

**HOG EYE ROAD SIDEWALK PROJECT
INTERLOCAL COOPERATION AGREEMENT
BETWEEN CITY OF AUSTIN AND TRAVIS COUNTY**

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

Recitals

1. The City and the County desire to develop and construct a sidewalk and associated improvements in a portion of the existing right-of-way of Hog Eye Road from Decker Lane to the Community First! Village (the “Project”).
2. Approximately 900 linear feet of the Project is located within the corporate limits of the City (the “City portion”) and approximately 2,000 linear feet of the sidewalk Project is located within the unincorporated area of the County (the “County portion”).
3. The Project is more particularly described in attached **Exhibit A**.
4. The Travis County Commissioners Court and the Austin City Council each finds that the construction of the Project will provide increased safety for persons using Hog Eye Road, facilitate the movement of people, goods, and services in the City of Austin and Travis County, and benefit the residents of the City of Austin and the residents of Travis County.
5. For purposes of cost efficiency, scheduling, and transportation planning, the County and the City desire to combine the development and construction of their respective portions of the Project.
6. Bond funds for the County’s share of the Project were approved by Travis County voters in the November 2017 Travis County Bond Election.
7. 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 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 Director of the Public Works Division of the Travis County Transportation and Natural Resources Department (the “County’s Director”) 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’s Director will designate a County Project Manager and may designate other representatives to 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 may designate a City Project Manager and may designate other representatives to act on behalf of the City with respect to the Project.
- (d) If a disagreement between the Parties arises regarding engineering design, design and construction standards, plans and specifications, inspection and testing, deficiencies and remedial action, change orders, or any other requirement or provision of this Agreement, and the disagreement is not resolved by the Parties’ Project Managers, it shall be referred as soon as possible to the Parties’ Directors for resolution. If the Directors do not resolve the issue, it shall be referred as soon as possible to the Assistant City Manager responsible for public works and the County Executive of the Travis County Transportation and Natural Resources Department for resolution.

2. Project Development.

- (a) The County will be responsible for the management of the development and construction of the Project, including (1) the development of the engineering design, plans and specifications for the sidewalks and associated improvements, (2) the surveying, (3) the construction, (4) the inspection and testing and any required permitting and environmental assessments and clearances associated with the Project, and (5) acceptance of the completed work on the County portion.
- (b) The plans and specifications for the Project shall be in accordance with the design and construction standards applicable under the Austin City Code. The plans and specifications will include the scope of design set forth in attached **Exhibit A**. In addition, the County will ensure that the plans and specifications will comply with the

applicable Texas Accessibility Standards and the Americans with Disabilities Act.

(c)

(i) Design Engineer. The County will ensure that the design engineer provides insurance in accordance with the standard requirements of the County for similar projects, including professional liability and errors and omissions coverage, and the County will have the City named as an additional insured with respect to all applicable coverages except for the professional liability coverage. The County will select and contract for professional services with the most highly qualified engineering consultant in accordance with the requirements of Chapter 2254 of the Texas Government Code, using County standard procurement procedures for professional services agreements. The County will obtain the City's concurrence of the selection of the consultant prior to awarding the professional services agreement for the design engineer. In the alternative, the Parties agree that the County may select a consultant qualified to provide the engineering services required for the Project from the County's pre-qualified list of consulting firms to fulfill the professional engineering services required for this Project.

(ii) Construction Contractor. The County will ensure that the construction contractor provides insurance in accordance with the standard requirements of the County for similar projects, and the County will require the contractor to indemnify and hold harmless the City of Austin, and will require the contractor name the City as an additional insured with respect to all applicable coverages except for the worker's compensation coverage. The County will ensure a competitive bidding process and procure and award the construction contract for the Project in accordance with the applicable state procurement laws, using the County's standard procurement procedures for construction contracts.

(d) 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 their respective portions of 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 their respective portions of the Project, during the development and construction of the Project.

- (e)
 - (i) A County development permit will be required for the Project.
 - (ii) One or more permits from the City's Development Services Department may be required for the portion of the Project within city limits. The City shall be responsible for payment of all permitting required by the City for the portions of the Project within the corporate limits of the City.
 - (f) For the portions of Project within city limits, permitting will follow the City's permitting process in accordance with the City of Austin's City Code. City permits that may be required for this Project would include a right-of-way permit that can be obtained from the Austin Utility and Location Coordination Committee. Other permits may be required as determined by the City's Development Services Department Director.
 - (g) The Parties will participate in joint review meetings with representatives from all affected City and County departments in order to avoid and resolve conflicts in review comments. The Parties will provide a designated review team to expedite the review process for their respective portions of the Project.
 - (h) The County shall require the consultant to take any appropriate remedial action to correct any deficiencies with the Project design identified by the City.
- 3. Additional Management Duties of the County. County hereby covenants and agrees to provide:
 - (a) an electronic copy of the construction plans and specifications for the Project at intervals to be agreed to by the Parties' Project Managers to the City for review and approval;
 - (b) written responses to the City's initial plan review comments within 14 days of receipt from the City;
 - (c) written notice to the City of the schedule for design, and the advertisement for bids, award of contract, and construction of the Project;
 - (d) written notice to the City of the bid tabs for the Project;
 - (e) a copy to the City of all contracts affecting the Project;

- (f) a written copy of all field changes, supplemental agreements, or revisions to the design plans for the Project that are proposed after the construction contract for the Project has been awarded;
- (g) executed change orders to the City, jointly approved by the County and the City, related to the City portion of the Project;
- (h) sufficient notice, documentation and opportunity for the City to assist in construction observation and inspections, where applicable, and in the final review of the construction services performed by the construction contractor;
- (i) a copy to the County's Project Manager of any change order request within two working days of the County receiving them from the construction contractor;
- (j) coordination of utility relocations for the Project and funding to pay the costs of utility relocations that are required the Project and that are not legally the responsibility of the utility owner;
- (k) supervising and ensuring that the contractor timely corrects any construction defects or other reported deficiencies in the work;
- (l) performing the construction observation and management of both the construction performance and warranty periods for both the County's and the City's portion of the Project; and
- (m) filing any claims against the performance bond, if necessary, to enforce the contractor's performance of the construction contract according to the plans and specifications.

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

- (a) reviews and approvals of the submitted plans and specifications for the Project by providing any initial comments within fourteen days of receipt of the submittal from the County, and follow-up reviews and approvals of the County's responses to those initial comments within seven days, and work in good faith to resolve any outstanding issues;
- (b) reviews of any change order proposal for the City portion of the Project by returning the change order request to the County within seven days of its receipt by the City's Project Manager, with a written recommendation for its disposition;

- (c) at the option and expense of the City, the City may, perform any additional independent inspection and testing on its portion of the Project in coordination with the County'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 Project to the maximum extent practical. In connection therewith, the City will designate inspectors to make any such inspections, including any joint final inspection of the completed City portion of the Project with the County; the City's inspectors shall communicate any issues to the County Project Manager only, and the County Project Manager will in turn communicate those issues to the construction contractor;
 - (e) reporting of any deficiencies observed in the construction of the Project immediately to the County's Project Manager with an additional written report within two working days;
 - (f) attendance at meetings at the request of the County's Project Manager;
 - (g) design review comments on the City portion of the Project to the County at appropriate agreed-to intervals of design complete stages within one week of receiving design documents from the County;
 - (h) utility relocations that are required for the City portion of the Project that are not legally the responsibility of the utility owner;
 - (i) City approval of the construction of the City's portion of the Project upon satisfactory completion of construction and any applicable warranty or construction performance period and acceptance of the completed work; and
 - (j) maintenance of the sidewalk and improvements will be the responsibility of the respective jurisdiction in which the maintenance will take place after the Project's warranty period is completed.
5. **Liability.** To the extent allowed by Texas law, the City and the County agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions.
6. **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 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 year from the date of acceptance of the Project. The City and the County will be named as co-obligees on the bonds.

7. Financial Obligations.

- (a) The City shall provide funding for the costs of the construction of the Project up to the amount of Sixty Three Thousand Dollars (\$63,000.00). The City will provide the funding to the County no later than thirty days after the Parties have fully executed this Agreement, unless otherwise agreed to by the County and the City in writing. Any additional City funding will require the approval of the City Council.
- (b) The County shall provide funding for the costs of the design and construction of the Project up to the amount of Two Million One Hundred Ten Thousand Nine Hundred Dollars (\$2,110,900). Any additional County funding will require the approval of the Travis County Commissioners Court.
- (c) The County shall obtain the written approval of the City for all change orders affecting the design and construction of the City portion of the Project prior to the County issuing the approved change order to the contractor, and the City's approval shall not be unreasonably withheld or delayed.
- (d) For any such change orders that are the responsibility of the City, as described above, and that cause the actual costs of design and construction of specific elements of the City's portion of the Project to exceed the City's funding, provided that the additional funding is available and does not exceed the contract amount and any contingency amounts authorized by Council, then the City shall make its funds available to the County within 30 days of receipt of the County's invoice by the County, such invoice to be accompanied by the change order request from the construction contractor. Any funding for change orders that exceed amounts authorized by Council, including any contingency amounts, will require approval by Council.
- (e) The City agrees to pay any statutory interest paid by the County to the contractor in accordance with the Texas Prompt Payment Act if such payment is incurred by the County solely by reason of the City's failure to pay the County an amount due by the City under pay a City-approved change order for the construction of a portion of the improvements which is the sole responsibility of the City within 30 days of the date the City received the submittal by the County, unless

the amounts required for the change exceed the amounts authorized by Council, including any contingency.

- (f) The County Treasurer shall act as Escrow Agent for the management of the City's funds and shall deposit the funds in an interest bearing escrow account. The County shall invest the funds in accordance with the Public Funds Investment Act, and any other applicable laws or bond covenants. The interest and any unused portion of the public funds provided by the City under this agreement shall be returned to the City within 30 calendar days after the completion of the Project. The County shall provide the City with an accounting of the deposits to and disbursements from the County's escrow account. The County will make its records available, at reasonable times, to the City's auditors, or its independent financial advisors or other professionals who provide arbitrage rebate calculations to the City.
- (g) The County shall timely pay the contractor under the Texas Prompt Payment Act.

8. 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: _____, Director
City of Austin Public Works Department
505 Barton Springs Road
Austin, Texas 78704

WITH COPY TO: Veronica Ocanas (or successor)
Assistant City Attorney
City of Austin Law Department
301 W. 2nd Street

Austin, Texas 78701

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

AND: Bonnie S. Floyd, MBA, CPPO, CPPB (or successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

WITH A COPY TO: David Escamilla (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767
File No. 291.885

- (c) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
- (d) Entire Agreement. This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting the construction of the Project. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties. No official, representative, agent, or employee of Travis County, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners Court of Travis County, Texas. The recitals set forth above and the attached exhibits are incorporated herein.
- (e) Effective Date. This Agreement takes effect upon the last date of execution of the Agreement by the City and the County. This Agreement will automatically renew from year to year until the completion of the warranty period for the Project and any litigation or other matters surviving the completion of the Project, unless terminated earlier by the Parties.
- (f) Other Instruments. The Parties covenant and agree that they will execute other and further instruments and documents as may

become necessary or convenient to effectuate and carry out the purposes of this Agreement.

- (g) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (h) Current Funds. The party or parties paying for the performance of governmental functions or services shall make payments therefor from current revenues available to the paying party.
- (i) Venue. TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN TRAVIS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.
- (j) Interpretation. In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either party.
- (k) Application of Law. This Agreement is governed by the laws of the State of Texas.
- (l) Mediation. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. To the extent permitted by law, all communications within the scope of the mediation are to remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.
- (m) Overdue Payments. Interest on overdue payments is governed by Chapter 2251 of the Texas Government Code.
- (n) Working Day. In this Agreement, “working day” and “business day” mean a calendar day that is not a Saturday, Sunday, or a holiday designated by the Travis County Commissioners Court.
- (o) Third Party Rights Not Created. This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and the Parties are not

waiving any defense or immunity to which they are entitled against any person or legal entity that is not a party to this Agreement.

- (p) Counterparts. This Agreement may be executed in separate counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Each of the signatories to this Agreement represents and warrants that he or she is duly authorized to sign this in the capacity indicated.

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: _____
Authorized Representative

Date: _____

Approved as to Form:

Assistant City Attorney

TRAVIS COUNTY, TEXAS

By: _____
Sarah Eckhardt, County Judge

Date: _____

EXHIBIT A
PROJECT DESCRIPTION

