

**THE STATE OF TEXAS                    §        INTERLOCAL AGREEMENT BETWEEN**  
**§        THE CITY OF SCHERTZ AND THE**  
**§        CITY OF CIBOLO**  
**COUNTY OF GUADALUPE            §**

**PREAMBLE:**

The Parties to this Agreement (“Agreement”) are the City of Cibolo and the City of Schertz (collectively referred to as the “Parties”). The Parties enter into this Agreement under the general provisions of the Interlocal Cooperation Act, Texas Government Code Chapter 791, under the specific authority of §791.026 and Texas Education Code §44.031(a)(5). This Agreement is made for the purpose of efficient and effective use of resources and is in the best economic interests of the Parties. The City of Cibolo and the City of Schertz are political subdivisions of the State of Texas.

**RECITALS**

WHEREAS, the Parties have identified certain common, legitimate public purposes in entering into this Agreement; and

WHEREAS, the governing bodies of the City of Cibolo and the City of Schertz each met in legally convened open meetings and authorized their respective representatives to enter into this Agreement; and

WHEREAS, the Parties intend to enter into a new agreement whereby the City of Cibolo will construct or cause to be constructed Wiederstein Road generally from Cibolo Valley Drive through the intersection of the northbound frontage road of Interstate Highway 35, the full right-of-way which is located in the corporate boundaries of Cibolo and Schertz, as shown on Exhibit “A” and the City of Schertz contribute funds toward that construction; and

WHEREAS, the City of Schertz desires to provide up to \$1,300,000 towards the cost of the construction; and

WHEREAS, the City Council of the City of Schertz has indicated a willingness to change the name of Wiederstein Road from Cibolo Valley Drive to the northbound frontage road of Interstate Highway 35 in support of working in partnership with the City of Cibolo on areas of mutual interest and has approved Ordinance XX-X-19 changing the name; and

WHEREAS, the City of Cibolo and City of Schertz desire to make additional roadway improvements to the intersections of both the north and south bound frontage road of Interstate Highway 35 and Wiederstein Road; and

WHEREAS, the City of Cibolo and the City of Schertz will each contribute an additional \$500,000 towards the cost of improving the bridge at Interstate 35 @ Wiederstein Road to

include the feeder road intersections to their full anticipated design, including traffic signalization; and

WHEREAS, the Texas Department of Transportation (TxDOT) controls the right-of-way of the intersection of the frontage roads of Interstate Highway 35 and Wiederstein Road, and their approval is required to make improvements to the intersections, both cities will petition and support request to TxDOT for approval and additional funding contributions to make intersection improvements.

NOW THEREFORE, the Parties, for and in consideration of the covenants and agreements herein set forth to be kept and performed by them respectively, have agreed to and do hereby agree together as follows:

### **I. DEFINITIONS**

A. “Breach” occurs when any of the Parties fails or refuses to perform one or more of the duties set forth in this Agreement.

B. “Force Majeure” means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, and lockouts.

C. “Notice” occurs upon written communication by one party to the other as specifically defined in this Agreement. Notice to the Parties is satisfied by written communication to the address designated in Paragraph 6.

D. Use of the singular shall include the plural, and vice versa, where the usage permits reasonable construction of this Agreement.

### **II. TERM OF AGREEMENT**

The term of this Agreement will begin June 1, 2019. The term of this Agreement will end in eighteen months or less unless extended or terminated before that time as provided in this Agreement.

### **III. MUTUAL PROMISES AND COVENANTS OF THE PARTIES**

The Parties, in consideration of the mutual promises and covenants contained in this Agreement, agree as follows:

A. The recitals set out in the preamble are hereby incorporated herein, for all purposes.

B. The City of Cibolo shall construct or cause to be constructed, roadway, traffic signals and associated improvements more particularly shown on the “Construction Plans” approved on (Month, Year) by the City of Schertz for improvement to Wiederstein Road between Interstate 35 to Old Wiederstein Road (approximately 3,100 feet) the “Project”.

C. Construction Plans for the Project shall be prepared by or caused to be prepared by the City of Cibolo using the design standards of the City of Schertz. The plans shall be submitted to the City of Schertz for review and approval By July 1, 2019. The City of Schertz will have thirty (30) days to review and submit comments back to the City of Cibolo. Revisions to comments from the City of Schertz shall be resubmitted within 30 days.

D. The improvements shall be built and completed in accordance with the City of Schertz design standards within eighteen months, unless extended by force majeure, of the approval of the construction plans by the City of Schertz.

E. The City of Cibolo shall procure or cause to be procured, a construction company to construct the Project. The City of Schertz shall provide inspections throughout the project to insure the Project is being constructed in accordance with the approved plans. Changes made in the plans during construction shall be approved by both Cities.

F. The cost of the Wiederstein Road improvements are estimated to be Four Million Eight Hundred Twenty Five Thousand Dollars (\$4,825,000) (the “cost estimate”), as more particularly shown on Exhibit “B” attached hereto and made a part hereof for all purposes.

G. The City of Schertz shall provide a surety in a form agreeable to the City of Cibolo in the amount of One Million Three Hundred Thousand (\$1,300,000) for the City of Schertz’s contribution to the cost of construction of Wiederstein Road to be paid upon completion and acceptance of the Wiederstein Road Improvements by the City of Schertz. Upon the completion of the Wiederstein Road Improvements and acceptance by the City of Schertz, the City of Schertz shall be responsible for all maintenance of the Wiederstein Road Improvements.

H. The cost of improvements are subject to review by the City of Schertz and shall be standard reasonable costs.

I. The City of Cibolo will provide monthly updates on the status of construction of the Wiederstein Road Improvements and shall meet the schedule attached as Exhibit “C”. Should the City of Cibolo fail to meet the construction schedule in Exhibit “C”, they are considered to be in default of the agreement. The City of Cibolo will have Sixty (60) working days to address the default. The City of Schertz shall have the right, but not the obligation, to assume responsibility for the construction of Wiederstein Road. If the City of Schertz provide notice of default, within Sixty (60) days, the City of Cibolo shall provide the balance of funding for the Wiederstein Road Construction to the City of Schertz to be used to complete the construction.

J. The City of Schertz and the City of Cibolo agree to approach TxDOT with an offer of providing Five Hundred Thousand Dollars (\$500,000) from each City to be used to

design and construct improvements to the intersections of both the north and south bound frontage roads of Interstate Highway 35 and Wiederstein Road. If the Cities cannot reach agreement from TxDOT by December 31, 2019, the cities are no longer obligated to commit funds for the intersection of both the north and south bound frontage roads of Interstate Highway 35 and Wiederstein Road per this section.

#### IV. MISCELLANEOUS

A. Notice and Addresses. All notices required hereunder must be given by certified mail or registered mail, addressed to the proper Party, at the following addresses:

To City of Schertz: City of Schertz, Texas  
Attn: Dr. Mark Browne, City Manager  
1400 Schertz Parkway  
Schertz, TX 78154

With a copy to: City of Cibolo, Texas  
Attn: Robert T. Herrera, City Manager  
200 S. Main Street  
Cibolo, TX 78108

Either Party may change the address to which notices are to be sent by giving the other Party notice of the new address in the manner provided in this section. Notices shall be deemed to have been received three (3) days after deposit in the mail.

For ease of administration of this contract, a main contact person has been designated for each of the Parties as follows:

For the City of Cibolo: Robert T. Herrera, City Manager  
For the City of Schertz: Mark Browne, City Manager

B. Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the Parties of this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

C. Prior Agreement Superseded. This Agreement constitutes the sole and only agreement of the Parties regarding their responsibilities to each other concerning the work noted herein on the Project and supersedes any prior understandings or written or oral agreements between the Parties respecting the Project. This Agreement in no way modifies or supersedes any document executed by the Parties prior to this Agreement which does not involve the Project.

D. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties to this Agreement.

E. Hold Harmless. The City of Cibolo will hold the City of Schertz harmless from any claims contemplated by this Agreement (e.g., contract claims between the City and any contractors and/or injury or property damage claims) to the extent permitted by Texas law. The City of Cibolo is solely responsible and liable for ensuring all requirements for procurement and bidding are followed.

F. Violation of Law. The City of Cibolo and the City of Schertz shall not knowingly violate any Federal, State or local laws, regulations, or ordinances in the performance of this Agreement.

G. Enforceability. If any provision of this Agreement proves unlawful or unenforceable by a court having jurisdiction over the Parties or the subject matter, such provision shall be severable from the other provision of this Agreement, and all remaining provision shall be fully enforceable. The City of Cibolo will provide or cause to be provided a surety in a form agreeable to the City of Schertz in the amount of Three Million Five Hundred Twenty Five Thousand (\$3,525,000) that can be used by the City of Schertz to construct the Project in the event of a default by the City of Cibolo per Section I.

H. Governing Law and Place for Performance. This Agreement shall be governed by the laws of Texas, which state shall also be deemed the place where this Agreement was entered into and the place of performance and transaction of business and Parties. In the event of litigation pertaining to the Agreement, the exclusive forum, venue, and place of jurisdiction shall also be the County of Guadalupe and the State of Texas unless otherwise agreed in writing by the Parties. The Parties acknowledge that each has had the unfettered opportunity to review, revise, and negotiate the terms of this Agreement and that if in the future there is a dispute as to the meaning of any provision herein, then no such provision shall be construed against the drafter of the Agreement.

I. Exhibits Incorporated. All exhibits to this Agreement are incorporated by reference as if completely set out herein.

J. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City of Cibolo and the City of Schertz, respectively.

K. No Waiver of Immunities. Nothing in the Agreement shall be construed to waive any immunities from suit or liability enjoyed by the City of Cibolo, the City of Schertz, their past or present officers, employees, or agents of employees.

L. No Third Party Beneficiary. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.

M. No Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the parties hereto.

N. Approval by Governing Bodies. This Agreement has been approved by the Governing bodies of the City of Cibolo and the City of Schertz.

O. Payment from Current Revenues. Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

P. Assignment. Neither Party may assign their interests in this Agreement except upon receiving the written consent of the other Party.

EXECUTED TO BE EFFECTIVE this \_\_\_\_\_ day of \_\_\_\_\_, 2019

**CITY OF CIBOLO**

By: \_\_\_\_\_  
Robert T. Herrera, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Peggy Cimics, City Secretary

**CITY OF SCHERTZ**

By: \_\_\_\_\_  
Mark Browne, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Brenda Dennis, City Secretary