed by the Parties. In addition, the County will ensure that the plans and specifications will comply with the applicable Texas Accessibility Standards.
- (c) The County shall provide water quality treatment that, when combined with existing water quality treatment features, substantially complies with the water quality standards of the City, provided that the water quality treatment for the Project shall meet or exceed those standards set by the Texas Commission on Environmental Quality, subject to the approval of the City.
- (d) The County shall take all reasonable measures to minimize the number of trees impacted by the construction of the Project. All protected tree mitigation determined to be reasonably necessary by the City's Watershed Protection and Development Review Department shall be reviewed and approved jointly by the City and the County and to the extent the tree mitigation program costs exceed the County's available funding for this

Project, the City shall provide supplemental funding in the not to be exceeded amount described in paragraph 8(c) below.

- (e) The County will fund improvements to address localized flooding in the Project area and the surrounding area between Roxie Drive and Turtle Rock Road as a Project cost to the extent that such improvements are required. To the extent that such improvements cause the Project cost to exceed the funds available to the County for this Project, the City shall provide supplemental funding in the not to be exceeded amount as described in paragraph 8(c), below.
- (f) To comply with City standards or requirements, the County shall provide water quality and drainage calculations to the City's Watershed Protection and Development Review Department for review and approval. The County shall also ensure that the Project's sidewalks, driveways and other applicable Project improvements comply with the Americans With Disabilities Act.
- (g) The County will ensure that the design engineer provides professional liability, automobile liability, and general liability insurance in accordance with the standard requirements of the County for such projects, during the term of the design and construction and the County will have the City and the County named as an additional insureds with respect to such general liability and automobile liability coverage.
- (h) The County and, to the extent set forth herein, the City will be responsible for the review and approval of the engineering design, plans and specifications and for construction inspection and testing for the Project. In addition, the County and, to the extent set forth herein, the City will be responsible for the review and approval of any modifications to the engineering design, plans, and specifications for the Project, during the development and construction of the Project.
- (i) A City permit shall be required only for any part of the Project within the City's full purpose corporate limits, provided that any fees in lieu of compliance with City Standards will be required within any portion of the City's jurisdiction. The same fees which the City applies to its own CIP Projects will apply to this Project, provided that City will by separate ordinance waive such fees as may be waived by Council action. The application review process for any such permit shall be the same as the process that the City applies to its own road projects, provided that the City and the County shall agree to a partnering process that adopts an expedited review process for all plans submitted to the City. The City shall coordinate the City's review of any permit application and issuance of the permit concurrently with the City's review and approval of engineering design and plans and specifications for the Project.

- (j) 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.
- (k) The County Engineer shall require the contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the City.

3. Project Bidding & Award of Construction Contract.

The County will be responsible for the solicitation of bids for the construction of the Project based on the approved plans and specifications and in accordance with applicable state and local bidding laws, practices, and procedures. The County will notify the City of the lowest responsible bidder and the amount of the bid for the Project and the City shall respond within seven (7) working days. Upon written agreement of the City, the County will approve a firm unit-price contract for the construction of the project with the successful bidder. The County will require its contractor to substantially comply with the "good faith efforts" process of the City's MBE/WBE Ordinance and will maximize the opportunities for MBE/WBE participation in this Project.

4. Additional Management Duties of the County. The County hereby covenants and agrees to provide to the City:

- (a) four (4) sets of the plans and specifications for the construction of the Project;
- (b) written notice of the schedule for the advertisement for bids, award of contract, and construction of the Project;
- (c) written notice of the bid tabs for the Project;
- (d) written copy of all contracts affecting the Project, including accompanying information regarding compliance with the County's minority and women-owned businesses policy;
- (e) a monthly itemized statement of all disbursements made and debts incurred during the preceding month relating to the Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt, including accompanying information regarding compliance with the County's minority and women-owned businesses policy;
- (f) executed change orders, jointly approved by the City and the County, related to the Project;

- (g) sufficient notice, documentation and opportunity for the City to review and jointly approve the construction contractor's application for final payment with accompanying information regarding compliance with the County's minority and women-owned businesses policy;
 - (h) a copy of any change order request related to the Project within two (2) working days of its receipt by the County, by delivery to the City's Project Manager for review and approval;
 - (i) upon satisfactory completion of construction and any applicable warranty or construction performance period, the County will furnish to the City a copy of the record drawings for the City's records;
 - (j) after completion of construction, the County will monitor the roadway and require correction of any deficiencies in design or construction of the roadway or related facilities;
 - (k) after a period of one year from the date of completion, if the roadway and related facilities have been constructed in accordance with contract specifications, and have passed inspection and qualify for acceptance, the County will notify the City that the Project is ready for acceptance;
 - (l) transfer all Contractor's warranties, guarantees, and bonds, to the extent such are transferable, to the City and assist the City in enforcing such guarantees, warranties and bonds to the extent necessary.
5. Management Duties of the City. The City hereby covenants and agrees to:
- (a) expeditiously review any applicable permit applications and work in good faith to resolve any outstanding issues;
 - (b) review any change order proposal for the Project and return the change order request to the County within five (5) working days of its receipt by the City's Project Manager, with a written recommendation for its disposition; respond to requests for information within three (3) working days and requests for approval of shop drawings within ten (10) working days;
 - (c) at the option of the City, perform any additional independent inspection and testing on the Project in coordination with the County's inspectors and as agreed to by the County and City Project Managers and in a timely manner; and in connection therewith, the City will designate inspectors to make any such inspections, including the joint final inspection of the completed Project with the County; provided, the City's inspectors shall communicate any issues to the County's inspectors only, and County

inspectors will in turn communicate those issues to the construction contractor;

- (d) provide copies of all inspection test results and, upon completion, the final construction summary and a set of as-built drawings to the City's Watershed Protection and Development Review Department;
 - (e) coordinate with the City and County Project Managers, the County's inspectors, and the construction contractor, as reasonable and necessary, in making inspection(s);
 - (f) during the period prior to City acceptance of the Project, refer any inquiries from the public regarding the Project to the County;
 - (g) immediately report any deficiencies observed in the construction of the Project in writing to the County's Project Manager;
 - (h) review and jointly approve the construction contractor's application for final payment;
 - (i) attend meetings at the request of the County's Project Manager; and
 - (j) upon satisfactory completion of construction and any applicable warranty or construction performance period, the City will accept the portion of the Project, which is located within the City in accordance with standard City regulations and procedures for acceptance of public roadways and related facilities.
6. **Bond and Guarantee.** All construction contracts affecting the Project shall include a payment and performance bond acceptable to and in favor of and benefiting the County and the City, for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting the County and the City, for a period of one year from the date of acceptance of the Project. The bonds shall be issued with the County and City named as co-obligees.
7. **Liability.** To the extent allowed by Texas law, the County and the City agree that each entity is responsible for its own proportionate share of any liability for personal injury or death or property damage arising out of or connected to its negligent acts or omissions in connection with this Agreement as determined by a court of competent law. In addition, the construction contractor shall be required to provide workers compensation insurance, auto liability and general liability insurance in the standard amounts required by the County. The County and the City will be included as an additional insureds on the above-referenced insurance policies and a waiver of subrogation will be provided on the auto liability, general liability and worker's compensation coverages.

8. Financial Obligations.

- (a) For the purposes of this Agreement, the County will provide funding for the Project up to the amount of its current Project budget of \$6,000,000.00. For the purposes of this Agreement, the City will provide the services set forth herein as its share of the cost of the development and construction of the Project, including the cost of construction inspection and testing. In the event that the total cost of the Project will exceed \$6,000,000.00, the Parties may engage in value engineering in an attempt to control costs. In the event that Project costs continue to exceed available funding, the Parties may elect to secure the additional funding or the Parties may elect to terminate this Agreement.
- (b) The County shall obtain the written approval of the City for all change order requests for the Project prior to the County issuing the approved change order to the contractor, such approval not to be unreasonably withheld or delayed. The City's Project Manager shall meet with the County's Project Manager to review the contractor's progress reports and invoices for the Project before approval by the County.
- (c) The City agrees to pay up to the not to be exceeded amount of \$500,000.00 in the aggregate for the costs described in paragraphs 2(d) and (e) above. In addition, the City agrees to pay all liquidated damages, delay damages, de-mobilization costs, re-mobilization costs, and any other associated costs of the construction contract for the Project by reason of the City's non-payment of any change order approved by the Parties for such work within ninety (90) days of the date of submittal by the County. Any additional funding will require the further approval of the Austin City Council.
- (d) The County shall promptly notify the City of any such claim for damages and the County and the City shall negotiate for the resolution of the claim. In the event that a decision is made to litigate such a claim, the City shall be solely responsible for any or all costs recited above, and the costs of litigation, including, but not limited to, attorney's fees, court costs, depositions, experts, the amount of any damages contained in a judgment or settlement, interest, and the costs of appeal.
- (e) The Parties agree to and shall provide their respective shares for the development of the Project on a timely basis in order to meet the Project schedule.
- (f) The County shall timely pay submitted invoices for the Project, which have been approved as required by this Agreement. The invoices for the

Project will be paid on the basis of work completed in accordance with the approved plans and specifications.

9. Miscellaneous.

- (a) Force Majeure. In the event that the performance by the County or the City 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 of 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 it 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: Howard Lazarus, Director
City of Austin
Public Works Department
505 Barton Springs Road
Austin, Texas 78704

WITH COPY TO: Gordon Bowman
Assistant City Attorney
City of Austin Law Department
301 W. 2nd Street
Austin, Texas 78701

COUNTY: Joe M. England, P.E.
Williamson County Engineer
3151 S.E Inner Loop, Suite B
Georgetown, Texas 78626

WITH A COPY TO: Sheets & Crossfield
Attn: Charlie Crossfield
309 E. Main Street
Round Rock, Texas 78664-5264

- (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 joint construction of the Projects. 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 hereto. The recitals set forth above and the attached exhibits are incorporated herein.
- (e) Effective Date. This Agreement takes effect upon the last date of due execution of the Agreement by the County and the City.
- (f) Other Instruments. The Parties hereto 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 therefore from current revenues available to the paying party.

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: _____
Authorized Representative

Date: _____

Approved as to Form:

Assistant City Attorney

WILLIAMSON COUNTY, TEXAS

By:  _____
_____, County Judge

Date: 3-5-09 _____



Exhibit "A"