

**FM 1826 SLAUGHTER LANE SIDEWALK PROJECT
SUMMERVALE DRIVE TO NORTH ENTRANCE OF SETON HOSPITAL
INTERLOCAL COOPERATION AGREEMENT
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.

WHEREAS, the City and the County desire to develop and construct sidewalks and associated pedestrian improvements in a portion of the existing right-of-way of FM 1826 from Summervale Drive to the North Entrance of Seton Hospital (hereinafter referred to as the “Project”); and

WHEREAS, approximately 1700 linear feet of the sidewalk Project is located within the corporate limits of the City (the “City portion”) and approximately 500 linear feet of the sidewalk Project is located within the unincorporated area of the County (the “County portion”); and

WHEREAS, the Project is more particularly described in attached **Exhibit A**; and

WHEREAS, the City will enter into an agreement with the Texas Department of Transportation (“TxDOT”) for the installation and maintenance of the County portion of the Project, which is located within existing FM 1826 right-of-way; and

WHEREAS, 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; and

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 City will provide the project management services for the development and construction of the Project, as set forth herein.
- (b) The Director of Public Works of the Travis County Transportation and Natural Resources Department (the “County’s Director”) will act on behalf of the County with respect to the Project, coordinate with the City and TxDOT, 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 and TxDOT, 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 City will be responsible for the management of the development and construction of the Project, including (i) the development of the engineering design, plans and specifications for the sidewalks and associated improvements, (ii) the surveying, (iii) the construction, (iv) the inspection and testing and any required permitting and environmental assessments and clearances associated with the Project, and (vi) acceptance of the completed work on the City portion.
- (b) The plans and specifications for the Project shall be in accordance with the design and construction standards applicable under Title 30, Austin City Code (Austin/Travis County Subdivision Regulations), unless otherwise agreed by the Parties. The plans and specifications will include the scope of design set forth in attached **Exhibit "A"**. 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) The City will ensure that the design engineer provides insurance in accordance with the standard requirements of the City for such projects, and the City will have the County and TxDOT named as an additional insured with respect to such coverage. The City 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 City procurement procedures. The City will obtain the County's concurrence of the selection of the consultant prior to awarding the professional services agreement for the design engineer. Prior to awarding the professional services agreement, the Parties' Project Managers shall agree on a method for tracking County and City Project design costs. In the alternative, the Parties agree that the City may use an existing rotation list contract to fulfill the engineering requirements on this Project.

- (d) The City and, to the extent set forth herein, the County and/or TxDOT 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 City and, to the extent set forth herein, the County and/or TxDOT 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) City permit and associated fees will be required only for the City portion of the Project, provided that any fees in lieu of compliance with City Standards will be required within any portion of the County's jurisdiction. The County shall coordinate the County's review of any permit application and issuance of any County or TxDOT permit concurrently with the County's review and approval of engineering design and plans and specifications for the Project.
- (f) The Parties will participate in joint review meetings with representatives from all affected City and County Departments and/or TxDOT 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.
- (g) The City shall require the consultant to take any appropriate remedial action to correct any deficiencies with the Project design identified by the County or TxDOT.

3. Project Bidding & Award of Construction Contract.

The City will be responsible for overseeing the solicitation of bids for the construction of the 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 M/WBE policy. Prior to bids being solicited, the Parties' Project Managers shall agree on a method of tracking County and City construction costs. To the extent applicable, construction costs will be allocated to the separate construction in each Party's respective portion of the Project and, to the extent feasible, will be calculated on the basis of unit prices and actual quantities of the work. The City will notify the County of the lowest responsible bid and

the amount of the bid for the Parties respective portions of the Project and the County shall respond within five (5) working days. Upon written agreement of the County, the City will approve a firm unit-price or lump sum contract for the construction of the Project with the successful bidder. In the alternative, the Parties agree that the City may use its existing indefinite delivery indefinite quantity sidewalk construction contract to complete the construction.

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

- (a) four sets of the construction plans and specifications for the Project at intervals to be agreed to by the Parties' Project Managers to the County for review and approval;
- (b) written responses to the County's initial plan review comments within fourteen (14) working days of receipt from the County;
- (c) written notice to the County of the schedule for design, and the advertisement for bids, award of contract, and construction of the Project;
- (d) written notice to the County of the bid tabs for the Project;
- (e) written copy to the County of all contracts affecting the Project, including information regarding compliance with the City's M/WBE policy;
- (f) a monthly itemized statement to the County of all disbursements made and debts incurred during the preceding month relating to the County portion of the Project, including copies of invoices, statements, vouchers, or any other evidence of payment of debt and accompanying information regarding compliance with the City's M/WBE policy;
- (g) executed change orders to the County, jointly approved by the County and the City, related to the County portion of the Project;
- (h) sufficient notice, documentation and opportunity for the County to review and jointly approve the construction contractor's application for final payment with accompanying information regarding compliance with the City's M/WBE policy;
- (i) a copy to the County's Project Manager of any change order request related to the County portion of the Project within two (2) working days of the City receiving them from the Contractor;
- (j) copies of construction contractor pay requests and change order requests related to the County portion of the Project within five (5) days of

receiving the approved Pay Applications and Change Order documents from the County;

- (k) coordination of utility relocations for the Project and funding to pay the costs of utility relocations that are required for the City portion of the Project and that are not legally the responsibility of the utility owner;
 - (l) to the extent required, TxDOT approval of the development and construction of the Project;
 - (m) acceptance of the portion of the Project which is located within the City upon satisfactory completion of construction and any applicable warranty or construction performance period;
 - (s) a copy to the County and TxDOT of the record drawings of the Project for the County's and TxDOT's records; and
 - (t) maintenance of the portion of the Project located within the County.
5. 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 County portion of the Project by providing any initial comments within fourteen (14) working days of submittal, and follow-up reviews and approvals of the City's responses to those initial comments within seven (7) working days, and work in good faith to resolve any outstanding issues;
 - (b) reviews for any applicable permit applications required by the County for the County portion of the Project and work in good faith to resolve any outstanding issues;
 - (c) reviews of any change order proposal for the County portion of the Project by returning the change order request to the City within seven (7) 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 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 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 County portion of the 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 Project immediately to the City's Project Manager with an additional written report within two (2) 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 County portion of the Project within five (5) 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 County portion of the Project to the City at appropriate agreed-to intervals of design complete stages within one week of receiving design documents from the City;
- (i) cooperation with the City to obtain any applicable permits and environmental clearances for the County portion of the Project;
- (j) utility relocations that are required for the County portion of the Project that are not legally the responsibility of the utility owner;
- (k) County approval of the construction of the County's portion of the Project upon satisfactory completion of construction and any applicable warranty or construction performance period and a recommendation to TxDOT for acceptance; and
- (l) Consent to continued City maintenance of the Project.

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, the County, and TxDOT for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting the City, the County, and TxDOT for a period of one year from the date of acceptance of the Project. The City, the County, and TxDOT will be named as co-obligees on the bonds.

7. 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. 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 City. The City, the County, and TxDOT will be included as additional insureds on the general liability and auto 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) The County and City will provide funding for the actual cost of design, regulatory permitting, utility relocations, construction, construction management, inspection, and testing for their respective portions of the Project as set forth in attached **Exhibit "A."**
- (b) The County shall provide funding for the costs of the design and construction of the County portion of the Project up to the amount of Sixty Thousand Dollars (\$60,000.00). The County will provide the funding to the City no later than thirty (30) days after the execution of this Agreement, unless otherwise agreed to by the County and the City in writing. Any additional funding will require the approval of the Travis County Commissioners Court.
- (c) The City shall provide funding for the costs of the design and construction of the City portion of the Project up to the amount of One Hundred Ninety Thousand Dollars (\$190,000.00). Any additional funding will require the approval of the City Council.
- (d) County and City funds will be expended in proportion to the work performed on the County and City portions of the Project, respectively.
- (e) The City shall obtain the written approval of the County for all change orders affecting the design and construction of the County portion of the Project prior to the City issuing the approved change order to the contractor, such approval not to be unreasonably withheld or delayed. The County's Project Manager shall meet with the City's Project Manager to review the contractor's progress reports and invoices for the Project before approval by the City.
- (f) For any such change orders, which are the responsibility of the County, as described above, and which cause the actual costs of design and construction of specific elements of the County's portion of the Project to exceed the County's funding, the County shall make its funds available to the City within ninety (90) days of receipt of invoice by the City, such invoice to be accompanied by the change order request from the construction contractor, which has been recommended for approval by the City and the County's Inspector and Project Manager.
- (e) The County agrees to pay delay damages, statutory interest, demobilization costs, Prompt Payment Act claims, re-mobilization costs, and any other associated costs incurred by the City under its construction

contract for the improvements by reason of the non-payment of any acceptable change order for the construction of a portion of the improvements which is the sole responsibility of the County and which has not been paid within 30 days of the date of submittal by the City

- (f) 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 to litigate such a claim, the County 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.
- (g) The City Treasurer shall act as Escrow Agent for the management of the County's funds and 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 thirty (30) calendar days after the completion of the 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.
- (h) The City Treasurer shall timely pay submitted invoices for the Project. 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 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 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 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: Howard S. Lazarus, P.E., Director
City of Austin Public Works Department
505 Barton Springs Road
Austin, Texas 78704

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

COUNTY: Steve Manilla, P.E. (or successor)
County Executive, TNR
P. O. Box 1748
Austin, Texas 78767

AND: Cyd Grimes, C.P.M. (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

(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 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

TRAVIS COUNTY, TEXAS

By: _____

Samuel T. Biscoe, County Judge

Date: _____

EXHIBIT A
PROJECT DESCRIPTION