



# Travis County Commissioners Court Agenda Request

**Meeting Date:** July 14, 2020

**AGENDA LANGUAGE:** Consider and take appropriate action on an Interlocal Agreement with the City of Austin in connection with the Springdale Road Sidewalk Project in Precinct One.

**Prepared By:** Morgan Cotten, P.E., Public Works Director **Phone #:** (512) 854-9434

**Department Head:** Cynthia C. McDonald, County Executive - TNR

**Sponsoring Court Member:** Commissioner Travillion, Precinct One

**Press Inquiries:** Hector Nieto, PIO@traviscountytexas.gov or (512) 854-8740

## **BACKGROUND/SUMMARY OF REQUEST:**

The Springdale Road Sidewalk Project is a capital improvement project approved by voters in the 2017 bond election. Funding approved in the bond order is for the design and construction of a six (6) foot wide, concrete sidewalk along Springdale Road from Ferguson Lane to US 290. The sidewalk will provide connectivity within the neighborhood and also to the existing bus stop at US 290.

One block of the project is located in the City of Austin's full jurisdiction. The Interlocal Agreement is for the approval to receive reimbursement from the City for construction costs in the City's portion of the project. The City of Austin City Council approved the authorization to negotiate and execute the ILA at their June 11, 2020, City Council meeting. The City of Austin requires the County's signature prior to the City's signature to execute the ILA.

## **STAFF RECOMMENDATIONS:**

TNR Staff recommends approval of the attached agreement.

## **ISSUES AND OPPORTUNITIES:**

Construction of the project will provide increased safety for persons using Springdale Road, facilitate the movement of people, goods, and services in the City and County, and benefit the residents of the City and the County.

## **FISCAL IMPACT AND SOURCE OF FUNDING:**

As per in the Agreement, Section 7a and 7b:

- The City will provide the funding of the City Share by reimbursement to the County, payable either in monthly progress payments or in one lump sum after completion of the Project.
- The County shall provide funding for the costs of the design of the Project and construction of the County Portion of the Project. The County shall provide funding for the costs of the construction of the City Portion of the Project, and the City shall reimburse the County 100% of the costs paid to the contractor for the construction of the City Portion of the Project.
  - Funding is through the 2017 Bond.

## **ATTACHMENTS/EXHIBITS:**

Interlocal Agreement, COA Springdale Estimate

**REQUIRED AUTHORIZATIONS:**

Cynthia C. McDonald	County Executive	TNR	(512) 854-9418
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**CC:**

David Greear	Assistant Public Works Director	TNR	(512) 854-7650
Sydnia Crosbie	Chief Deputy	TNR	(512) 854-7682
Charles Bergh	Parks Director	TNR	(512) 854-9408
Odette Tan	Engineer, Sr.	TNR	(512) 854-7587
Jennifer Hopgood	Attorney VI	TCAO	(512) 854-2912

**MC:CCM:kg**

**SPRINGDALE 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, a home-rule municipal corporation located in Hays, Travis, and Williamson Counties, State of Texas (the “City”) and Travis County, a political subdivision of the State of Texas (the “County”), hereinafter collectively referred to as the “Parties,” upon the premises and for the consideration stated herein.

**Recitals**

1. The County desires to develop and construct a sidewalk and associated improvements in a portion of the existing right-of-way of Springdale Road from Ferguson Lane to US 290 (the “Project”).
2. Approximately one block of the Project is located within the corporate limits of the City (the “City Portion”) and the remainder of the Project is located within the unincorporated area of the County (the “County Portion”).
3. The Project is depicted 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 Springdale Road, facilitate the movement of people, goods, and services in the City and County, and benefit the residents of the City and the residents of the 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. The County will design the Project, and the City will reimburse the County for construction costs for the City Portion of the Project.
7. Bond funds for the County’s share of the Project were approved by Travis County voters in the November 2017 Travis County Bond Election.
8. 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 ("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 ("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, the disagreement shall be referred as soon as possible to the Parties' directors for resolution. If the directors do not resolve the disagreement, the disagreement 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 as depicted 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 its officers, agents and employees, 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.
- (e) (ii) One or more permits from the City's Development Services Department may be required for the City Portion. The City shall be responsible for payment of all permitting required by the City for the City Portion.
- (f) For the City Portion of the Project, 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 agrees to provide:

- (a) an electronic copy of the construction plans and specifications for the City Portion of 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, and a copy to the City's Project Manager of any change order request related to or affecting the City Portion of the Project, 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 Portion and the City 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, irrespective of whether a claim is related to that part of the work described in this Agreement as the City Portion of the Project.

4. Additional Management Duties of the City. The City 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 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 the City Portion of the Project in coordination with the County's inspectors and as agreed to by the City Project Manager and the County Project Manager. 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 and that are not legally the responsibility of the utility owner;
  - (i) City approval of the construction of the City 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 Project's 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 City Portion of the Project ("City Share"). The City will provide the funding of the City Share by reimbursement to the County, payable either in monthly progress payments or in one lump sum after completion of the Project. Reimbursement may be either (i) in one lump sum payment to the County, after the completion of all Work and after the County has made all payments to the contractor for the City Portion, due sixty days after the City's receipt of all paid invoices with supporting documentation; or (ii) in monthly payments to the County as the work progresses, due thirty days after the City's receipt of a paid invoice and supporting documentation.
  - (b) The County shall provide funding for the costs of the design of the Project and construction of the County Portion of the Project. The County shall provide funding for the costs of the construction of the City Portion of the Project, and the City shall reimburse the County 100% of the costs paid to the contractor for the construction of the City Portion of the Project.
  - (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) The Parties agree that the County is entering into the contracts necessary to perform the design and construction for the Project and that the County is solely responsible for meeting the terms and conditions under its contracts, including all payments owed to its consultants and contractors. The City is not responsible for, and will not pay any statutory interest paid by the County to the contractor in accordance with the Texas Prompt Payment Act.
  - (e) The County shall provide the City with an accounting of the Project upon the City's request. 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: Richard Mendoza (or successor)  
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. 2<sup>nd</sup> 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) Payments. Payments required of the Parties under this Agreement, including any interest on overdue payments, are 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 or the City Council of the City of Austin.
- (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.
- (q)

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

**CITY OF AUSTIN, a home-rule municipal corporation located in Hays, Travis, and Williamson Counties, State of Texas**

By: \_\_\_\_\_  
Gina Fiandaca  
Assistant City Manager

Date: \_\_\_\_\_

Approved as to Form:

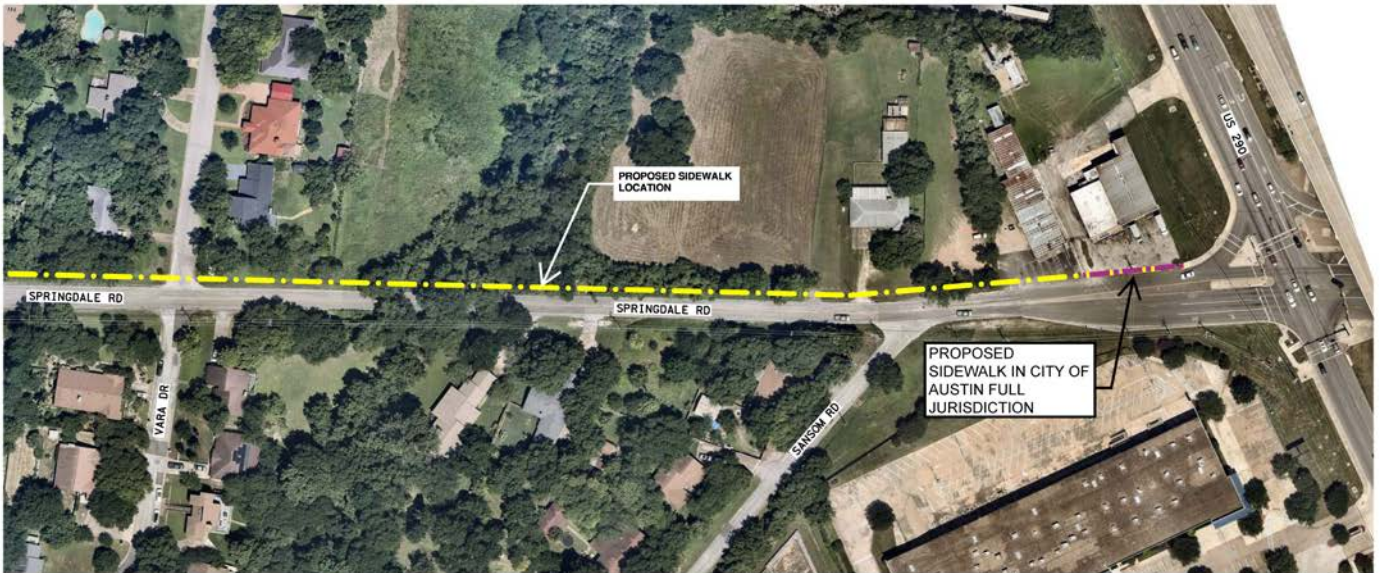
\_\_\_\_\_  
Veronica Ocanas  
Assistant City Attorney

**TRAVIS COUNTY, a political subdivision of the State of Texas**

By: \_\_\_\_\_  
Samuel T. Biscoe, Travis County Judge

Date: \_\_\_\_\_

**EXHIBIT A**  
**PROJECT DEPICTION**



Springdale Sidewalk - CoA Portion Estimate

	BID ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM PRICE
	Driveway Reconstruction	1100	SF	\$ 20.00	\$ 22,000.00
	Driveway excavation	41	CY	\$ 150.00	\$ 6,150.00
	Laydown Curb	135	LF	\$ 30.00	\$ 4,050.00
	TCP	5%			\$ 1,610.00
	Mobilization	10%			\$ 3,220.00
	SW3P	3%			\$ 966.00
	CONTINGENCY	25%			\$ 8,050.00
<b>TOTAL CONSTRUCTION COST</b>					<b>\$ 46,046.00</b>