

STATE OF TEXAS

§

County: Williamson

COUNTY OF WILLIAMSON

§

Construction CSJ: 0440-02-010

ROW CSJ: 0440-02-012

Highway: SH 195 – Section 4
(Old Phase 2)

**AGREEMENT FOR RIGHT OF WAY PROCUREMENT
SUPPLEMENTAL AGREEMENT #3**

THIS SUPPLEMENTAL AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation (the "State"), and Williamson County, Texas (the "Local Government"), acting by and through its duly authorized officials.

WITNESSETH

WHEREAS, the State and Local Government executed an agreement on June 26, 2006 to acquire certain right of way and adjust utilities necessary for highway improvements on Highway No. SH 195 from 8.105 miles south of SH 138 to IH 35, which initial agreement provided the State would acquire the right of way, including relocation of utilities, with the local government to make incremental payments of its required percentage contribution; and

WHEREAS, in the first Supplemental Agreement to Contribute Funds executed by the State on November 13, 2007, the responsibility for the acquisition of right of way only was turned over to the Local Government, with the State retaining the responsibility for handling all relocation of utilities; and

WHEREAS, in a second "Supplemental Agreement to Contribute Funds" executed on May 27, 2009, by the State and Local Government, the responsibility for the handling of all relocation of utilities was turned over to the Local Government along with the continuing obligation of the Local Government to acquire the right of way, with both of these obligations to be accomplished under the terms and provisions of that form contract designated as ROW-RM-37 "Contractual Agreement for Right of Way Procurement—Local Government", with this second supplemental agreement also providing that the initial deposit by the Local Government in the amount of \$250,000.00 would be refunded to the Local Government and

WHEREAS, it has become necessary to further amend the above agreements and specifically include some additional provisions as part of the Form ROW-RM-37 which will be applicable to the above identified project; and

WHEREAS, the Governing Body of the Local Government has approved entering into this supplemental agreement by resolution or ordinance dated _____, 2012, which is attached to and made a part of this supplemental agreement as Attachment A;

NOW THEREFORE, the State and the Local Government do agree as follows:

AGREEMENT

1. Description of Amended Items:

- A. The following additional provisions are added at the end of and as part of the Paragraph titled *Negotiations*: The Local Government may utilize as part of the acquisition process, Possession and Use Agreements for Transportation Purposes (TxDOT Form N-7) provided (1), such forms are not altered, (2) are obtained in accordance with the procedures contained in the TxDOT Right of Way Manual, (3) updated title commitments are obtained, (4) payment by the Local Government to the parcel owner identified as the record title holder in the updated title commitment is made through the title company issuing the updated title commitment, (5) there are no outstanding liens or encumbrances that have not been released, and (6), the Agreements are immediately filed for record in the Official Public Records of Real Property for the county in which the right of way parcel is located.
- B. The following additional provisions are added at the end of and as part of the Paragraph titled *Reimbursement*:
- I. The State will reimburse the Local Government for the amounts paid to obtain possession of a specific parcels by Possession and Use Agreements (TxDOT Form N-7) obtained subsequent to the date of execution of this Supplemental Agreement by and on behalf of the State, in the following amounts: (1) Seventy percent (70%) of the consideration paid as stated in the Possession and Use Agreement, upon being furnished by the Local Government of a Request for Reimbursement in accordance with TxDOT's Right of Way manual together with written verification of compliance with the requirements set out in Paragraph 1 A. above, to include a signed copy of the Possession and Use Agreement, verification of recording of the Possession and Use Agreement, copy of updated title commitment, and verification of payment to the record title holder of the consideration as stated in the Possession and Use Agreement; (2) Twenty percent (20%) of the consideration paid as stated in the Possession and Use Agreement after either a final closing of the parcel by negotiated Deed, or upon the Local Government obtaining an Award of Special Commissioners pursuant to an eminent domain proceeding, upon being furnished by the Local Government of a Request for Reimbursement in accordance with TxDOT's Right of Way manual, to include a signed copy of the Award of Commissioners, verification of deposit by the Local Government into the registry of the court of any additional amounts by which the Award of Commissioners exceeded the amount originally paid under the Possession and Use Agreement and allowed as deduction credit against the Award of Commissioners under the terms of the Possession and Use Agreement, and a copy of updated title commitment.
 - II. For right of way parcels where condemnation was initiated by the Local Government (and a Possession and Use Agreement was not obtained),

the Local Government may elect to either wait to submit a request for reimbursement until a final judgment (including a judgment in absence of objections) has been obtained, or may submit a Request for Reimbursement in accordance with TxDOT's Right of Way manual, upon the Local Government obtaining an Award of Special Commissioners pursuant to an eminent domain proceeding, with such Request for Reimbursement to include a signed copy of the Award of Commissioners, verification of deposit by the Local Government into the registry of the court of the amount of the Award of Special Commissioners, and a copy of updated title commitment. Reimbursements based upon an Award of Commissioners would be for ninety percent (90%) of the amount of the Award, subject to final audit based upon the amount of the final judgment.

- III. For those parcels for which the Local Government have obtained Possession and Use Agreements prior to the effective date of this Supplemental Agreement #2, the State will reimburse the Local Government for the amounts paid as consideration under such Possession and Use Agreements in the same manner as set out in Paragraph 1 B- I, hereinabove. Said reimbursements will be conditioned upon all of the items set out in Paragraph 1A, hereinabove, (except such prior agreements that have already been executed are not required to be on unaltered TxDOT Form N-7).
- IV. Notwithstanding anything to the contrary set out above, all reimbursements paid to the Local Government under either negotiated deeds, possession and use agreements, awards of special commissioners, or final judgments are subject to final audit, which is to be based upon the maximum amount of reimbursement to be paid by the State to the Local Government not to exceed ninety percent (90%) of the cost of the right of way acquired in accordance with the terms and provisions of the basic Form ROW-RM-37 "Contractual Agreement for Right of Way Procurement – Local Government". In the event a final judgment in an eminent domain proceeding provides for a lower amount of compensation than did the Award of Commissioners, the Local Government agrees to reimburse the State for any excess amounts paid by the State to the Local Government based upon the higher Award of Commissioners. Reimbursements paid by the State to the Local Government for parcels acquired through eminent domain proceedings for amounts exceeding the State's predetermined value of each parcel, are conditioned upon the State having been notified in writing prior to the filing of such eminent domain suit and upon prompt notice being given as to all action taken therein. The State shall have the right to become a party to the suit at any time for all purposes, including the right of appeal at any stage of the proceedings.

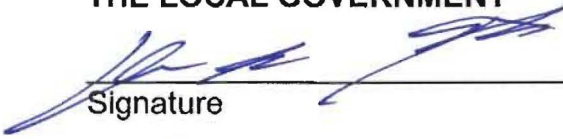
All other provisions of the original agreement and prior Supplemental Agreements not amended are unchanged and remain in full force and effect.

2. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT



Signature

DAN A. GATTI

Typed or Printed Name

County Judge

Title

08-06-2012

Date

THE STATE OF TEXAS

John P. Campbell, P.E.
Director, Right of Way Division
Texas Department of Transportation

Date

**ATTACHMENT A
RESOLUTION OR ORDINANCE**