

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT REGARDING
RELOCATION OF WATER SYSTEM IMPROVEMENTS
(SH 195 PROJECT)**

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

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT REGARDING RELOCATION OF WATER SYSTEM IMPROVEMENTS ("Amendment") is entered into between Chisholm Trail Special Utility District, a conservation and reclamation district of the State of Texas (the "**District**") and Williamson County, a political subdivision of the State of Texas (the "**County**"). In this Agreement, the District and the County are sometimes individually referred to as "**a Party**" and collectively referred to as "**the Parties**".

WHEREAS, the County and the Texas Department of Transportation ("TxDOT") previously entered into one or more agreements regarding the construction of improvements to SH 195 from IH-35 to the Williamson County line west of Florence, Texas (the "**Project**"); and

WHEREAS, in said agreements, the County assumed the responsibility to acquire right-of-way and relocate utilities for the Project, and TxDOT agreed to construct the roadway improvements that constitute the Project; and

WHEREAS, some of the proposed SH 195 roadway improvements include the widening of the right-of-way into easements in which the District's water system improvements are located; and

WHEREAS, in connection with the construction of the roadway improvements, the County desires to relocate the District's existing water system improvements into substitute water line easements; and

WHEREAS, the District and the County previously entered into that certain Interlocal Agreement Regarding Relocation of Water System Improvements dated to be effective July 13, 2009 (the "**Agreement**") setting forth the terms and conditions pursuant to which the District agreed to relocate the District's water system improvements in certain segments of the Project into substitute easements at the County's sole cost and expense to accommodate TxDOT's subsequent construction of the SH 195 roadway improvements; and

WHEREAS, the County has informed the District that the County may not be reimbursed for certain expenses relating to the Project from TxDOT unless the District enters into contracts for the relocation of its improvements with TxDOT, and has asked that the District enter into such contracts; and

WHEREAS, this Amendment sets forth the terms and conditions pursuant to which the District has agreed to enter into contracts with TxDOT in response to the County's request; and

WHEREAS, the District is considering to undertake certain additional improvements to its water transmission system as part of the Project, and therefore desires to amend the definition of "Betterment Improvements" under the Agreement to include such improvements, all of which would be funded by the District.

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

Agreement

Section 1. **Definitions.** The Parties agree that Section 1.03 of the Agreement is hereby amended to read in its entirety as follows:

"1.03 "Betterment Improvements" means an increase in diameter of the Waterline Improvements, or the extension of the Waterline Improvements, by the District as part of the Project but only if the District elects to proceed with construction of the Betterment Improvements and pays 100% of the Betterment Costs."

Section 2. **Contracts with TxDOT.**

(a) The District hereby agrees to enter into those certain contracts with TxDOT substantially in the form attached to this Amendment as Exhibit "A" (the "SH 195 TxDOT Contracts").

(b) The Parties agree as follows with respect to the SH 195 TxDOT Contracts:

(i) The District is executing the SH 195 TxDOT Contracts in response to the County's request so that the County may secure reimbursement of certain Project costs from TxDOT;

(ii) The District's right to reimbursement for the District Waterline Costs, and the County's obligation to reimburse such costs, shall be determined according to the Agreement, as amended hereby, and not the SH 195 TxDOT Contracts;

(iii) The District's right to reimbursement from the County for the District Waterline Costs, and the County's obligation to reimburse the District for such costs, is not contingent upon the County receiving any amount of reimbursement or payment from TxDOT;

(iv) The amount of reimbursement to which the District is entitled shall be determined by the Agreement, as amended hereby, and not the SH 195 TxDOT Contracts; and

(v) The amount of reimbursement received by the County from TxDOT will likely vary from the amount of District Waterline Costs to be paid by the County to the District.

Section 3. **Effect on Prior Agreements.**

Except as specifically modified by this Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

Section 4. **Capitalized Terms.**

Except as specifically defined herein, all capitalized terms in this Amendment shall have the meanings set forth in the Agreement.

ATTEST:

**CHISHOLM TRAIL SPECIAL UTILITY
DISTRICT:**

Secretary

By: _____

Printed Name: _____

Title: President

Date: _____

ATTEST:

WILLIAMSON COUNTY:

Nancy E. Rister
County Clerk

By: [Signature]

Printed Name: _____

Title: County Judge

Date: 05-17-2011

EXHIBIT "A"

SH 195 TXDOT CONTRACTS TO BE EXECUTED BY DISTRICT

STANDARD UTILITY AGREEMENT

County: Williamson
ROW CSJ: 0440-01-036
Highway Project Letting Date: June 1, 2012

U-Number: U12916
Highway: SH 195
From: CR 240
To: CR 241

This Agreement by and between Williamson County, ("County"), and Chisholm Trail Special Utility District, ("Utility"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the County.

WHEREAS, that the State of Texas ("State"), acting by and through the Texas Department of Transportation ("TxDOT") and Williamson County ("County") have executed a Contractual Agreement for Right of Way Procurement, that states that the County is financially responsible for utility relocation costs for a utility that are deemed to be reimbursable within the limits of the highway as indicated above.

WHEREAS, the County has deemed it necessary to make certain highway improvements as designated by the County and within the limits of the highway as indicated above;

WHEREAS, the proposed highway improvements will necessitate the adjustment, removal, and/or relocation of certain facilities of Utility as indicated in the following statement of work: CTSUD will abandon approximately 2250 linear feet of existing water line and replace it with 281 linear feet of 4" and 3847 linear feet of 8" Class C900, DR14 PVC pipe. Pipe placement includes appurtenances, valves, connections to existing transmission lines and services. One horizontal road bore will be required; and more specifically shown in Utility's plans, specifications and estimated costs, which are attached hereto as Attachment "A".

WHEREAS, the County will participate in the costs of the adjustment, removal, and/or relocation of certain facilities to the extent as may be eligible for County participation.

WHEREAS, the County, upon receipt of evidence it deems sufficient, acknowledges Utility's interest in certain lands and/or facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above.

NOW, THEREFORE, BE IT AGREED:

The County will pay to Utility the costs incurred in adjustment, removal, and/or relocation of Utility's facilities up to the amount said costs may be eligible for County participation.

The County and Utility agree that all conduct under this agreement, including but not limited to the adjustment, removal and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with 23 CFR 645, Subparts A & B and all other applicable federal and state laws, rules and regulations. Utility agrees to supply, upon request by the County, proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction.

The Utility agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by the County, or may, with the County's approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by Utility. Bills for work hereunder will be submitted to the County not later than 90 days after completion of the work.

When requested, the **County** will make intermediate payments at not less than monthly intervals to **Utility** when properly billed and such payments will not exceed 80 percent (80%) of the eligible cost as shown in each such billing. In addition, the **County** will make a payment, before audit, which will bring the total percentage paid to the **Utility** up to the 90% eligible cost. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

Alternatively, the **County** agrees to pay **Utility** an agreed lump sum of \$N/A as supported by the attached estimated costs. The **County** will, upon satisfactory completion of the adjustments, removals, and/or relocations and upon receipt of a final billing, make payment to **Utility** in the agreed amount.

Upon execution of this agreement by both parties hereto, the **County** will, by written notice, authorize the **Utility** to perform such work diligently, and to conclude said adjustment, removal, or relocation by the stated completion date. The completion date shall be extended for delays caused by events outside **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the **County** or any other party with **Utility's** ability to proceed with the relocation, or any other event in which **Utility** has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of **Utility**.

The **County** will, upon satisfactory completion of the relocation or adjustment and upon receipt of final billing prepared in an approved form and manner, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for **County** reimbursement.

Unless an item below is stricken and initialed by the **County** and **Utility**, this agreement in its entirety consists of the following:

1. Standard Utility Agreement;
2. Plans, Specifications, and Estimated Costs (Attachment "A");
3. Utility's Accounting Method (Attachment "B");
4. Utility's Schedule of Work and Estimated Date of Completion (Attachment "C");
5. Statement Covering Contract Work - Wilco-U-48 (Attachment "D");
6. Eligibility Ratio (Attachment "F");
7. Betterment Calculation and Estimates (Attachment "G");
8. Proof of Property Interest - Wilco-U1 (Attachment "H");
9. Inclusion in Highway Construction Contract (if applicable) (Attachment "I"); and
10. Utility Joint Use Acknowledgment - ROW-U-JUAB (TxDOT) (Attachment "E").

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this agreement or a written change or extra work order approved by the **County** and **Utility**.

This agreement is subject to cancellation by the **County** at any time up to the date that work under this agreement has been authorized and that such cancellation will not create any liability on the part of the **County**.

The State and/or County Auditor may conduct an audit or investigation of any entity receiving funds from the **County** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The **Utility** by execution of this agreement does not waive any of the rights which **Utility** may have within the limits of the law.

It is expressly understood that the **Utility** conducts the adjustment, removal, or relocation at its own risk, and that the **County** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

UTILITY

Utility: Chisholm Trail Special Utility District
Name of Utility


By: _____
Authorized Signature

Mary Wilson
Print or Type Name

Title: Chisholm Trail S.U.D. President

Date: _____

EXECUTION RECOMMENDED:

WILLIAMSON COUNTY, TEXAS	
Executed and approved for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by Williamson County, Texas.	
By: _____ <i>Authorized Signature</i>	
Title: _____	
Date: <u>05-17-2011</u>	

FOR REVIEW ONLY:

THE STATE OF TEXAS

By: _____
Authorized Signature

Title: _____

Date: _____

U12916
Attachment A

Plans, Specifications, and Estimated Costs

U12916
Attachment B

Utility's Accounting Method

- ☒ **Actual Cost Method of Accounting**
The utility accumulates cost under a work order accounting procedure prescribed by the Federal or State regulatory body; and
The utility proposes to request reimbursement for actual direct and related indirect costs,
- ☐ **Lump Sum Method of Accounting**
Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.
- ☐ **Alternative Method of Accounting**
The utility accumulates costs under an accounting procedure (Chart of Accounts) developed by the utility and approved by the State; and,
The utility proposes to request reimbursement for actual direct and indirect costs; and
The utility owner is a municipality.

U12916
Attachment C

Utility's Schedule of Work and Estimated Date of Completion

Estimated Start Date: March 1, 2012

Duration: 93 days

Estimated Completion Date: June 1, 2012

**U12916
Attachment D**

Statement Covering Contract Work – ROW-U-48



STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK
(AS APPEARING IN ESTIMATE)

U-No. U12916

District: Austin
County: Williamson
Federal Project No.: N/A

ROW CSJ No.: 0440-01-036
Highway No.: SH 195

I, Mary Wilson, a duly authorized and qualified representative of Chisholm Trail Special Utility District, hereinafter referred to as **Owner**, am fully cognizant of the facts and make the following statements in respect to work which will or may be done on a contract basis as appears in the estimate to which this statement is attached.

It is more economical and/or expedient for **Owner** to contract this adjustment, or **Owner** is not adequately staffed or equipped to perform the necessary work on this project with its own forces to the extent as indicate on the estimate.

Procedure to be Used in Contracting Work

- ☒ A. Solicitation for bids is to be accomplished through open advertising and contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed.
- ☐ B. Solicitation for bids is to be accomplished by circulating to a list of pre-qualified contractors or known qualified contractors and such contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed. Such presently known contractors are listed below:
- 1.
 - 2.
 - 3.
 - 4.
 - 5.
- ☐ C. The work is to be performed under an existing continuing contract under which certain work is regularly performed for **Owner** and under which the lowest available costs are developed. (If only part of the contract work is to be done under an existing contract, give detailed information by attachment hereto.)
- ☐ D. The utility proposes to contract outside the foregoing requirements and therefore evidence in support of its proposal is attached to the estimate in order to obtain the concurrence of the State, and the Federal Highway Administration Division Engineer where applicable, prior to taking action thereon (approval of the agreement shall be considered as approval of such proposal).
- ☐ E. The utility plans and specifications, with the consent of the State, will be included in the construction contract awarded by the State.

Signature

Date

Title

U12916
Attachment E

Joint-Use Acknowledgement – ROW-U-JUAA



UTILITY JOINT USE ACKNOWLEDGEMENT UTILITY ADJUSTMENT

U-Number: **U12816**

District: Austin

County: Williamson

ROW CSJ: 0440-01-036

Highway: SH 195

Construction CSJ: 0440-01-033

From: CR 240

Projected Highway Letting Date: 6/1/2012

To: CR 241

WHEREAS, the State of Texas ("State"), acting by and through the Texas Department of Transportation ("TxDOT"), proposes to make certain highway improvements on that section of the above-indicated highway; and

WHEREAS, the Chisholm Trail Special Utility District, ("Utility"), proposes to retain, locate, or relocate, if applicable, certain of its facilities along or across, and within or over such limits of the highway right of way as indicated on the plans attached hereto except as provided herein below;

NOW, THEREFORE, It is hereby mutually agreed that joint usage for both highway and utility purposes will be made of the area within the highway right of way limits as such area is defined and to the extent indicated on the aforementioned plans. If the facilities shown in the aforementioned plans need to be altered or modified or new facilities constructed to either accommodate the proposed highway improvements or as part of Utility's future proposed changes to its own facilities, Utility agrees to notify TxDOT at least 30 days prior thereto, and to furnish necessary plans showing location and type of construction, unless an emergency situation occurs and immediate action is required. If an emergency situation occurs and immediate action is required, Utility agrees to notify TxDOT promptly. If such alteration, modification or new construction is in conflict with the current highway or planned future highway improvements, or could endanger the traveling public using said highway, TxDOT shall have the right, after receipt of such notice, to prescribe such regulations as necessary for the protection of the highway facility and the traveling public using said highway. Such regulations shall not extend, however, to requiring the placement of intended overhead lines underground or the routing of any lines outside of the area of joint usage above described.

If Utility's facilities are located along a controlled access highway, Utility understands and agrees that ingress and egress for servicing the installation will be limited to (a) frontage roads where provided, (b) nearby or adjacent public roads or streets, or (c) trails along or near the highway right of way lines, connecting only to an intersecting road; from any one or all of which entry may be made to the outer portion of the highway right of way for normal service and maintenance operations. The Utility's rights of access to the through-traffic roadways and ramps shall be subject to the same rules and regulations as apply to the general public except, however, if an emergency situation occurs and usual means of access for normal service operations will not permit the immediate action required by Utility in making emergency repairs as required for the safety and welfare of the public, Utility shall have a temporary right of access to and from the through-traffic roadways and ramps as necessary to accomplish the required emergency repairs, provided that TxDOT is immediately notified by Utility when such repairs are initiated and adequate provision is made by Utility for convenience and safety of highway traffic.

If Utility's facilities are located along a non-controlled access highway, the Utility's rights of access to the through-traffic roadways and/or ramps are subject to the same rules and regulations as apply to the general public.

By executing this Acknowledgement, TxDOT does not purport to grant any right, claim, title, or easement in or upon this highway. TxDOT may require the Utility to relocate this facility to the extent set forth in state law.

All work on the highway right of way shall be performed in accordance with TxDOT instructions as authorized by state law.

Initial

Date

Utility and TxDOT, by execution of this Acknowledgement, do not waive or relinquish any right which they may have under the law, and nothing herein shall be interpreted to be an agreement by Utility to an expansion or addition to TxDOT's authority under state law.

Utility will, by written notice, advise TxDOT of the beginning and completion dates of the adjustment, removal, or relocation, and, thereafter, agrees to perform such work diligently, and to conclude said adjustment, removal, or relocation by the stated completion date. The completion date shall be extended for delays caused by events outside Utility's control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the State or any other party with Utility's ability to proceed with the relocation, or any other event in which Utility has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of Utility.

It is expressly understood that Utility conducts the new installation, adjustment, removal, and/or relocation at its own risk, and that TxDOT makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

The signatories to this Acknowledgement warrant that each has the authority to enter into this Acknowledgement on behalf of the party represented.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

UTILITY

Utility: Chisholm Trail Special Utility District
Name of Utility

By: _____
Authorized Signature

Mary Wilson
Print or Type Name

Title: Chisholm Trail S.U.D. President

Date: _____

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Signature

Print or Type Name

Title: _____

Date: _____

* For locally-executed agreements, District Engineer (or designee) approves and executes; otherwise ROW Division Director.

Initial Date

U12916
Attachment F
Eligibility Ratio

**CTSUD ELIGIBILITY RATIO
SH 195 SEGMENT 2 WATER LINE RELOCATION**

WATER LINE	BEGIN STATION	END STATION	QUANTITY (LF)	
			INELIGIBLE	ELIGIBLE
4"	1245+70	1246+50	0	273
4"	1266+40	1294+80	112	3391
TOTAL =			112	3,664

ELIGIBLE (LF) = 3,664

INELIGIBLE (LF) = 112

GRAND TOTAL (LF) = 3,776

ELIGIBILITY RATIO = 97.03%

U12916
Attachment G

Betterment Calculation and Estimates

"Not Applicable"

U12916
Attachment H

Proof of Property Interest

U12916
Attachment I

"Not Applicable"