

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT REGARDING
RELOCATION OF WATER SYSTEM IMPROVEMENTS
(US 183 PROJECT)**

THE STATE OF TEXAS
COUNTY OF WILLIAMSON

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KNOW ALL BY THESE PRESENTS:

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**".

Recitals

WHEREAS, the District and the County entered into that certain "Interlocal Agreement Regarding Relocation of Water System Improvements (US 183 Project)" dated July 13, 2009 (the "Agreement") setting forth the terms and conditions pursuant to which the County agreed to relocate certain water system improvements owned by the District into new easements secured by the District at the County's expense in connection with the County's construction of improvements to Highway 183 from the San Gabriel River to SH 29 on behalf of the Texas Department of Transportation (the "Project");

WHEREAS, the Agreement provided for a portion of the District's waterline improvements (the "Remaining Additional Waterline Improvements", as defined in the Interlocal Agreement) to remain in place within existing District easements (and within public right-of-way acquired by the County overlapping the District's existing easements) until such time as future highway improvements or highway operations necessitated relocation of the waterline improvements;

WHEREAS, the Agreement further provided that in the event any of the Remaining Additional Waterline Improvements had to be relocated as a result of the design, construction or operation of the Project by the County, then such waterline improvements would be relocated into new easements to be secured by the District at the County's expense;

WHEREAS, the County's construction of certain Project improvements has necessitated relocation of certain of the District's Remaining Additional Waterline Improvements (the "Conflict Improvements");

WHEREAS, due to the County's funding limitations and the Parties' understanding that the Texas Department of Transportation, the County, the Central Texas Regional Mobility Authority or another entity with relevant jurisdiction (individually and collectively referred to

hereinafter as a "Transportation Authority") will undertake additional improvements to Highway 183 in the future that will necessitate relocation of water system improvements, the County has requested that the Conflict Improvements be relocated by the District into public right-of-way at this time for an interim period, at the County's sole cost and expenses, until the subsequent roadway improvements are undertaken; and

WHEREAS, the County has further agreed that if a Transportation Authority undertakes a subsequent expansion of Highway 183 that necessitates, or a Transportation Authority otherwise requires, relocation of the District's water system improvements from the public right-of-way into which they are being relocated, then the improvements will be relocated at that time into replacement easements at the sole cost and expense of the County to the extent such costs are not otherwise paid by the Transportation Authority undertaking the roadway improvements; and

WHEREAS, this Amendment sets forth the terms and conditions pursuant to which the District agrees to relocate the Conflict Improvements into the public right-of-way at the County's sole cost and expense, and pursuant to which the County agrees to pay all costs and expenses associated with the future relocation of improvements from the public right-of-way to the extent such costs are not paid by a Transportation Authority.

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

Agreement

I. DEFINITIONS

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

1.01 "Additional Bid Documents" means the plans and specifications, together with all contract documents and bid instructions, relating to construction of the Additional Waterline Improvements.

1.02 "Additional Waterline Costs" means all costs and expenses incurred by the District relating to or arising out of the Additional Waterline Improvements. By way of example and without limitation, the Additional Waterline Costs shall include the following costs and expenses: (i) all costs and expenses incurred by the District for Additional Waterline Design Work; (ii) all costs and expenses incurred by the District under the Engineering Services Agreement relating to the Additional Waterline Improvements; (iii) all legal fees and expenses incurred by the District relating to the negotiation and preparation of this Amendment and otherwise incurred with respect to the Additional Waterline Improvements; and (iv) all internal administrative and employee costs incurred by the District relating to the Additional Waterline Improvements.

1.03 "Additional Waterline Design Work" means the engineering consulting and design services to be undertaken by the District, its staff, and its engineering consultants in connection with the Additional Waterline Improvements, including engineering; surveying; participation in meetings relating to the Additional Waterline Improvements, and all other employee, administrative, engineering and consultant services performed relating to the District's interests in the Additional Waterline Improvements.

1.04 "Additional Waterline Improvements" means the design and construction of those certain water transmission line improvements more particularly described on **Exhibit "A"** attached hereto, together with all related facilities, equipment and appurtenances, to be constructed by the District at the sole cost and expense of the County,.

1.05 "Agreement" means that certain "Interlocal Agreement Regarding Relocation of Water System Improvements (US 183 Project)" dated July 13, 2009 previously entered into by the District and the County.

1.06 "Amendment" means this First Amendment to Interlocal Agreement Regarding Relocation of Water System Improvements.

1.01 "Betterment Costs" means the incremental costs of construction of any Betterment Improvements to be determined in accordance with alternative bidding procedures described herein.

1.02 "Betterment Improvements" means an increase in diameter of the Additional Waterline Improvements that may be constructed by the District, or construction of additional water system improvements simultaneously with construction of the Additional Waterline Improvements, but only if the District elects to proceed with construction of the Betterment Improvements and pays 100% of the Betterment Costs.

1.03 "Effective Date" means the last date of execution of this Amendment by the Parties; provided both of the Parties must execute this Amendment for it to be effective.

1.04 "Engineering Services Agreement" means the contract for engineering services relating to the Additional Waterline Improvements entered into by the District and Halff Associates, Inc.. In the event of termination of such contract for any reason, the phrase "Engineering Services Agreement" shall refer to any subsequent engineering services contract entered into by the District relating to the Additional Waterline Improvements.

1.05 "Party" or "Parties" means the District and/or the County, individually or collectively, as applicable.

1.06 "Project Contractor" means the contractor(s) that enter into a contract with the District for construction of the Additional Waterline Improvements.

1.07 "Transportation Authority" means the Texas Department of Transportation, the County, the Central Texas Regional Mobility Authority, or any other entity that undertakes future improvements to Highway 183 that necessitates, or that otherwise requires, relocation of

the Additional Waterline Improvements from the location in which they are being constructed under this Amendment.

II. DESIGN OF PROJECT

2.01 Design of Additional Waterline Improvements. Promptly after execution of this Amendment by the Parties, the District will authorize its engineering consultants to provide engineering consulting services for the Additional Waterline Design Work in accordance with the Engineering Services Agreement. The District shall be solely responsible for all engineering services relating to the Additional Waterline Design Work.

2.02 Cost of Design. The District will advance and pay the cost of the Additional Waterline Design Work, subject to its right to reimbursement from the County in accordance with the terms of this Amendment.

2.03 Reimbursement of Additional Waterline Costs. Upon the District's approval of each invoice for the Additional Waterline Design Work under the Engineering Services Agreement, the District will transmit a copy of the invoice to the County. The County agrees to pay each invoice in full within 30 days after delivery of the invoice (the "**Due Date**"). Each invoice submitted by the District for reimbursement will clearly describe the work done for which reimbursement is sought, and will not seek reimbursement or payment for any costs or expenses other than Additional Waterline Costs. Upon request of the County, the District agrees to make available documentation in reasonable detail evidencing any Additional Waterline Costs for which reimbursement is sought. Any amounts due to the District which are not paid within 30 days of delivery will accrue interest at the rate of 8% per annum from the Due Date until paid.

2.04 Work Product. Upon receipt of a request from the County, the District agrees to promptly make available to the County a copy of any work product produced by its engineering consultant in connection with the Additional Waterline Design Work. The County shall pay all reasonable costs incurred by the District in preparing and furnishing the copies.

III. CONSTRUCTION OF PROJECT

3.01 General. The District shall construct all physical improvements that constitute the Additional Waterline Improvements.

3.02 Approval of Additional Bid Documents. Without limitation, the Additional Bid Documents shall include the following requirements relating to the construction of the Additional Waterline Improvements:

(i) The design of the Additional Waterline Improvements within the Additional Bid Documents shall be in the form prepared by the District;

(ii) The Additional Bid Documents shall seek alternative bids for construction of any Betterment Improvements. Specifically, the Additional Bid

Documents shall solicit alternate bids for construction of the Betterment Improvements (as the alternate bid) and the Additional Waterline Improvements set forth on **Exhibits "B"** (as the base bid) for purposes of quantifying the Betterment Costs;

(iii) The District shall be named as an additional insured on the contractor's insurance policies; and

(iv) The District shall be named as additional beneficiary under the contractor's performance and payment bonds with respect to the Additional Waterline Improvements.

3.03 Bid Award.

(a) All construction contracts for the Additional Waterline Improvements will be competitively bid and awarded by the District in the manner provided by State laws and in accordance with this Section.

(b) The District shall furnish the bid tabulation and apparent successful contractor (subject to Board approval) to the County not less than 20 days prior to awarding a contract for construction of the Additional Waterline Improvements. The District shall also specify the meeting date on which the District shall consider the award of the contract. The District's notice shall also inform the County in writing as to the amount of any Betterment Costs (as determined by the alternate bids to be solicited in the Additional Bid Documents), and the net amount of the construction contract for which payment must be received by the District from the County.

(c) As more particularly described in Section 3.05 below, the County must provide payment to the District in the amount equal to the bid price submitted by the apparent successful contractor that for the Additional Waterline Costs as a condition of award of the construction contract by the District; provided, however, that the County shall not be required to pay the amount of any Betterment Costs in the event the District elects to construct any Betterment Improvements. Failure by the County to provide timely payment in full to the District shall be a material breach of the Amendment.

3.04 Construction of Additional Waterline Improvements.

(a) **General.** The District shall be responsible for constructing, or causing to be constructed, the Additional Waterline Improvements, and all related equipment, materials and supplies. In connection with the construction of the Additional Waterline Improvements, the District agrees to use good faith and reasonable efforts to ensure that the Project Contractor completes construction of the Additional Waterline Improvements in accordance with the plans and specifications and other requirements set forth in the Additional Bid Documents. The County will be responsible for payment of any and all costs and expenses associated with the construction of the Additional Waterline Improvements (save and except Betterment Costs, if any) in accordance with this Agreement.

(b) **Change Orders.** During construction, any change orders related to the Additional Waterline Improvements will be subject to review and approval by the District. The

costs of any change orders related to the Additional Waterline Improvements, other than the costs of any "betterments" specifically requested by the District, shall be reimbursed by the County as Additional Waterline Costs. In the event that any change orders incurred in response to unanticipated conditions encountered during construction relating solely to the Betterment Improvements (and that would not arise but for construction of the Betterment Improvements) increase the costs of the Betterment Improvements, then the District shall be responsible for the costs of such change order (as it relates to the Betterment Improvements).

3.05 Payment of Additional Waterline Costs.

(a) The County shall provide payment to the District in the amount equal to 100 percent of the bid price for the Additional Waterline Improvements (save and except any Betterment Costs) as a condition of award of the construction contract for the Additional Waterline Improvements by the District. The County shall provide payment in full within 20 days after receipt of an invoice for payment from the District. Failure by the County to provide timely payment in full to the District shall be a material breach of this Agreement.

(b) All construction contracts and other agreements relating to the construction of the Additional Waterline Improvements will contain provisions to the effect that the Project Contractor will look solely to the District for payment of all sums coming due thereunder. The District shall pay all construction costs relating to the Additional Waterline Improvements directly to the Project Contractor, subject to prior receipt of payment from the County in accordance with Section 3.05(a) above.

(c) In the event any change orders increase the costs of the Additional Waterline Improvements (other than change orders relating solely to the Betterment Improvements), the District shall send an invoice to the County for payment. The County shall provide payment in the full amount of the invoice within 30 days of receipt of the invoice, in the same way as other Additional Waterline Costs are paid by the County.

(d) Except for Betterment Costs, the County shall pay 100 percent of all Additional Waterline Costs.

3.06 Ownership. After acceptance, the District shall hold an 100% undivided ownership interest in the Additional Waterline Improvements, and shall be responsible for operation, maintenance and repair thereof.

IV. RIGHT-OF-WAY MATTERS

4.01 Future Relocation.

(a) The Parties mutually acknowledge and agree that the Conflict Improvements are located within easements held by the District, and that the County's construction of the Roadway Improvements has necessitated relocation of the Conflict Improvements. The Parties further acknowledge and agree that the County has requested that the District allow the Additional Waterline Improvements to be relocated into public right-of-way for an interim period until such

time as the subsequent construction of additional roadway improvements by a Transportation Authority necessitates relocation of the Additional Waterline Improvements, or until a Transportation Authority otherwise requires relocation of the Additional Waterline Improvements from the public right-of-way.

(b) The Parties agree that at such time as a Transportation Authority requires relocation of the Additional Waterline Improvements from the location in which they are being constructed under this Amendment, as depicted in Exhibit "A", the Additional Waterline Improvements shall be relocated into twenty foot (20') wide easements to be held by the District and to be in a form approved by the District (the "Relocation Easements").

(c) In connection with the subsequent relocation of the Additional Waterline Improvements, the County specifically acknowledges and agrees that it shall pay all costs and expenses incurred by the District associated with the acquisition of Relocation Easements, and incurred by the District in connection with the design, construction and relocation of the Additional Waterline Improvements into such Relocation Easements, that the Transportation Authority does not pay. The District shall send a written invoice for any such costs and expenses to the County for payment. The County agrees to pay each invoice in full within 30 days after delivery of the invoice. Each invoice submitted by the District for reimbursement will clearly describe the costs and expenses for which reimbursement is sought. Upon request of the County, the District agrees to make available documentation in reasonable detail evidencing of the costs and expenses for which reimbursement is sought. Any amounts due to the District which are not paid within 30 days of delivery will accrue interest at the rate of 8% per annum from the due date until paid.

(d) The failure by the County to pay any invoiced sums in full for costs or expenses incurred by the District in connection with the acquisition of the Relocation Easements, or relocation of the Additional Waterline Improvements into the Relocation Easements, shall be a material breach of this Agreement for which the District shall have all remedies available at law and in equity. The County specifically agrees that the Agreement, as amended by this Amendment, constitutes a contract for goods and services for which the County does not have governmental immunity. The Parties further agree that the County's payment obligations hereunder shall survive termination of the Agreement (including this Amendment) for any reason.

V. GENERAL PROVISIONS

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

5.02 Assignment. The assignment of this Amendment by either Party is prohibited without the prior written consent of the other Party. All of the respective covenants, undertakings, and obligations of each of the Parties will bind that Party and will apply to and bind any successors or assigns of that Party. The provisions of this Amendment providing for reimbursement or payment or reimbursement of costs of the District by the County shall survive

any remain with the County notwithstanding any assignment of roadway improvements to another Transportation Authority.

5.03 Payments from Current Revenues. Any payments required to be made by a Party under this Amendment will be paid from current revenues or other funds lawfully available to the Party for such purpose.

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

5.05 Entire Agreement. This Amendment, together with the 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.

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

5.07 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Amendment, and that it is binding upon each of the Parties.

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

5.09 Capitalized Terms. All capitalized terms in this Amendment that are not otherwise defined shall have the meanings set forth in the Agreement.

ATTEST:

Marius R. Griggs
Secretary VICE PRESIDENT

ATTEST:

Nancy E. Ruter
County Clerk

CHISHOLM TRAIL SPECIAL UTILITY
DISTRICT:

By: Mary Wilson
Printed Name: MARY WILSON
Title: President
Date: NOVEMBER 17, 2011

WILLIAMSON COUNTY:

By: [Signature]
Printed Name: _____
Title: County Judge
Date: 1-12-12

EXHIBIT "A"

ADDITIONAL WATERLINE IMPROVEMENTS