

**FIRST AMENDED INTERLOCAL AGREEMENT BETWEEN
WILLIAMSON COUNTY AND CITY OF CEDAR PARK**

THE STATE OF TEXAS

§

§

COUNTY OF WILLIAMSON

§

KNOW ALL BY THESE PRESENTS:

This First Interlocal Agreement (the "Agreement") is made and entered into by and between WILLIAMSON COUNTY (the "County") and the CITY OF CEDAR PARK, TEXAS (the "City"), both of which are local governments and political subdivisions of the State of Texas, and both of which may be referred to in this Agreement as a Party or the Parties.

WITNESSETH:

WHEREAS, the Texas Interlocal Cooperation Act, V.T.C.A., Government Code, Chapter 791, Section 791.011(a) and Section 791.011(c)(2) provides that any one or more local governments may contract with each other for the performance of governmental functions and services that each party to the contract is authorized to perform individually; and

WHEREAS, the City and the County previously entered into the Original Interlocal Agreement (the "Agreement") in August of 2008 for the purpose of cooperating in the cost sharing on various roadway projects in Cedar Park; and

WHEREAS, the County has previously committed to providing funding towards certain designated roadway improvements in Cedar Park ("Original Projects") in the amount of \$12,403,884 under the Agreement; and

WHEREAS, project cost savings on the Original Projects has resulted in a surplus of funds, estimated to be \$4,770,595 which the parties now desire to be applied towards new projects, as listed herein (the "Amended Projects"),

WHEREAS, the County desires to make an additional \$1,150,000 contribution to assist in funding a portion of the RM 1431/ Parmer CFI project (the "RM 1431 Project");

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

**SECTION 1
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings set forth:

1. City – "City" shall mean the City of Cedar Park, Texas. Any reference in this Agreement to "City" shall include the respective officers, agents, employees and departments of the City of Cedar Park.
2. Construction – "Construction" shall mean the provision of all materials, equipment, labor, surveying, testing, and inspection necessary to construct the Amended Projects according to the plans and specifications approved by the City and the County.

Construction will be deemed to have begun if a bid has been awarded by the City to a contractor for the Amended Projects.

3. County – “County” shall mean Williamson County, Texas. Any reference in this Agreement to Williamson County shall include the respective officers, agents, employees and departments of Williamson County.
4. Design – “Design” shall mean engineering services, surveying services, geotechnical services, environmental services, and any other professional or technical services required to produce bidding documents, plans, and specifications for the Amended Projects.
5. Amended Projects - “Amended Projects” shall mean the design, right-of-way acquisition and construction of the projects listed in Exhibit “A”, attached hereto and incorporated herein
6. Right-of-Way – “Right-of-Way” acquisition shall mean all engineering services, surveying services, appraisal services, legal services, title company services, and any other services required to acquire in fee simple the parcels of land necessary to construct the Amended Projects.

SECTION 2

PURPOSE

The general purpose of this Agreement is for the County and the City to participate and cooperate in cost sharing for funding the Amended Projects.

SECTION 3

EFFECTIVE DATE; TERM OF AGREEMENT

This Agreement shall be deemed to be effective on the date of the last party’s execution. The term of this Agreement shall be for five (5) years from date of final execution. In the event that the City has not awarded a construction contract for all of the Amended Projects within five (5) years from date of final execution of this Agreement, then this Agreement shall be declared terminated and the City shall have the obligation to return to the County all unexpended funds for Amended Projects not awarded by contract within said five year period.

SECTION 4

TERMS AND CONDITIONS

County Obligations. The County commits to funding up to and no more than ONE MILLION ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,150,000) for the RM 1431 Project. Within thirty (30) calendar days after completion of 100% construction plans for RM 1431 Project, the County shall deposit \$150,000 into said fund. Within thirty (30) calendar days after the receipt of the bids and prior to award of a construction contract for the RM 1431 Project, the County shall deposit the final \$1,000,000 into said fund. Such monies may be used by the City, after consultation with the County, to fund the design, right-of-way acquisition and/or construction of any portion of the RM 1431 Project.

By this Agreement, the County further agrees to allow the City to utilize the funds allocated to the Original Projects for the Amended Projects as listed in Exhibit "A". Within thirty (30) calendar days of execution of this Interlocal Agreement, the County shall deposit \$1,000,000 into a fund to be established and administered by the City (the "Design Fund") for the Amended Cedar Park Road Projects. Within thirty (30) calendar days after the award of a contract for any of the Amended Cedar Park Road Projects, the County shall deposit the remaining funds allocated to the Amended Projects into a fund to be established and administered by the City (the "Construction Fund") for the Amended Cedar Park Road Projects.

The Parties expressly acknowledge that the Project is not a joint venture between the City and the County. The Parties further expressly acknowledge that it shall be the City's sole responsibility, and not the liability of the County, to pay out all funds for Design, Right-of-Way acquisition and construction costs related to the Project.

City Obligations. The City agrees to serve as Project Manager on its own behalf and on behalf of the County for its contribution, and the City agrees to administer all aspects of Engineering, Design and Right-Of-Way acquisition for the Amended Projects, including but not limited to consultant selection, preparation of construction plans, competitive bidding, construction and inspection of the Project (with the approval of the County).

The City agrees that the County or its duly authorized representatives shall have the right, and related access, to examine and photocopy any and all books, documents, papers and records of the City which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. The City agrees that the County shall have access during normal working hours to all necessary City facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The County shall give the City reasonable advance notice of intended audits.

SECTION 5

MISCELLANEOUS PROVISIONS

Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and will constitute one and the same instrument.

Governing Law. This Agreement will be governed by the Constitution and laws of the State of Texas, and all obligations of the Parties shall be performable in Williamson County, Texas, and exclusive jurisdiction and venue for any action arising hereunder shall lie in Williamson County, Texas.

Successors and Assigns. The assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party.

Headings. The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

Partial Invalidity. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be in contradiction of any laws of the State of Texas or of the United States, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected. The remainder of the Agreement shall remain in full force and effect.

Waiver. Any waiver by any Party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

Amendments. This Agreement may be amended or modified only by written agreement duly authorized and executed by the duly authorized representatives of the Parties.

Cooperation. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Representations. Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing, will not be merged, and will survive the termination or expiration of this Agreement.

Exhibits. All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.


Entire Agreement. This Agreement, including any attached exhibits, constitutes the entire agreement between the Parties with respect to the subject matter, and supersedes all their oral and written negotiations, agreements and understandings of every kind. The Parties understand, agree and declare that no promise, warranty, statement or representation of any kind whatsoever which is not expressly stated in this Agreement has been made by any Party hereto or its officers, employees or other agents to induce execution of this Agreement.

Effective Date. The Effective Date of this agreement shall be the date approved by Williamson County.

IN WITNESS WHEREOF, the Parties hereto have caused this document to be signed, sealed and attested in duplicate by their duly authorized officers.

(Rest of page left blank)

WILLIAMSON COUNTY

By: 
Honorable Dan A. Gattis, County Judge

Date: 11-27-2012

FOR COUNTY, ATTEST:

By: 
Nancy Rister, County Clerk

CITY OF CEDAR PARK, TEXAS

By: _____
Mayor

Date: _____

FOR CITY, ATTEST:

By: _____

EXHIBIT A

Amended Cedar Park Road Projects

BMC Drive Project:

Extension of BMC Drive from its current terminus to Brushy Creek Loop

Cypress Creek/Lakeline Project

Improvements to the intersection of Cypress Creek Road and Lakeline Blvd

Cypress Creek/US 183 Project

Improvement to the intersection of Cypress Creek Road and US 183

CR 272 Project

Overlay of CR 272

AMR/Zepplin Signal

Traffic signal upgrades at Anderson Mill Drive and Zepplin Dr.

BCR Right Turn Lane Project

Modification of the eastbound Brushy Creek Road right turn lane to southbound Parmer Lane

Brushy Creek East Project

Overlay of Brushy Creek Road from Arrowhead Trail to city limits

RM 1431 Project

Improvements to the intersection of RM 1431 and Parmer Lane