

## ACCESS AGREEMENT

This **ACCESS AGREEMENT** ("Agreement"), dated August 25, 2020, is made by and between **Kevin and Martha Beiter**, 400 Stubblefield Lane, Liberty Hill, Texas 78642 ("**Owner**"), and Williamson County, Texas, and its consultants LJA Engineering, Inland Geodetics, and SWCA Environmental Consultants, having its principal place of business at 710 Main Street, Georgetown, Texas 78626 (collectively "**Entering Party**").

### **BACKGROUND**

Entering Party wishes to have a non-exclusive right of access to Owner's real property described in Exhibit "A" (the "**Property**") for the following limited purpose (the "**Activity**" or "**Activities**"):

Linear boundary and topographical survey, archeological and environmental Phase I or hydrologic investigation, and engineering design investigation for proposed Liberty Hill Bypass Project.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing premises and the for and subject to the mutual covenants, agreements, representations and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. **ACCESS/DATA.** Owner hereby grants permission to Entering Party to enter the Property for the limited purpose of the Activity. Entering Party acknowledges the valuable consideration extended by Owner in granting such permission. Notwithstanding the foregoing, Owner has the right to limit the scope and direction of the Activity as it may deem appropriate in their sole discretion, and as otherwise allowed by Texas law. In addition, employees and representatives of the Entering Party shall not leave any area designated by an employee of Owner unless accompanied by Owner or an employee of Owner.

- a. The only permitted point of ingress and egress for access to the Property is designated as the entrance gate located at 400 Stubblefield Lane. The gate located at the point of ingress and egress is to be kept closed at all times except when in use.
- b. Entering Party will provide advance written notice at least 24 hours prior each entry onto the Property, identifying the individuals and contractors (including the employees or agents of any contractor conducting work for or on behalf of Entering Party) who will be on the Property, the time of entry and the intended duration of surveying activities on the Property. The Entering Party shall not enter the Property unless accompanied by the Owner or the Owner's designated representative; or unless given permission in writing by the Owner to enter the Property unaccompanied.

- c. Entering Party and its Contractors are strictly prohibited from directly or indirectly utilizing the Property to access any other properties. If any portion of a contiguous property sustains any damage by reason of the acts or omissions of Entering Party or its contractors, then Entering Party or its contractors, or both, shall be the only parties responsible for restoring the contiguous property to its condition existing immediately before the occurrence of this damage.
- d. All vehicles on the Property must remain confined to existing roads unless Owner provides prior written consent.
- e. Owner reserves the right to require persons entering the property to sign or log in with Owner (or Owner's representative) prior to entering onto the Property and to observe all activities on the property by the Entering Party and its contractors.
- f. The Activities must not interfere with or disrupt the normal activities on Property or on any contiguous property and must not endanger the health, safety, or welfare of Owner or anyone else on the Property or on any contiguous property during the Activities.
- g. The access permitted by this Agreement does not include the right to take any samples or conduct any testing, other than minor shovel testing (which shall be immediately refilled) or tree trimming solely as necessary to establish reasonable line of sight, of any sort on or over any part of the Property.
- h. Entering Party must obtain, at its own sole cost and expense, all governmental permits and authorizations required by any government agency for Entering Party and its contractors to perform the Activity on the Property, including, without limitation, the restoration of the Property substantially to its original condition. All activities conducted on the Property by Entering Party and its contractors must be conducted in compliance with all applicable laws.
- i. Entering Party and its contractors may maintain on the Property only such equipment, materials, and personnel as are reasonably necessary for performance of the Activities. Such equipment and materials must be located in a manner that does not interfere with entering, leaving, and using the Property or any contiguous property, and shall not be stored or otherwise left on the Property when representatives of the Entering Party are not otherwise present. To the extent that the equipment, materials, and personnel have served their function and their presence is no longer reasonably necessary to perform the Activities, Entering Party and its contractors must promptly remove them from the Property.
- j. Entering Party will mark both the proposed engineer's corridor centerline and property corners of any proposed right of way parcel acquisition area associated with proposed Bypass construction activities sufficiently that Owner can identify same.

- k. Entering Party will, promptly following completion of its physical activities on the Property pursuant to this Agreement and at no cost to Owner, provide Owner with copies of any reports, surveys and other work product generated from such activities. Entering Party shall furnish such materials in such format (printed or digital) as may be requested by Owner.

**2. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, ENTERING PARTY SHALL AND DOES HEREBY RELEASE AND AGREE TO DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER, AND ALL PARTNERS, SUBSIDIARIES, AND ANY OTHER RELATED OR AFFILIATED ENTITIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, PARTNERS AND EMPLOYEES (COLLECTIVELY, "INDEMNITEES"), HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, DAMAGES, DEMANDS, LAWSUITS, CAUSES OF ACTION, STRICT LIABILITY CLAIMS, PENALTIES, FINES, ADMINISTRATIVE LAW ACTIONS AND ORDERS, EXPENSES (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, COURT COSTS, CONSULTING AND EXPERT WITNESS FEES), AND COSTS OF EVERY KIND AND CHARACTER (COLLECTIVELY, "CLAIMS/LIABILITIES") ARISING OUT OF OR IN ANY WAY INCIDENT TO THE PRESENCE OF ENTERING PARTY OR ITS AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND EACH OF THEIR RESPECTIVE EMPLOYEES, SUBCONTRACTORS, AGENTS, REPRESENTATIVES AND INVITEES (COLLECTIVELY, "ENTERING PARTY GROUP") IN THE PROPERTY, INCLUDING, WITHOUT LIMITATION, CLAIMS/LIABILITIES RELATING TO PERSONAL INJURIES, DEATH, DAMAGE TO OR LOSS OF PROPERTY OR GOODS, OR DAMAGE TO THE ENVIRONMENT, REGARDLESS OF WHETHER SUCH HARM IS TO ENTERING PARTY GROUP, INDEMNITEES, THE EMPLOYEES OR OFFICERS OF EITHER OR ANY OTHER PERSON OR ENTITY WHATSOEVER. THE DUTY TO DEFEND, PROTECT, INDEMNIFY AND HOLD INDEMNITEES HARMLESS REFERRED TO IN THE PRECEDING SENTENCE SHALL INCLUDE, WITHOUT LIMITATION, CLAIMS/LIABILITIES THAT RESULT FROM THE COMPARATIVE, CONCURRENT OR CONTRIBUTING NEGLIGENCE OF ANY PERSON OR ENTITY INCLUDING, BUT NOT LIMITED TO, INDEMNITEES, EXCEPT ENTERING PARTY SHALL NOT BE LIABLE UNDER THIS SECTION FOR CLAIMS/LIABILITIES RESULTING FROM THE SOLE NEGLIGENCE OF INDEMNITEES.**

**3. SAFETY.** Entering Party shall be responsible for the safety of each Entering Party Group member. In addition, as relating to Entering Party's activities hereunder, Entering Party shall be solely responsible for identifying all hazardous conditions at the Property. To the extent Entering Party becomes aware of a hazardous condition caused by any Entering Party Group member, Entering Party shall promptly notify Owner. Moreover, Entering Party shall notify Owner (and provide details as requested by Owner) as soon as reasonably possible in the event any accident or other event occurs during the course of Entering Party's presence in the Property that involves non-compliance by any Entering Party Group member with any applicable laws, regulations, ordinances, or rules. Owner makes no representation as to any conditions at the Property, and Entering Party shall rely solely on Entering Party's own examination and investigation of the surface and subsurface conditions at the Property, and all local and general conditions that may affect Entering Party's activities on the Property.

4. **CONDUCT OF ACTIVITIES.** Entering Party Group shall conduct all activities in the Property in accordance with all applicable governmental laws, rules, regulations, good standard industry practices and all of Owner's safety regulations and directions, and in a manner that does not materially interfere with the operations of others (Owner or third parties) in the Property. Entering Party shall be responsible for promptly repairing and remediating, at its expense, any damage to property or the environment that arises out of Entering Party Group's activities in the Property.

5. **CONFIDENTIALITY.** During the course of the Activity and in connection with Entering Party's presence in the Property it is anticipated that Owner will deliver or otherwise disclose to Entering Party or Entering Party shall observe certain confidential or proprietary information of Owner. Therefore, Owner and the Entering Party hereby agree as follows:

a. Proprietary Information. The term "**Proprietary Information**" shall mean all confidential or proprietary information or trade secrets which may be observed by Entering Party or disclosed by Owner, any affiliate of Owner, or any of their respective representatives or agents to Entering Party pursuant to the terms of this Agreement, including but not limited to confidential information obtained during the Activity.

b. Disclosure of Proprietary Information. Entering Party shall keep confidential all Proprietary Information, and shall not, without Owner's prior written consent in each instance, use the Proprietary Information for any purpose other than in connection with the Activity, or disclose the Proprietary Information to any third party, except the officers, directors, employees, attorneys, accountants and consultants of Entering Party, who have a need to know such information and agree in writing to comply with the terms of this Agreement. Entering Party hereby acknowledges and agrees that the Proprietary Information is a valuable trade secret of Owner and that any unauthorized disclosure thereof could cause irreparable harm and loss to Owner. In this connection with the Proprietary Information disclosed to Entering Party, (a) Owner makes no representation or warranty, express or implied, as to the quality, accuracy or completeness of the Proprietary Information; and (b) neither Owner nor any of its affiliates shall have any liability whatsoever with respect to the use or reliance upon any of the Proprietary Information.

c. Limitation on Obligations. The duties and obligations of Entering Party under this Agreement shall not apply to Proprietary Information that:

(i) is, at the time of disclosure, in the public domain or available to the public or enters the public domain at a later date through no fault of Entering Party;

(ii) is in the possession or knowledge of Entering Party before disclosure thereof by Owner, as evidenced in writing by Entering Party at the time of disclosure of the Proprietary Information by Owner with no obligations of confidentiality;

(iii) is disclosed at any time to Entering Party in writing by an independent third party who has a right to make such disclosure;

(vi) is developed by or for Entering Party independent of the Proprietary Information in question, as evidenced in writing by Entering Party at the time of disclosure of the Proprietary Information by Owner; or

(v) is required by any governmental authority to be disclosed by Entering Party, except that Entering Party shall promptly notify Owner in writing in advance of any such required disclosure and shall cooperate with Owner in any attempt to obtain an order or other reliable assurance that confidential treatment will be accorded the Proprietary Information.

## **6. INSURANCE.**

a. Entering Party, at its own expense, shall carry insurance covering activities while at the Property of not less than the following kinds and amounts:

(i) Worker's Compensation in accordance with statutory requirements;

(ii) Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate;

(iii) Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage of \$1,000,000.00 each accident;

(iv) Professional Liability Insurance in the amount of \$2,000,000.00 per claim and annual aggregate.

b. The insurance carried shall provide that during the Activities the insurer may not cancel the insurance without giving Owner thirty (30) days prior notice of cancellation.

c. Entering Party shall furnish Owner with certificates setting forth the required insurance coverage prior to entering the Property.

## **7. MISCELLANEOUS.**

a. Term. This Agreement, and all matters arising hereunder or in connection herewith, shall be effective as of the date first written above, and shall continue in effect thereafter for a period of one hundred eighty (180) days or until terminated by either party upon notice to the other party. Entering Party acknowledges and agrees that the rights granted under this Agreement are for the sole and only purpose of the Activity and that such rights may be revoked at the sole discretion of Owner at any time, for any reason or for no reason. Entering Party's obligations hereunder shall survive the termination, revocation or expiration of this Agreement.

b. Injunction. Entering Party hereby acknowledges and agrees that money damages may not be sufficient to remedy any breach of any provision of this Agreement and that in addition to all other remedies which Owner may have at law against Entering Party, Owner shall be entitled to seek specific performance and injunctive relief or any other equitable relief as a remedy for any such breach.

c. Assignment; Contractors/Subcontractors. This Agreement may not be assigned in whole or in part by Entering Party without the prior written consent of Owner, nor shall activities be performed under this Agreement by a contractor or subcontractor of Entering Party without the prior written consent of Owner. Subject to the foregoing, this Agreement is binding on and inures to the benefit of Owner and Entering Party and their respective personal representatives, successors, and assigns; however, Entering Party's assignment of this Agreement does not release Entering Party from any obligation under this Agreement. References to a party include, bind, and inure to the benefit of that party's officers, agents, employees, successors in interest, and assignees.

d. Notices. All notices required or allowed under this Agreement must be in writing and sent to the address set out below. Notice must be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, by overnight delivery service or by certified U.S. mail with return receipt requested. Notices are effective on the earliest of the date received, the date of the delivery receipt or the fifth day after the postmark.

To Owner: Kevin M. Beiter  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

To Entering Party: Randy Ehresman, PE  
  
Sr. Project Engineer, Wilco Bond Program  
  
101 East Old Settlers Blvd. Suite 100  
  
Round Rock, Texas 78664

e. Choice of Law/Venue. The Agreement shall be governed by the laws of the State of Texas without application of conflict of laws rules. Venue shall be in Williamson County, Texas.

f. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, including their respective trustees, representatives, successors and any permitted assigns.

g. Severability. If any provision of this Agreement is held invalid or unenforceable by any court the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable


h. Entire Agreement. This Agreement supersedes and cancels all prior or contemporaneous discussions, negotiations, representations or agreements among the parties and constitutes a complete and exclusive statement of the agreements, covenants, conditions, promises, warranties and representations between the parties with respect to its subject matter, and there are no oral or written agreements, covenants, conditions, promises, warranties (express or implied) or representations among the parties with respect to the subject matter hereof except as set forth in

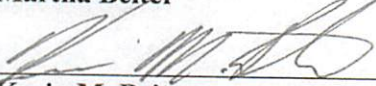
this Agreement. This Agreement shall not be modified, amended or supplemented except pursuant to a written agreement executed by both parties.

*[Signature Page Follows]*

So agreed as of the date first written above.

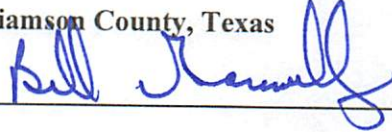
**OWNER:**

  
\_\_\_\_\_  
Martha Beiter

  
\_\_\_\_\_  
Kevin M. Beiter

**ENTERING PARTY:**

Williamson County, Texas

  
\_\_\_\_\_

By: Bill Gravell Jr.

Printed Name: \_\_\_\_\_

Title: County Judge