

**INTERLOCAL AGREEMENT  
BETWEEN WILLIAMSON COUNTY AND THE CITY OF GEORGETOWN, TEXAS  
REGARDING THE SOUTHWEST BYPASS PROJECT**

**THIS INTERLOCAL AGREEMENT** is made and entered into by and between WILLIAMSON COUNTY (the "County") and the CITY OF GEORGETOWN, TEXAS (the "City"), political subdivisions of the State of Texas.

**ARTICLE I – RECITALS**

**WHEREAS**, The Texas Interlocal Cooperation Act, Texas Government Code Chapter 791 (the "Act"), provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

**WHEREAS**, the City executed an Industrial District Agreement with Texas Crushed Stone Company ("TCS") and Georgetown Railroad Company, Inc. ("GRR") (TCS and GRR are collectively referred to herein as "Owner") effective March 31, 2011 and recorded in the Official Records of Williamson County as Document No.2011022308, a complete copy of which is attached hereto as Exhibit "A", including Exhibits A through H thereto (collectively, the "Industrial District Agreement") pertaining to construction of a two-lane road commencing at the intersection of SH Toll 130 and CR 104, and terminating at its intersection with SH 29, which is referred to locally as the Southwest Bypass Road and the general location of which is shown by diagram on Exhibit "B" attached hereto; and

**WHEREAS**, Owner is the owner of certain tracts of real property that must be acquired as public right-of-way for the portion of the Southwest Bypass Road to be located between IH-35 and FM 2243 (a/k/a Leander Road), said segment of the Southwest Bypass Road being referred to in this Agreement as the "Project;" and

**WHEREAS**, Owner agreed to donate or allow use of approximately \_\_ acres of land described on Exhibit "C" to the City as right-of-way for the Project (the "Right-of-Way Tract"), subject to certain rights of Owner and to the terms and conditions of the Industrial District Agreement, and the Special Warranty Deed and Railroad Crossing License attached thereto as Exhibits G and H, respectively; and

**WHEREAS**, the County has bond funding available to fund design and construction of the Project; and

**WHEREAS**, by entering this Agreement it is the intention of the City to, among other things, 1) delegate to the County the duties to complete the Project and perform the City's obligations under the Industrial District Agreement and Special Warranty Deed, as modified by this Agreement, except those obligations specifically retained by the City as expressly stated herein; 2) allow the County to utilize the Right-of-Way Tract (save and except that portion of the Right-of-Way Tract described in Section 3.1 of the Industrial Development Agreement as the Georgetown Railroad (GRR) property, by sketch on Exhibit D-Part 3 of the Industrial

Development Agreement as the “Railroad Crossing License”, referred to in Exhibit H of the Industrial Development Agreement as the “GRR License Tract”, and described by metes and bounds and surveyor’s sketch in the survey attached hereto as Exhibit “C”) (the “GRR License Tract”) for the purposes of constructing the Project under a temporary access and construction easement, subject to the limitations, exceptions, reservations, and other terms and conditions of Industrial District Agreement, Special Warranty Deed, Railroad Crossing License, and the additional terms and conditions of this Agreement; and 3) address payment and/or reimbursement to the City by the County for design and construction of that portion of the Project to be located on the GRR License Tract (the “GRR License Tract Segment”) and

**WHEREAS**, by entering this Agreement it is the intention of the County to, among other things: 1) assume the obligation to complete the Project at its sole cost and expense and in compliance with all terms and conditions of the Industrial District Agreement, Special Warranty Deed, Railroad Crossing License (as applicable), and this Agreement; 2) to promptly and fully pay the City for construction of the GRR License Tract Segment of the Project; and 3) to obtain the right from the City to use the Right-of-Way Tract (save and except the GRR License Tract) to construct the Project at no additional cost to the County.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, City and County agree as follows:

## **ARTICLE II – CITY OBLIGATIONS FOR THE PROJECT**

2.01 The City agrees to provide notices to Owner under Sections 3.2(a), (g), and (h) of the Industrial District Agreement not later than ten (10) days after City receives a written request to do so from County. Written requests from the County to the City must be provided in the manner described in Section 9.12 of this Agreement.

2.02 As consideration for the County’s agreement to construct the Project at County’s sole cost and expense, the City agrees to allow the County to utilize the Right-of-Way Tract (save and except for the GRR License Tract) for the purposes of constructing the Project, subject to the limitations, exceptions, reservations, and other terms and conditions of Industrial District Agreement, Special Warranty Deed, and Railroad Crossing License (as applicable), and to the additional terms and conditions of this Agreement. Not later than thirty (30) days after the City and Owner have executed the Special Warranty Deed and Railroad Crossing License in accordance with Section 3.2(a) of the Industrial District Agreement, City will execute a Temporary Access and Construction Easement in the form attached hereto as Exhibit “D” allowing the County to utilize the Right-of-Way Tract (save and except for the GRR License Tract) for the purposes of constructing the Project, which easement shall be expressly subject to the limitations, exceptions, reservations, and other terms and conditions of Industrial District Agreement, Special Warranty Deed, and Railroad Crossing License (as applicable), and the additional terms and conditions of this Agreement.

2.03 City agrees to obtain Endorsement 217, Indemnification under Contract, from the Texas Municipal League Intergovernmental Risk Pool, or otherwise comply with the

requirements of Section 3.2(e) of the Industrial District Agreement.

2.04 City agrees to cooperate with the County and TxDOT to expedite driveway permitting for the Project at the IH-35 intersection.

2.05 City agrees to allow the County to construct the Project within the City limits, if and to the extent necessary. City agrees to be responsible for the operation and maintenance of the Project after completion by the County and acceptance by the City.

2.06 Subject to and conditioned upon the County's full compliance with the provisions of Article VI and with all other terms and conditions of this Agreement, City agrees to design and construct the GRR License Tract Segment of the Project.

### **ARTICLE III – COUNTY OBLIGATIONS FOR THE PROJECT**

3.01 Except as expressly retained by the City under Article II of this Agreement or expressly modified by this Agreement, the City hereby delegates and the County hereby agrees to perform all duties and obligations of the City related to the Project under the Industrial District Agreement, the Special Warranty Deed, and the Railroad Crossing License (as applicable). The duties and obligations City delegates to County, and the duties and obligations County hereby accepts and agrees to perform at its sole cost and expense, include, but are not limited to:

- (a) Demolish the former Snead homestead on the Barnes Property prior to construction of the Project in compliance with the Industrial District Agreement, Section 2.2.
- (b) Prepare for the City's and Owners' approval the Traffic Safety Plan in accordance with Section 3.2(f) of the Industrial Development Agreement and the Safety Plan in accordance with Sections 1(h) and (i) of the Railroad Crossing License.
- (c) Design the Project (save and except for that portion of the Project to be located on the GRR License Tract) in compliance with the Southwest Bypass Road Conditions defined and described in Sections 3.2(a)(i) through (v) of the Industrial District Agreement and with all additional standards and conditions of the Special Warranty Deed and the Railroad Crossing License (as applicable).
- (d) Construct the Project on the Right-of-Way Tract (save and except for that portion of the project to be located on the GRR License Tract) in compliance with the Southwest Bypass Road Conditions defined and described in Sections 3.2(a)(i) through (v) of the Industrial District Agreement and with all additional standards and conditions of the Special Warranty Deed.
- (e) Cause final completion and acceptance by the City of the Project to occur on or before March 31, 2020.

- (f) Locate, install, and relocate utilities underground as necessary for the Project and to serve the Property (as that term is defined in Exhibit B of the Industrial District Agreement), including acquisition of right-of-way, easements, and/or other property, and professional fees. County agrees to perform the City's responsibilities, if any, related to utilities, including those responsibilities memorialized in other documents, as referenced in Section 3.2(d) of the Industrial District Agreement.
- (g) Design, locate, and construct the water quality and/or detention pond as necessary for the Project and to serve the Property in accordance with Section 3.3 of the Industrial District Agreement, and Exhibit "D" thereto, and as required by TCEQ or other regulatory agency, including acquisition of right-of-way, easements, and/or other property, and professional fees.
- (h) Obtain and maintain the insurance required by the Industrial Development Agreement and Special Warranty Deed, and Article VI of this Agreement, and name the City as an additional insured on such policies.
- (i) Provide notices to the City in accordance with Article II of this Agreement.
- (j) Timely prepare all Contract Documents (defined herein) for the Project (save and except the GRR License Tract Segment of the Project) in compliance with the Industrial Development Agreement, Special Warranty Deed, and/or Railroad Crossing License, and provide electronic and hard copies of all Contract Documents related to the Project to the City as required by Section 5.03 of this Agreement. For the purposes of this Agreement, the term "Contract Documents" means and includes all documents related to the Project in whatever form or format, including, without limitation, bidding documents (e.g., advertisements for bids, invitation for bids, instructions to bidders, bid forms, etc), agreements between County and Engineer or HDR and the contractor(s), including general conditions, special conditions, supplementary conditions and all other conditions; drawings, plans, specifications, amendments, modifications, addenda, change orders/work directives/field orders, submittals and communications with the Engineer, HDR and the contractor, and reports and drawings of subsurface and physical conditions, and all other documents listed in the agreements with the Engineer, HDR and the contractor as constituting contract documents.
- (k) Cause the engineering contract for the Project to be prepared so that the owner for purposes of the GRR License Tract Segment of the Project is the City and the owner for the purposes of the remainder of the Project is the County; and cause the bid documents and construction contract for the Project to be prepared so that a separate bid for the City as owner is obtained for construction of the GRR License Tract Segment of the Project, and a separate bid for the County as owner is obtained for construction of the remainder of the Project.

- (l) Pay to the City all GRR License Tract Segment Design Costs (defined herein), GRR License Tract Construction Costs (defined herein), all other costs referenced in Section 2(a), (b), (d) and (e) of the Railroad Crossing License, and all other sums due under this Agreement.

3.02 County agrees to comply with all other terms and conditions of the Industrial District Agreement, Special Warranty Deed, and Railroad Crossing License (as applicable) as necessary to obtain and maintain all rights to use the Right-of-Way Tract for the Project at no cost to the City. County represents and warrants that it will comply with the terms of the Industrial District Agreement, Special Warranty Deed, and Railroad Crossing License (as applicable) as if it were the City, subject to the modification made by Sections 3.01(d) and 3.03 of this Agreement to the completion deadline.

3.03 County hereby agrees that, as to its performance of the City's obligations under Article III of the Industrial District Agreement, the deadline of March 31, 2026 described in Section 3.2(b) of the Industrial District Agreement, Section 7 of the Railroad Crossing License, and in the Special Warranty Deed as the "Primary Term," shall, as to the County and for the purposes of this Agreement and the Project, be deemed to be March 31, 2020. This Agreement makes no other modifications to the terms or conditions of the Industrial Development Agreement, Special Warranty Deed, or Railroad Crossing License and County is required to comply with all other terms and conditions thereof (as applicable) as if it were the City.

3.04 County's obligations to relating to the GRR License Tract Segment are set forth in Article VI of this Agreement.

3.05 Failure of the County to comply with any of the terms and conditions of the Industrial Development Agreement, Special Warranty Deed, or Railroad Crossing License (as applicable) as modified by this Agreement, or with any of the terms and conditions of this Agreement, is a material breach of this Agreement.

#### **ARTICLE IV – TERM**

4.01 This Agreement shall commence upon the Effective Date (defined herein) and shall end on March 31, 2020, unless otherwise agreed by the City and the County in writing.

#### **ARTICLE V – PROJECT MANAGEMENT**

5.01 The County's Engineer for the Project is \_\_\_\_\_, P.E. (Engineer) of HDR, Inc. (HDR) County hereby represents and warrants to the City that HDR shall design the Project and provide construction management for the Project in compliance with the terms and conditions of this Agreement and the Industrial District Agreement. City shall review the plans and specifications for the Project at 30%, 60% and 90% completion, and shall approve the final design and construction Contract Documents, in writing. City shall receive a copy of all communications, documents, and transmittals between HDR and the County related to the Project and compliance with the terms of this Agreement and the Industrial Development Agreement. Notwithstanding the foregoing, the County shall not be responsible for management of construction of the GRR License Tract Segment of the Project.

5.02 Construction of the Project shall be competitively bid and awarded by the County as required by Texas law. City and County shall each review and approve, in writing, the form of the bid documents (including the form of the construction contracts) prior to the construction contract solicitations, and review the bid tabulation and qualifications of bidding contractors. Contractors and subcontractors that are not on the current TxDOT Bid List shall be disqualified from the Project. Notwithstanding the foregoing, the County shall not be responsible for construction of the GRR License Tract Segment of the Project.

5.03 County shall provide, or cause Engineer, HDR or its contractor to provide, electronic and hard copies of all Contract Documents for the Project to the City within seven (7) days of the City's request to the County for same.

5.04 County shall cause City to be named as an additional insured on the County's Contractor's insurance policies and on the insurance policy to be secured by the County as required under Section 3.2(e) of the Industrial District Agreement. County shall cause the County's Contractor to provide a performance bond that includes County and City as dual obligees. County shall promptly provide to the City copies of all communications between the Engineer and/or Contractor and the County.

5.05 City shall be invited to attend construction progress meetings, at the same time and in the same manner as the County, and shall receive a copy of the minutes for each meeting at the same time the minutes are sent to the County.

5.06 County shall provide to the City copies of all material testing reports and all other inspection reports for the Project at the same time the inspection reports are sent to the County. City representatives shall have the right to access and inspect the Project during construction and the County shall not interfere with such access or inspection by the City.

5.07 At substantial completion of the Project, City and County shall inspect the Project for compliance with the Contract Documents. The City and County shall jointly prepare a punchlist. The City shall accept the Project for operation and maintenance when the City acknowledges, in writing, that all of the following conditions precedent are satisfied: 1) the Engineer certifies that all punchlist work is complete; 2) the Engineer certifies that the Project is finally complete in accordance with the Contract Documents; 3) the Contractor provides the maintenance bond required by the Contract Documents to the City; and 4) the Traffic Safety Plan and Safety Plan are approved by the Owner and the City and fully implemented by the County.

## **ARTICLE VI – GRR LICENSE TRACT SEGMENT**

6.01 The provisions of this Article VI apply to the GRR License Tract Segment of the Project.

6.02 City shall be responsible for design and construction of the GRR License Tract Segment of the Project, but the County will be responsible for all costs related to same.

6.03 City shall provide a copy of the final, executed design and construction Contract Documents pertaining to the GRR License Tract Segment of the Project to County. The County hereby agrees that the provisions in the City's design and construction Contract Documents pertaining to contract price and payment applications by the engineer and contractor for work on the GRR License Tract Segment of the Project are hereby deemed to be sufficient to support requests for payment of the GRR License Tract Segment Design Costs (defined herein) and GRR License Tract Segment Construction Costs (defined herein) by the City to the County under this Agreement.

6.04 Any change orders related to work on the GRR License Tract Segment of the Project must be approved by both the City and the County, and the County's approval of any such change order(s) shall not be unreasonably conditioned or withheld.

6.05 Payment by the County to the City for design of the GRR License Tract Segment of the Project shall be as follows:

- (a) Not later than thirty (30) days after the date of the City's written request to the County sent to the County at the address for Notices set forth in Section 9.12 of this Agreement, County shall pay to the City one hundred percent (100%) of the estimated costs for design and engineering work related to the GRR License Tract Segment of the Project reflected in the Contract Documents between the City and the City's engineer (the "GRR License Tract Segment Design Costs"). Payment shall be by cashier's check made payable to the City of Georgetown, Texas and sent to the City Manager at the address for Notices set forth in Section 9.12 of this Agreement with the annotation "Southwest ByPass GRR License Tract Segment Design Funds."
- (b) If the actual costs of designing and engineering the GRR License Tract Segment are more than the amount of the County's initial payment for same, the County shall tender additional payment(s) to the City within fifteen (15) days of the City's written request(s) for same. If the actual costs of designing and engineering the GRR License Tract Segment are less than the amount of the County's payment(s) for same, the City shall be entitled to retain the monies received but shall, prior to final acceptance of the Project, subtract any excess GRR License Tract Design Cost payments from the amount showing as due on the final invoice pertaining to the GRR License Tract Segment Construction Costs (defined herein).
- (c) Any amount invoiced to the County under Section 6.05 of this Agreement that is not paid prior to the expiration of the applicable deadline set forth in Section 6.05(a) or (b) above shall accrue an immediate ten percent (10%) penalty, plus interest at the rate set forth in Texas Government Code Section 2251.025(b). The County further agrees to pay all costs of collection including attorney's fees.

6.06 Payment by the County to the City for construction of the GRR License Tract Segment of the Project shall be as follows:

- (a) Not later than thirty (30) days after the effective date of the Contract Documents by and between the City and the contractor selected to construct the GRR License Tract Segment of the Project, but in any case prior to issuance of a notice to proceed on the construction of the GRR License Tract Segment of the Project, the County shall pay to the City thirty percent (30%) of the full construction contract price shown in the executed Contract Documents for the GRR License Tract Segment of the Project, including, without limitations, the estimated cost of labor, materials, equipment, trench safety, erosion control, environmental, Safety Plan costs, Traffic Safety Plan costs, and contingency amounts related to design and construction of the GRR License Tract Segment of the Project (collectively, the “GRR License Tract Segment Construction Costs”). Payment shall be by cashier’s check made payable to the City of Georgetown, Texas and sent to the City Manager at the address for Notices set forth in Section 9.12 of this Agreement with the annotation “Southwest ByPass GRR License Tract Segment Construction Funds.”
- (b) No more frequently than once every thirty (30) days, the City shall invoice the County for the GRR License Tract Segment Construction Costs incurred since the prior invoice date. Said invoice shall be accompanied by the City-approved pay application documentation received by the City from the engineer or contractor. County shall pay full the amount due on each invoice no later than the date that is thirty (30) days after the date of the invoice (the “Due Date”) by cashier’s check or bank wire in order not to be considered delinquent; provided, however, that the County may dispute an invoice in the manner set forth in Section 6.07 of this Agreement and payment of an invoice in full shall not constitute a waiver of the County’s right to dispute the invoice. If paid by cashier’s check, payment of an invoice must be received on or before the Due Date at the address given for Notices in Section 9.12 of this Agreement and with the annotation described in Section 6.05(a) of this Agreement. If paid by wire, County shall request wiring instructions from the City prior to remitting payments of the GRR License Tract Segment Construction Costs by bank wire and the City’s account must be credited with the funds on or before the Due Date. Exhaustion of the funds received under Section 6.06(a) of this Agreement shall not be a precondition to the City’s right to request and receive payment under this Section 6.06(b) of this Agreement.
- (c) Any amount invoiced to the County under Section 6.06 of this Agreement that is not paid by the Due Date shall accrue an immediate ten percent (10%) penalty, plus interest at the rate set forth in Texas Government Code Section 2251.025(b). The County further agrees to pay all costs of collection including attorney’s fees.

6.07 The obligation of the County to make payments under this Article VI or any other section of this Agreement constitutes a general obligation or indebtedness of the County. Failure of the County to make payments under this Agreement is a material breach of this Agreement.



6.08 If the County at any time disputes the amounts to be paid by it to the City under this Article VI, the County shall nevertheless make the disputed payment or payments, but the County shall have the right to seek a judicial determination whether the amounts shown on an invoice paid by the County are in accordance with the terms of this Agreement. If it is subsequently determined by agreement or court decision that the disputed amount paid by the County should have been less or more, the City shall promptly prepare a revised invoice reflecting the agreed or adjudicated amount due, and any payments required to be made pursuant to the revised invoice shall be remitted to the Party entitled to receive them per the revised invoice within three (3) business days after receipt of the revised invoice.

6.09 Failure of the County to pay the City the GRR License Tract Segment Design Costs, or the GRR License Tract Segment Construction Costs, or any other sums due under this Agreement when and as required by this Agreement, shall be a material breach of this Agreement.

## **ARTICLE VII – INSURANCE AND INDEMNITY**

**7.01 COUNTY ACKNOWLEDGES THAT THE SOUTHWEST BYPASS ROAD WILL BE CONSTRUCTED AND OPERATED WITHIN AN ACTIVE QUARRY ZONE CONTAINING AN ACTIVE QUARRY OPERATION. THE COUNTY HEREBY AGREES TO INDEMNIFY CITY AND OWNER AGAINST LOSSES FROM CLAIMS OR LAWSUITS RESULTING FROM THE COUNTY'S CONSTRUCTION OF THE SOUTHWEST BYPASS ROAD WITHIN AN ACTIVE QUARRY ZONE BY OBTAINING ENDORSEMENT 217, INDEMNIFICATION UNDER CONTRACT, FROM THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL, AND/OR OTHER INSURANCE COVERAGE AS NECESSARY TO COMPLY WITH THE INSURANCE AND INDEMNITY REQUIREMENTS OF THE INDUSTRIAL DISTRICT AGREEMENT. IN THE EVENT A CLAIM OR LAWSUIT IS BROUGHT AGAINST THE COUNTY, CITY, OR OWNER, THE TML INTERGOVERNMENTAL RISK POOL AND/OR OTHER INSURER, WILL PROVIDE A DEFENSE FOR CITY AND FOR OWNER, AND WILL PAY DAMAGES, IF ANY.**

**7.02 THE COUNTY AGREES TO OBTAIN, AT COUNTY'S SOLE COST AND EXPENSE, A GENERAL LIABILITY INSURANCE POLICY TO PROTECT AGAINST ANY AND ALL BODILY INJURY OR PROPERTY DAMAGE AS A RESULT OF THE PROJECT AND TO NAME THE CITY AND OWNER AS ADDITIONAL INSURED ON SUCH POLICY. COUNTY AGREES TO INDEMNIFY AND HOLD CITY AND OWNER HARMLESS FROM ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, OR OTHER DAMAGES RELATED TO THE PROJECT IN EXCESS OF THE INSURANCE COVERAGE.**

**7.03 COUNTY AGREES AND ACKNOWLEDGES THAT CITY AND OWNER DO NOT ASSUME ANY LIABILITY FOR, OR WARRANT, THE PROJECT. COUNTY AGREES AND ACKNOWLEDGES THAT CITY SHALL NOT BE LIABLE FOR ANY CLAIM OR CAUSE OF ACTION THAT COUNTY MAY HAVE NOW OR IN THE**

**FUTURES, OR ANY DAMAGES OF ANY NATURE WHATSOEVER ALLEGEDLY SUSTAINED BY COUNTY, OR ANYONE HAVING A CLAIM BY, THROUGH OR UNDER COUNTY, RELATED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE PROJECT, AND COUNTY EXPRESSLY RELEASES CITY FROM ANY SUCH CLAIM OR CAUSE OF ACTION.**

**7.04 COUNTY WAIVES ANY CLAIM THE COUNTY OR THE COUNTY'S CONTRACTORS MAY HAVE AGAINST CITY OR OWNER RESULTING FROM DAMAGE TO THE SOUTHWEST BYPASS ROAD, UTILITIES CONSTRUCTED WITHIN THE RIGHT-OF-WAY TRACT, AND ANY OTHER PROPERTY, SO LONG AS QUARRY OPERATIONS ARE CONSISTENT WITH REQUIREMENTS ESTABLISHED BY STATE LAW, FEDERAL LAW AND INDUSTRY STANDARDS, INCLUDING, WITHOUT LIMITATION, CLAIMS THE COUNTY OR THE COUNTY'S CONTRACTORS MAY HAVE AGAINST OWNER ARISING OUT OF, OR IN ANY MANNER CONNECTED WITH TREMORS, VIBRATIONS, FLYING ROCKS OR DEBRIS, NOISE OR NOXIOUS ODORS.**

#### **ARTICLE VIII – DEFAULT AND REMEDIES**

8.01 Any material breach by the County of this Agreement, the Industrial Development Agreement, the Special Warranty Deed, or the Railroad Crossing License (as applicable) shall be a default of this Agreement. If a Party commits a default of this Agreement, any notice given by the non-defaulting Party to the defaulting party shall describe the alleged default in reasonable detail (the “Notice of Default”).

8.02 If the Notice of Default pertains to the failure of the County to perform any of its monetary obligations set forth in this Agreement, the County shall cure the monetary default within fourteen (14) days after the date of the Notice of Default (the “Monetary Cure Period”). If the Notice of Default pertains to failure of a Party to perform a non-monetary obligation set forth in this Agreement, the defaulting Party must commence cure of the non-monetary default(s) specified in the Notice of Default within thirty (30) days after the date of the Notice of Default, and must thereafter diligently pursue such cure to completion, but in no event longer than sixty (60) days after the date of the Notice of Default (the “Non-Monetary Cure Period”).

8.03 If the defaulting Party does not cure the default before the expiration of the applicable cure period (specified in Section 8.02 of this Agreement), and if the non-defaulting Party has not waived the default in writing, then after the expiration of the applicable cure period, the non-defaulting Party may, in its sole discretion, and without prejudice to any other right or remedy allowed under this Agreement, seek any relief available at law or in equity, all of which are cumulative and are in addition to any other right or remedy given under this Agreement which may now or subsequently exist in law or in equity by statute or otherwise, and the exercise of any one remedy does not preclude the exercise of another. Damages, if any, to which any non-defaulting Party may be entitled shall be limited to actual damages and shall not include special, incidental, or consequential damages. To the extent that any course of dealing, act, omission, failure, or delay in exercising any right or remedy under this Agreement constitutes the election of an inconsistent right or remedy, that election does not constitute a waiver of any right or remedy, or limit or prevent the subsequent enforcement of any provision

of this Agreement. No single or partial exercise of any right or remedy under this Agreement precludes the simultaneous or subsequent exercise of any other right or remedy.

8.04 In addition to the City's rights under other Sections of this Agreement, if County fails to cause substantial completion of the Project to occur on or before March 31, 2020 and/or to be completed in compliance with all terms and conditions of this Agreement and the Industrial Development Agreement, the Special Warranty Deed, and the Railroad Crossing License (as applicable), the City may, in its sole discretion, terminate the Temporary Access And Construction Easement and this Agreement, and County shall 1) hold harmless and defend the City against all losses, damages (including, without limitation, consequential damages) costs and expenses (including, without limitation, interest (including prejudgment interest in any litigated matter), penalties, court costs, and attorney's fees and expenses) asserted against, imposed upon or incurred by the City, directly or indirectly, arising out of or resulting from the breach or uncured default and termination of the Temporary Access and Construction Agreement and/or this Agreement and enforcement of this Section.

## **ARTICLE IX – GENERAL PROVISIONS**

9.01 Authority. This Agreement is entered, in part, pursuant to the authority of the Act. The provisions of the Act are incorporated in this Agreement and this Agreement shall be interpreted in accordance with the Act.

9.02 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement will not be affected and this Agreement will be construed as if the invalid or unenforceable provision(s) had never been included.

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

9.04 Entire Agreement. This Agreement and all Exhibits to this Agreement, which are incorporated herein by reference and made a part hereof as if set forth in full (except as modified by this Agreement), constitute the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter of this Agreement. No promise, statement or representation that is not expressly stated in this Agreement has been made by any Party to induce execution of this Agreement.

9.05 Amendments. This Agreement may not be amended or modified except in writing executed by both City and Williamson County, and authorized by their respective governing bodies.

9.06 Waiver. Lack of enforcement of any right under this Agreement by either Party shall not constitute a waiver of that right or any other in the future.

9.07 Independent Relationship. Each Party, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one Party shall not be deemed or

construed to be the employees or agents of the other Party for any purpose.

9.08 No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either Party. Neither City nor County waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

9.09 No Third Party Beneficiaries. This Agreement is entered into for the sole and exclusive benefit of the Parties. Nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring any rights, benefits, remedies, or claims upon any other person or entity.

9.10 No Assignment. This Agreement may not be assigned in whole or in part by either Party.

9.11 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.

9.12 Notices. Notices given under this Agreement will be effective if forwarded to a Party by hand-delivery; transmitted to a Party by confirmed fax; or deposited with the U.S. Postal Service, certified mail, postage prepaid, to the address of the Party indicated below:

County: Williamson County  
Attn: County Judge  
710 Main Street, Suite 101  
Georgetown, TX 78626  
Fax: (512) 943-1550

City: City of Georgetown  
Attn: City Manager  
113 E. 8<sup>th</sup> Street  
Georgetown, Texas 78627  
Fax: (512) 930-3622

Either Party may designate any other person or address for notice by written notice to the other Party.

9.13 Exhibits. The following Exhibits are attached to this Agreement and incorporated by reference:

Exhibit A – Industrial District Agreement, including Exhibits A through H  
Exhibit B – Diagram of Southwest Bypass Project  
Exhibit C – Survey of Right of Way Tract  
Exhibit D – Form of Temporary Access and Construction Easement

9.14 Counterparts; Effect of Partial Execution. This Agreement may be executed in

counterparts each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.

9.15 Authority. City and County have authorized and approved this Agreement by resolution or action adopted by their respective governing bodies at meetings held in compliance with the Texas Open Meetings Act.

9.16 Effective Date. This Agreement is executed to be effective on the latest date accompanying the signatures of duly authorized representatives of both the City and the County (the "Effective Date").

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK-  
SIGNATURE PAGES TO FOLLOW]

**ACCEPTED AND AGREED TO:**

**WILLIAMSON COUNTY**

By: \_\_\_\_\_  
Dan A. Gattis, County Judge

**ATTEST:**

By: \_\_\_\_\_  
County Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
General Counsel

STATE OF TEXAS	§	
	§	ACKNOWLEDGMENT
COUNTY OF WILLIAMSON	§	

**THIS INSTRUMENT** was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2016, by Dan A. Gattis as County Judge of Williamson County, on behalf of the County.

\_\_\_\_\_  
Notary Public - State of Texas

**ACCEPTED AND AGREED TO:**

**CITY OF GEORGETOWN, TEXAS**

By: \_\_\_\_\_  
Dale Ross, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Shelley Nowling, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

THE STATE OF TEXAS	§	
	§	ACKNOWLEDGMENT
COUNTY OF WILLIAMSON	§	

**THIS INSTRUMENT** was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2016, by Dale Ross as Mayor of the City of Georgetown, a Texas home-rule city, on behalf of the City.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT A TO  
INTERLOCAL AGREEMENT  
BETWEEN WILLIAMSON COUNTY AND THE CITY OF GEORGETOWN, TEXAS  
REGARDING THE SOUTHWEST BYPASS PROJECT**

Industrial District Agreement, including Exhibits A through H



**EXHIBIT B TO  
INTERLOCAL AGREEMENT  
BETWEEN WILLIAMSON COUNTY AND THE CITY OF GEORGETOWN, TEXAS  
REGARDING THE SOUTHWEST BYPASS PROJECT**

Diagram of Southwest Bypass Road

**EXHIBIT C TO  
INTERLOCAL AGREEMENT  
BETWEEN WILLIAMSON COUNTY AND THE CITY OF GEORGETOWN, TEXAS  
REGARDING THE SOUTHWEST BYPASS PROJECT**

Survey of Right-of-Way Tract

**EXHIBIT D TO  
INTERLOCAL AGREEMENT  
BETWEEN WILLIAMSON COUNTY AND THE CITY OF GEORGETOWN, TEXAS  
REGARDING THE SOUTHWEST BYPASS PROJECT**

Form of Temporary Access and Construction Easement