

**INTERLOCAL AGREEMENT REGARDING  
EXPANSION OF RM 2338  
(Williams Drive Project)**

THE STATE OF TEXAS           §  
  §           KNOW ALL BY THESE PRESENTS:  
COUNTY OF WILLIAMSON    §

**THIS INTERLOCAL AGREEMENT EXPANSION OF RM 2338 (WILLIAMS DRIVE)** (“**Agreement**”) is entered into between Williamson County, a political subdivision of the State of Texas (the “**County**”) and the City of Georgetown, a political subdivision of the State of Texas (the “**City**”). In this Agreement, the City and the County are sometimes individually referred to as “**a Party**” and collectively referred to as “**the Parties**”.

**WHEREAS**, the Texas Department of Transportation (“**TxDOT**”) has released its jurisdiction over a portion of Williams Drive in Williamson County, Texas to the County and the City; and

**WHEREAS**, the County and City mutually desire to conduct certain roadway improvements to widen and expand a portion of Williams Drive, and the County has agreed to undertake the roadway project in cooperation of the City; and

**WHEREAS**, the project includes the expansion and widening of RM 2338 from DB Wood Drive to FM 3405 and maintenance of RM 2338 from the southbound frontage road of IH-35 to FM 3405, (the “**Project**”), and

**WHEREAS**, the County and City jointly applied for federal funds to assist with the Project, and federal funds have been awarded to the Project per that certain Advance Funding Agreement No.CSJ-2211-01-016 (Dist # 14; Code Chart 64 # 16000; RM 2338 W or FM 3405 to Cedar Breaks Road) by and between the Texas Department of Transportation and City.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

**I. DEFINITIONS**

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

**1.01**           “*Agreement*” means this Interlocal Agreement Regarding Expansion of RM 2338.

**1.02**           “*AFA Agreement*” means that certain Advance Funding Agreement No.CSJ-2211-01-016 (Dist # 14; Code Chart 64 # 16000; RM 2338 W or FM 3405 to Cedar

Breaks Road) by and between the Texas Department of Transportation and City, a copy of which is attached hereto as **Exhibit D.**

**1.03** “*AFA Amount*” means EIGHT MILLION EIGHT HUNDRED TWENTY EIGHT THOUSAND NINE HUNDRED DOLLARS AND NO CENTS (\$8,828,900).

**1.04** “*Bid Documents*” means the plans and specifications, together with all contract documents and bid instructions, relating to construction of the Project.

**1.05** “*City*” means Georgetown, Texas.

**1.06** “*City Portion*” means that portion of the Project from D.B. Wood Road to Jim Hogg Road, which comprises approximately 65% of the Project.

**1.07** “*City’s Reimbursement Amount*” means sixty-five percent (65%) of all sums spent by the County for the Project, including relocation of utilities, less: (a) all costs associated with the Chisholm Exceptions, as defined herein; and (b) sixty five percent (65%) of the AFA Amount. This amount represents the City Portion of the Project.

**1.08** “*Effective Date*” means the last date of execution of this Agreement by the Parties; provided that all of the Parties must execute this Agreement for it to be effective.

**1.09** “*Exclusive Assignment*” means the assignment to be granted by the County and City within public right-of-way in the Project Area, in which no other parallel subsurface utility improvements may be located, and in which any future relocation of the Chisholm SUD waterline improvements caused by a conflict with any roadway improvements shall be undertaken at the County’s expense, as more particularly described in this Agreement.

**1.10** “*Exclusive Assignment Area*” means that certain 5-foot wide corridor within the Project Area and public right of way for Williams Drive in which Chisholm SUD distribution line improvements will be located, as more particularly identified in **Exhibit “A”**. The parties acknowledge and agree that the Exclusive Assignment Area may vary within the northern right-of-way of the Project in order to avoid construction and other utility conflicts.

**1.11** “*Final Acceptance*” shall mean the written approval of a duly authorized representative of the City accepting the Project as finally complete, including the final payment to the Project Contractor for the Project.

**1.12** “*Project*” means, collectively, the Roadway Improvements and the related utility relocations, all as set forth in this Agreement.

**1.13** “*Project Area*” means the area in which the Project will be undertaken, as said Project Area is more particularly identified in **Exhibit “B”** attached hereto.

**1.14** “*Roadway Improvements*” means the construction of the improvements to Williams Drive/RM 2238 to be undertaken by the County within the Project Area, including all utility relocations.

**1.15** “*Party*” or “*Parties*” means the City and/or the County, individually or collectively, as applicable.

**1.16** “*Project Costs*” shall mean hard construction costs for road and related facilities, including utility relocation and all other reasonable and necessary costs related to the construction of the Project. The total estimated Project Cost is approximately \$17 \$22 million, as shown on the attached *Exhibit E*.

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**1.17** “*Project Contractor*” means the contractor(s) that enter into a contract with the County for construction of the Project.

## **II. STATEMENT OF INTENT; PROJECT DESIGN**

**2.01 General.** The purpose of this Agreement is to 1) provide for the widening of Williams Drive and the assumption of operation and maintenance of portions of Williams Drive from TxDOT by the County and the City; and 2) to provide for the reimbursement by the City to the County for the City Portion of the Project.

**2.02 Project Design.** TxDOT has completed the design of the Project. All right-of-way has been acquired by TxDOT. The Parties acknowledge that the Project shall be constructed pursuant to TxDOT design standards. The Parties, however, retain the right to upgrade road designs to enhance medians, including street lighting, sidewalks, urban drainage and other related design elements agreed to by the Parties. The proposed TxDOT design of the Project is a five lane major arterial with shoulders pursuant to plans prepared by KBR Engineering dated \_\_\_\_\_.

## **III. PROJECT COMMITTEE**

**3.01 Composition of Project Committee.** There is hereby created a Project Committee to be composed of not less than two representatives appointed by each Party. The following persons are hereby designated as the initial members of the Project Committee: the Director of System Engineering and the Transportation Engineer on behalf of the City, and Joe England and Richard Ridings on behalf of the County. Each Party can substitute its representatives at any time.

**3.02 Responsibility of Project Committee.** The Project Committee shall represent the individual and collective interests of the Parties with respect to the following matters:

- (i) The re-design of the Project, if necessary;
- (ii) The review and approval of the Bid Documents;
- (iii) The review of the bid tabulation and qualification of prospective contractors;

- (iv) The periodic review of the status of construction of the Project;
- (v) The review and recommendation of approval of change orders relating to the construction of the Project;
- (vi) The review and recommendation of approval of invoices for payment related to the Project;
- (vii) The confirmation of final completion of construction of the Project; and
- (viii) Any other pertinent matters relating to the construction or operation of the Project.

The Project Committee shall meet at regular intervals to review the matters over which it has authority. The Project Committee shall be diligent, prompt and timely in reviewing and acting on matters submitted to it.

#### IV. CONSTRUCTION OF PROJECT

**4.01 Compliance with AFA Agreement.** County represents and warrants to the City that it has received a copy of the AFA Agreement attached hereto as **Exhibit D.** County further represents and warrants that it will comply with the terms of the AFA Agreement as if it were the “Local Government,” and that it shall not take any action or fail to take any action that would cause the AFA Amount not to be received in full.

**4.02 General.** The Parties mutually acknowledge and agree that the County shall construct the Project, including the relocation of utilities.

#### **4.03 Bid Award.**

(a) All construction contracts for the Project have been competitively bid and shall be awarded by the County in the manner provided by State laws and in accordance with this Section.

(a) The bid tabulation and related information for the construction of the Project shall be submitted to the Project Committee for review and consideration. The County shall consider the advice and recommendations of the Project Committee, but the decision as to the acceptance of any bid shall be within the sole discretion of the County, *provided that*, the County shall not accept the bid of a contractor, or allow the contractor to use a subcontractor, that is not on the current TxDOT Bid List.

(b) The County shall furnish the bid tabulation and recommendation of award to the City not less than 10 days prior to awarding a contract for construction of the Project. The County shall also specify the date on which the County shall determine the award of the contract.

#### **4.04 Construction of Project Improvements.**

(a) **General.** The County shall be responsible for constructing, or causing to be constructed, the Project, including, without limitation, the relocation of utilities, and acquiring all related easements, equipment, materials and supplies.

(a) **Chisholm SUD Waterline Relocation Costs.**

(i) The County and Chisholm SUD have entered into that certain Interlocal Agreement regarding the relocation of existing waterlines abutting Williams Dive (Chisholm Agreement), a copy of which is attached hereto as **Exhibit "C."** The Chisholm Agreement dictates certain obligations of the County which shall be assumed by the City after the City assumes operation and maintenance of its portion of Williams Drive. The City specifically agrees to honor the Exclusive Assignment within the Exclusive Assignment Area, as described herein, and more fully described in **Exhibit "B"** of the Chisholm Agreement.

(ii) All of the terms and conditions of the Chisholm Agreement shall be fully performed by the County prior to the City's assumption of maintenance and operation of the City Portion.

(b) **Inspection.**

(i) The County shall retain a full-time construction inspector to inspect construction of the Project. The County shall notify the Project Committee of any construction defects relating to the Project coming to its attention as soon as practicable and in no event later than five (5) working days after obtaining knowledge of the defect. The City may elect to have its employees or staff inspect or observe construction of the Project from time to time.

(ii) The City's representatives shall have a reasonable right to access and inspect the Project as construction progresses, and the County shall not interfere with such access or inspection by the City or its designated representative(s).

(c) **Change Orders.** During construction, any change orders related to the Project shall be subject to review and comment by the Project Committee and the City. The City shall review any change orders and provide written comments specifically identifying any concerns with the changes within 10 working days of receipt. If the City fails to either approve the submittal or provide written comments specifically identifying the required changes within 14 working days, the change order in question will be deemed approved. If the City disapproves a change order, the Parties shall confer and attempt to resolve the dispute. If the dispute remains unresolved, the County reserves the right to approve the change order.

(d) **Insurance.** The County shall require that all workers involved with the installation and construction of the Project are covered by workers' compensation insurance as required by the laws of the State of Texas. The County shall also require that the contractors procure and maintain comprehensive general liability insurance insuring against the risk of bodily injury, property damage, and personal injury liability occurring from, or arising out of, construction of the Project, with such insurance in the amount of a combined single limit of

liability of at least \$1,000,000 and a general aggregate limit of at least \$5,000,000. Such insurance coverage shall be maintained in force at least until the completion, inspection and acceptance of the Project.

#### **4.05 Payment of Project Costs.**

(a) All construction contracts and other agreements relating to the construction of the Project will contain provisions to the effect that the Project Contractor will look solely to the County for payment of all sums coming due thereunder.

(a) The County shall pay all other construction costs relating to the Project, including the costs of construction of the waterlines relocated for the Chisholm Trail S.U.D. Neither the County nor the City shall be responsible for the costs of installing the “Betterment Line” as defined in the Chisholm Agreement. In addition to the other reimbursements listed herein, the City shall be responsible for the reimbursement to the County of costs related to the relocation of the Chisholm waterlines as dictated in the Chisholm Agreement, with the exception of the following: the Chisholm water line on the north side of Williams Drive from Penny Lane running east to its terminus (Chisholm Exceptions).

(b) The County shall ensure that each invoice for payment from the Project Contractor shall segregate costs and services related to the Chisholm Exceptions from costs and services related to the remainder of the Project.

#### **4.06 Acceptance.**

(a) Upon completion of construction of the Project, the County shall obtain the written approval of a duly authorized representative of the City prior to Final Acceptance and final payment to the Project Contractor.

(a) Within 30 days after completion of construction and prior to final payment to the engineers for the Project, the County will cause the Project engineers to provide to the City a concurrence letter from the Project engineers certifying that the construction of the Project has been completed in accordance with the approved plans, specifications and change orders, inclusive of Record Drawings and rights-of-way documentation for the Project.

**4.07 Warranties.** The County agrees to cause the Project Contractor to repair all defects in materials, equipment or workmanship appearing within one year from the date of Final Acceptance of the Project and to assign any and all warranties, inclusive the the Project Contractor’s bond obligations, to the City after the City assumes operation and maintenance of the City Portion.

### **V. NEGOTIATION AND MEDIATION OF DISPUTES**

**5.01 Agreement Regarding Remedies.** The Parties agree that their respective obligations under this Agreement are unique and the failure by any Party to perform its obligations under this Agreement would not be capable of being appropriately remedied by award of damages to any other affected Party to this Agreement and in any event, such damages would be difficult, if not impossible, to determine because of the unique nature of

the Parties' obligations to each other hereunder. Further, the Parties agree that the remedy of termination of this Agreement by any Party is inappropriate and not in the public interest. Therefore, the Parties agree that they shall be entitled, and limited, to the remedies of specific performance, mandamus and injunction in the event of any breach of any obligation by any Party under this Agreement. The Parties hereby waive any requirement that they be required to provide any bond or other surety in order to obtain any of the agreed upon remedies. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County or City, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County and City do not waive, modify, or alter 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.

**5.02 Agreement to Mediate.** If any dispute cannot be resolved through good faith negotiation, then the Parties shall endeavor to resolve the dispute by mediation as provided herein.

**5.03 Presentation of Written Claim Regarding Disputes Not Resolved by Negotiation.** In the event that a dispute is not resolved as a result of such negotiations, either party may at any time give formal written notice to the other of a "claim." A "claim" as used herein means a demand or assertion by one of the Parties (the "claimant") seeking, as a matter or right, adjustment or interpretation of contract terms, the payment of money, an extension of time for performance or other relief with respect to the terms of this Agreement or any other dispute or matter in question among the Parties arising out of or related to this Agreement. Such notice shall be in writing. After such notice is given, the dispute resolution procedure provided for below shall immediately enter into effect.

**5.04 Performance during Mediation.** The claimant shall continue with performance under this Agreement pending mediation of the dispute.

**5.05 Appointment of Mediator.** Promptly following the making of a written claim by any Party, the Parties will consult with one another to agree on the appointment of a mediator acceptable to all Parties. The mediator shall have experience in matters of the kind giving rise to the claim. If within five (5) business days the Parties are unable to agree on the appointment of a mediator, then any Party may request the appointment of a mediator by the Center for Public Policy Dispute Resolution at the University of Texas at Austin School of Law. The Parties shall endeavor to secure such appointment from a District Judge of Williamson County. The Parties agree to utilize the mediator appointed by the Judge unless they ultimately reach agreement on an alternative selection.

## **VI. COUNTY PROJECT PAYMENT AND CITY REIMBURSEMENT**

**6.01 County Obligations.** As stated herein, the County is obligated to provide full funding for all costs associated with the Project, including all utility relocations, and shall be solely responsible for all payments to the Project Contactor.

**6.02 City Obligations.** Except for the Chisholm Exceptions, as stated herein, the City shall be obligated to reimburse the County for that portion of the Project Cost for the City's Portion of the Project, but no more than the City's Reimbursement Amount, with approved Change Orders, in accordance with the terms and conditions of this Agreement, and provided that County is not in default hereof.

**6.03 Terms of City's Reimbursement to County.** The County shall deliver copies of all invoices for the Project and evidence of the County's payment thereof to the City. Based on such documentation, the City shall be obligated to pay to the County the City's Reimbursement Amount as follows: the City shall pay to the County the following sums on the following schedule:

(i) \$1.5 Million on September 30, 2009; and

(ii) \$1.5 Million on September 30, 2010; and

~~(iii) \$1.8 Million on September 30, 2011; and~~

~~(iv) \$1.8 Million on September 30, 2012; and~~

~~(v) (iii) Final installment in the amount of the remainder of the City's Reimbursement Amount on September 30, 2013-2011 (this last installment may be more or less than \$1.8 Million depending on the actual costs of the Project).~~ CHARLIE - THE THREE YEAR PAYOUT PROPOSAL STILL NEEDS TO BE REVIEWED BY THE CITY. - TRISH

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**6.04 County Operation and Maintenance Responsibilities.** Williams Drive/RM 2338 is a state-owned and maintained highway. The County has assumed operation and maintenance of Williams Drive/RM 2338 (roadway, traffic signals, drainage, etc.) from the western right-of-way of the IH-35 south bound frontage road to FM 3405 until Final Acceptance of the Project by the City and the County.

**6.05 City Operation and Maintenance Responsibilities.** The City shall assume operation and maintenance of RM 2338 from the western right-of-way of the IH-35 southbound frontage road to D.B. Wood Drive by October 31, 2009. The City shall assume operation and maintenance of RM 2338 from D.B. Wood Drive to Jim Hogg Road from the County upon Final Acceptance of the Project.

## VII. MISCELLANEOUS PROVISIONS

**7.01 Authority.** This Agreement is made in part under the authority conferred in Chapter 791, Texas Government Code.

**7.02 Severability.** The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.



**7.03 Assignment.** Except as otherwise provided herein, the assignment of this Agreement by any Party is prohibited without the prior written consent of the other Party.

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

**7.05 Entire Agreement.** This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.

**7.06 Amendments.** Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

**7.07 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.

**7.08 Notices.** Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

**CITY:** City Manager  
City of Georgetown  
113 E. 8th St.  
Georgetown, Texas 78626  
Telephone: (512) 930 - 3723  
Facsimile: (512) 930 - 3622

**COUNTY:** \_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**7.09 Exhibits.** The following exhibits are attached to this Agreement and incorporated herein by reference:

- Exhibit A - Exclusive Assignment Area
- Exhibit B - Project Area
- Exhibit C - "Interlocal Agreement Regarding Payment of Costs," by and between Williamson County, Texas, and Chisholm Trail Special Utility District, dated \_\_\_\_\_.
- Exhibit D - Advance Funding Agreement No.CSJ-2211-01-016 (Dist # 14; Code Chart 64 # 16000; RM 2338 W or FM 3405 to Cedar Breaks Road) by and between the Texas Department of Transportation and City of Georgetown

Exhibit E - Estimate of Project Costs as of January 6, 2009.

**7.10 Counterparts; Effect of Partial Execution.** This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

**7.11 Authority.** Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

**ATTEST:**

**CITY OF GEORGETOWN, TEXAS:**

\_\_\_\_\_  
City Secretary

By: \_\_\_\_\_  
Printed Name: George G. Garver  
Title: Mayor

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

**ATTEST:**

**WILLIAMSON COUNTY:**

\_\_\_\_\_  
County Clerk

By: \_\_\_\_\_  
Printed Name: Dan A. Gattis  
Title: County Judge

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