

**INTERLOCAL AGREEMENT REGARDING
DESIGN, INSTALLATION, OPERATION AND MAINTENANCE OF PEDESTRIAN
AND TRAFFIC IMPROVEMENTS INSIDE CITY OF AUSTIN AND WILLIAMSON
COUNTY LIMITS**

THE STATE OF TEXAS
COUNTY OF WILLIAMSON

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KNOW ALL BY THESE PRESENTS:

THIS INTERLOCAL AGREEMENT REGARDING DESIGN, INSTALLATION, OPERATION AND MAINTENANCE OF PEDESTRIAN AND TRAFFIC IMPROVEMENTS INSIDE CITY OF AUSTIN AND WILLIAMSON COUNTY LIMITS ("Agreement") is entered into between City of Austin, a home rule city and political subdivision of the State of Texas situated partially in Williamson County ("the City") and Williamson County, a political subdivision of the State of Texas (the "County"). In this Agreement, the City and the County are sometimes individually referred to as "a Party" and collectively referred to as "the Parties".

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which the City shall design, install, operate and maintain the proposed traffic signal at the intersection of Pearson Ranch Road and Avery Ranch Road; design, install, operate and maintain the proposed pedestrian hybrid beacon at the intersection of Pearson Ranch Road and Iveans Way; and install and maintain the proposed fence at the end of Pickaxe Trail inside the City's limits (collectively referred to as the "City's Improvements");

WHEREAS, this Agreement also sets forth the terms and conditions pursuant to which the County shall participate in 50% and 100% of the installation costs (being subject to the not-to-exceed amount set out herein) for the City's traffic signal and pedestrian hybrid beacon installations respectively; and design, install, operate and maintain the proposed flashing beacons inside the City and the County limits (collectively referred to as the "County's Improvements");

WHEREAS, the installation costs include the cost of equipment and materials placed at the location, the cost of any contractor services, and any other construction related costs;

WHEREAS, the locations of the improvements' sites are depicted in Exhibit "A", which is attached hereto and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I.
AGREEMENT AND OBLIGATIONS OF THE PARTIES

1.01 General. The purpose of this Agreement is to provide for the City's agreement and obligations as to the City's Improvements and the County's agreement and obligations as to the County's Improvements.

1.02 City's Improvements. The City hereby agrees to design, install, operate and maintain the proposed traffic signal at the intersection of Pearson Ranch Road and Avery Ranch Road; design, install, operate and maintain the proposed pedestrian hybrid beacon at the intersection of Pearson Ranch Road and Iveans Way inside the City's limits; and install and maintain the proposed fence at the end of Pickaxe Trail within existing City right-of-way, as described in the Plans and Specifications.

As specified in Section 2.04 of this Agreement, the City agrees to cost sharing for the installation cost of the proposed traffic signal at the intersection of Pearson Ranch Road and Avery Ranch Road and of the proposed pedestrian hybrid beacon at the intersection of Pearson Ranch Road and Iveans Way. The City agrees that installation and maintenance of the proposed fence at the end of Pickaxe Trail will be at its own expense.

1.03 County's Improvements. The County hereby agrees to design, install, operate and maintain the proposed flashing beacons and any associated traffic control signs within existing city and/or county right-of-way.

As specified in Section 2.04 of this Agreement, the County agrees to reimburse the City for 50% of the installation cost of the proposed traffic signal at the intersection of Pearson Ranch Road and Avery Ranch Road and for 100% of the installation cost of the proposed pedestrian hybrid beacon at the intersection of Pearson Ranch Road and Iveans Way.

The County agrees to install and maintain, at its own expense, any traffic control signs associated with the proposed pedestrian hybrid beacon at the intersection of Pearson Ranch Road and Iveans Way that are located on Pearson Ranch Road south of Iveans Way (within Williamson County but outside the City of Austin jurisdiction.)

1.04 Plans and Specifications. The "Plans and Specifications" shall be those prepared by the City.

1.05 Continuation of Service. The City agrees that the City's Improvements shall be undertaken to minimize lane closures to the traveling public. The County agrees that the County's Improvements shall be undertaken to minimize lane closures to the traveling public.

II. CONSTRUCTION OF PROJECT

2.01 General. The Parties mutually acknowledge and agree that the City and County shall, at its own expense, construct all physical improvements that constitute a Party's obligation hereunder.

2.02 Construction Plans. The City and County shall submit the Plans and Specifications related to the particular Party's improvements, and any changes or modifications thereto, to the County and City prior to commencing construction.

2.03 Inspection. The City and County shall inspect the Plans and Specifications and the physical improvements by the respective Parties during construction.

2.04 Repayment of Costs. The County shall reimburse the City for 50% of the installation costs that the City incurs for the proposed traffic signal at the intersection of Pearson Ranch Road and Avery Ranch Road and 100% of the installation costs that the City incurs for the proposed pedestrian hybrid beacon at the intersection of Pearson Ranch Road and Iveans Way; provided, however, the County's total reimbursement shall not exceed \$285,000 (the "County Reimbursement").

(a) The final amount of the County Reimbursement will be based upon 50% and 100% of the actual installation costs incurred by the City for the proposed traffic signal and pedestrian hybrid beacon respectively, inside the City's limits, but it may not exceed the above referenced amount. All invoices shall be presented to the County's Auditor as soon as possible after the County has deemed the City's construction of the proposed traffic signal and pedestrian hybrid beacon installations complete.

(b) The County Reimbursement shall be payable to the City within 60 days after the County has deemed the construction of the proposed traffic signal and pedestrian hybrid beacon installations complete and all invoices have been received by the County's Auditor. Said determination of completion will not be unreasonably withheld.

2.05 Texas Prompt Payment Act Compliance. Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date the goods or services are received under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the City receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by licensee in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of the fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

2.06 Insurance, Bonds and Warranties. Deleted.

III. DISPUTES

3.01 Material Breach; Notice and Opportunity to Cure.

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. Notwithstanding the foregoing, any matters specified in the default notice which may be cured solely by the payment of money must be cured within 10 days after receipt of the notice. This applicable time period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to such breach.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation, arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

3.02 Equitable Relief. In recognition that failure in the performance of the Parties' respective obligations could not be adequately compensated in money damages alone, the Parties agree that after providing notice and an opportunity to cure in accordance with Section 3.01 above, the Parties shall have the right to request any court, agency or other governmental authority of appropriate jurisdiction to grant any and all remedies which are appropriate to assure conformance to the provisions of this Agreement. The defaulting Party shall be liable to the other for all costs actually incurred in pursuing such remedies, including reasonable attorney's fees, and for any penalties or fines as a result of the failure to comply with the terms including, without limitation, the right to obtain a writ of mandamus or an injunction requiring the governing body of the defaulting Party to levy and collect rates and charges or other revenues sufficient to pay the amounts owed under this Agreement.

3.03 Agreement's Remedies Not Exclusive. The provisions of this Agreement providing remedies in the event of a Party's breach are not intended to be exclusive remedies. The Parties retain, except to the extent released or waived by the express terms of this Agreement, all rights at law and in equity to enforce the terms of this Agreement.

IV. GENERAL PROVISIONS

4.01 Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*.

4.02 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction,

the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

4.03 Payments from Current Revenues. Any payments required to be made by a Party under this Agreement will be paid from current revenues or other funds lawfully available to the Party for such purpose.

4.04 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

4.05 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter and only relates to those portions of the County's Improvements and City's Improvements shown in the Plans and Specifications.

4.06 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

4.07 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

4.08 Notices. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

CITY:

City of Austin, Texas
Austin Transportation Department
P.O. Box 1088
Austin, Texas 78767-1088
Telephone: (512) 974-1150

COUNTY:

Williamson County
710 Main Street, Suite 101
Georgetown, Texas 78626
Attn: Judge Bill Gravell, Jr.
Telephone: (512) 943-1665

4.09 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

4.10 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

4.11 Termination for Convenience. This agreement may be terminated at any time, prior to a Party's construction contract execution date, at the option of either Party, without future

or prospective liability for performance upon giving thirty (30) days written notice thereof. In the event of termination, each Party will only be liable for its pro rata share of services rendered and goods actually received.

4.12 Termination. This agreement may be terminated by either Party upon giving thirty (30) days written notice thereof if all of the following conditions are met:

(a) The installation of the proposed improvements included in this agreement has been completed,

(b) The repayment of costs by Williamson County to the City of Austin as provided in Section 2.04 has been completed, and

(c) The portion of Pearson Ranch Road from Iveans Way southward to at least the point of the southern flashing beacon is within the City of Austin full purpose jurisdiction.

4.13 No Waiver of Sovereign Immunity or Powers. Nothing in this agreement will be deemed to constitute a waiver of sovereign immunity or powers of the County, the Williamson County Commissioners Court, the City of Austin, the City of Austin City Council or any officials or representatives of the Parties.

(SIGNATURES ON FOLLOWING PAGE)

APPROVED AS TO FORM:


Assistant City Attorney

CITY OF AUSTIN:

By: 

Printed Name: Gina Fiandaca

Title: Assistant City Manager

Date: 7/23/19

WILLIAMSON COUNTY:

By: 

Printed Name: Bill Gravell, Jr.

Title: County Judge

Date: 8/13/19

Exhibit A



**Pearson Ranch Middle School and
Elsa England Elementary School**



This map is a schematic intended only for casual purposes; do not rely on the accuracy of any details without independently confirming them.

Data Source:
 Schools - TEA
 Aerials 2019 Pictometry
 City Boundary - City of Austin
 Roads - Williamson County 9-1-1 Addressing