

STATE OF TEXAS           §           **ROAD CONSTRUCTION AND  
IMPROVEMENT AGREEMENT**

  §

COUNTY OF TRAVIS       §

**Commented [LA01]:** What is your recommendation for approach to ensuring submittal and completion of the development plat? If not part of this document, how should we word it as a condition of a motion to approve? LTISD has previously said they want to do it post-construction so I'm not sure holding site acceptance (and therefore the school opening) until it's completed will work.

**Commented [PA2R1]:** Covered by adding a condition to the Site plan. Conditions of approval should be communicated to the applicant prior to the meeting

The **CITY OF BEE CAVE** ("City"), a home rule municipal corporation situated in Travis County, Texas, and the **LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT**, a Texas public independent school district and political subdivision of the State of Texas ("**LTISD**"), make and enter into this Road Construction and Improvement Agreement ("**Agreement**"), dated and effective on the date of the last party to sign this Agreement ("**Effective Date**").

#### RECITALS

**WHEREAS**, LTISD is the owner of an approximately 136 acre tract of land described in **Exhibit "A"**, attached hereto, (the "**Property**") upon which District intends to construct Middle School No.3 ("**MS#3**") in accordance with approvals and permits issued by the City, Travis County, ESD No. 6 and the Texas Commission on Environmental Quality (the "**Project**"). LTISD must begin construction of MS#3 by early December 2017 in order to open the school for the 2019-2020 school year;

**WHEREAS**, LTISD initially proposed the Project to include approximately 560 feet of a roadway meeting the design standards for a divided four lane Type B Minor Arterial (as defined by the City) that would be reduced to two lanes for school bus traffic within the MS#3 campus to meet public education requirements ("**MS#3 Driveway**");

**WHEREAS**, the City and Travis County requested LTISD to construct, instead of the MS#3 Driveway, approximately 1,400 feet of the full cross section of a divided four lane Type B Minor Arterial, including sidewalks, meeting public road design standards from Vail Divide to the south property line of the Property, as shown on the attached **Exhibit "B"** ("**Internal Roadway**"). LTISD agreed to construct the Internal Roadway, including sidewalks, as part of the Project. The estimated cost to design, engineer, permit, and construct the Internal Roadway to public road standards is approximately \$1,992,013.84, as shown in the Estimate of Probable Cost attached hereto as **Exhibit "C"**. Until the Internal Roadway is accepted as a public road, LTISD will operate the Internal Roadway as an internal drive within the MS#3 campus. If a public road is constructed from ~~ERM~~ 3238 to the south property line of the Property, LTISD anticipates dedicating the Internal Roadway as a public road;

**WHEREAS**, the Property includes and is adjacent to Vail Divide right of way owned or to be owned by Travis County and pursuant to the City's Transportation Plan and LTISD's

determination of its transportation needs, the City and LTISD have agreed some improvements to Vail Divide are necessary to mitigate traffic impacts from development of MS#3;

**WHEREAS**, LTISD expects to receive a Site Plan Permit from the City that will authorize LTISD to construct MS#3 and the Internal Roadway (“**MS#3 Site Plan Permit**”);

**WHEREAS**, LTISD has filed development permit applications with the City and Travis County to reconfigure Vail Divide so that the Internal Roadway could be an extension of Vail Divide, as contemplated by the City’s Transportation Plan and as shown on the attached **Exhibit “D”** (the “**Vail Divide Reconfiguration**”). The estimated cost to design, engineer, permit and construct the Vail Divide Reconfiguration is approximately \$1,208,252.37, as shown in the Estimate of Probable Cost attached hereto as **Exhibit “E”**;

**WHEREAS**, LTISD is in the process of acquiring additional right of way for the Vail Divide Reconfiguration;

**WHEREAS**, LTISD expects to receive a Site Plan Permit from the City and a development permit from Travis County to construct the Vail Divide Reconfiguration described in **Exhibit “D”** attached hereto;

**WHEREAS**, the LTISD has agreed to construct the Vail Divide Reconfiguration at LTISD’s sole cost and expense which costs have been estimated, as set out in the attached **Exhibit “E”**, and in accordance with Travis County road design standards and the City’s Code of Ordinances and associated Site Plan approvals issued by the City;

**WHEREAS**, the Internal Roadway and the Vail Divide Reconfiguration are referred to collectively as the “**Road Improvements**”;

**WHEREAS**, City has determined that this Agreement and the LTISD’s construction of the Road Improvements can be accomplished in a cost efficient manner, will result in an economic benefit to local taxpayers, and is in the best interests of the citizens of the City; and

**NOW THEREFORE**, in consideration of the above stated Recital, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and LTISD agree as follows:

## **1. DEFINITIONS.**

A. *City* means the City of Bee Cave, a Texas home-rule municipal corporation situated in Travis County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.

B. *Cost Estimate* means the estimate of soft and hard costs: 1) attached hereto as **Exhibit “C”**, necessary to construct the Internal Roadway described in the attached **Exhibit “B”**; and 2)

attached hereto as **Exhibit “E”**, necessary to construct the Vail Divide Reconfiguration described in the attached **Exhibit “D”**.

C. *LTISD* means the Lake Travis Independent School District, a Texas public independent school district and political subdivision of the State of Texas, its representatives, agents, contractors, employees, and consultants.

D. *Effective Date* means the date on which the last party executes this Agreement.

E. *Property* means the LTISD’s property described in the attached **Exhibit “A”**.

F. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.

G. *Parties* mean the City and LTISD.

H. *Road Improvements* means the Internal Roadway, as shown in the attached **Exhibit “B”** to be constructed in accordance with the Site Plan Permit and Site Development Permit for MS#3 approved by the City and Travis County and the Reconfiguration of Vail Divide, as shown in the attached **Exhibit “D”** to be constructed in accordance with the Site Plan Permit and development permit plans approved by the City and Travis County.

I. *Site Plan Permit for MS#3 or Site Development Permit* means a permit for the construction of public and private improvements, and including the Roadway Improvements, to serve the LTISD’s property, also referred to as a Site Development Permit~~development of land.~~

## 2. PARTIES’ OBLIGATIONS

LTISD shall construct the ~~Road Improvements~~ Internal Roadway in accordance with the design and specifications contained in the Site Plan Permit for MS#3 as approved by the City and the terms of this Agreement. LTISD shall cause the design and construction of the Road Improvements Vail Divide Reconfiguration to be completed in accordance with all applicable governmental rules and regulations and the terms of this Agreement. LTISD further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs, including labor and materials, arising from the construction of the Road Improvements, except as otherwise provided herein.

LTISD shall comply with all applicable federal, state and local laws including all City ordinances, codes and regulations in the design and construction of the Roadway Improvements. As the Roadway Improvements will ultimately be owned and maintained by Travis County, prior to beginning construction of the Road Improvements, LTISD shall submit plans and material specifications to the City and Travis County for review and approval. Failure to obtain the City’s final approval prior to construction or failure to comply with all applicable federal, state and local law including all City ordinances, codes and regulations shall constitute a material breach of this Agreement. In the event of conflict between City road design and construction

**Commented [LA03]:** I agree in concept for them to be obligated to do all Road Improvements. However, the intersection improvements—the second part of Road Improvements—are technically under a separate site plan permit than that which will be issued for MS 3.

**Commented [PA4R3]:** Don’t think that should matter as long as permit is issued to the LTISD and not someone else. I have revised the site plan definition to clarify

requirements and Travis County road design and construction requirements, Travis County road design and construction requirements shall control. In addition, LTISD shall obtain all permits and inspections required by the City and Travis County and shall be solely responsible for any costs associated with obtaining such permits and inspections.

Any work performed by a contractor or consultant of LTISD will not, under any circumstances, relieve LTISD of its responsibilities and obligations under this Agreement. All work performed by LTISD or its agent shall be done in a good and workmanlike manner satisfactory to the City and Travis County. Any contractor or consultant hired by LTISD shall have sufficient skills and experience to properly perform the work described in the approved Site Development Construction Permit and as shown on the approved Site Development plans, and shall provide adequate supervision to assure competent performance of the work.

During construction of the Road Improvements, the City shall be granted entry to the construction site at reasonable times to inspect the progress and quality of the construction of the Road Improvements to confirm compliance with the City's Code of Ordinances, and any other applicable rules and regulations. LTISD shall provide to the City a copy of all test results performed in conjunction with the construction of the Road Improvements. Any changes in design criteria associated with the Road Improvements shall be approved by the City and Travis County prior to construction of such changes. Any changes in materials or construction criteria associated with the Road Improvements shall be approved by the City and Travis County prior to construction of such changes.

LTISD shall complete construction of the Internal Roadway no later than two (2) years after the City's issuance of the MS#3 Site Development Permit.

LTISD shall complete construction of the Vail Divide Reconfiguration no later than one (1) year after the City's issuance of the Site Development Permit for the Vail Divide Reconfiguration. LTISD will provide the City verification of Travis County's acceptance of the Vail Divide Reconfiguration within thirty (30) days of the County's acceptance.

The October 2017 Traffic Impact Analysis for MS#3 prepared by Arthur F. Gamble, P.E., of Alliance Transportation Group ("**MS#3 TIA**") estimated approximately \$43,000.00 in off-site road improvements to mitigate for the traffic generated by MS#3 ("**Road Mitigation Amount**"). LTISD agrees to complete the Traffic Impact Analysis and provide same to the City in accordance with the City's Code of Ordinances. LTISD may apply the cost of constructing the Vail Divide Reconfiguration and a portion of the cost of constructing the Internal Roadway Road Improvements against the current estimate of the Road Mitigation Amount and to off-set any future off-site traffic mitigation amounts assessed against future development on the Property. The terms of this paragraph shall survive the termination of this Agreement.

LTISD intends to design and construct the Internal Roadway so that it can be connected to a future public roadway from the southern property line of its Property across adjoining property to connect to FM 3238 (Hamilton Pool Road). When such future public roadway connection to Hamilton Pool Road is constructed, LTISD agrees to offer for public dedication to the City or County, as applicable, the Internal Roadway. In addition, LTISD agrees to allow the

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future public road to connect to the Internal Roadway and agrees to cooperate with the applicable governmental entity constructing the public roadway via a mutually acceptable construction easement or license agreement to access the Property in order to construct the connection to the Internal Roadway. This paragraph shall survive the termination of this Agreement.

### **3. TERM**

Commented [LA05]: Good.

Unless terminated earlier as provided for herein, this Agreement shall automatically terminate after the construction and acceptance by Travis County of the Road Improvements.

If Travis County determines that the County's specifications or any requirements under the law have not been met and the Roadway Improvements cannot be accepted by Travis County, then LTISD shall be solely responsible for any necessary corrections and alterations and all costs associated with any necessary corrections and alterations. The City shall not be responsible nor participate in any costs incurred in such instance. If LTISD does not complete the construction of the Road Improvements in accordance with the terms herein, the City may elect to terminate this Agreement or complete the construction and assess the LTISD with any costs to complete the construction of the Road Improvements.

### **4. INCREASED COSTS AND UTILITY RELOCATION**

It may be anticipated that additional costs may arise regarding construction of the Road Improvements through site conditions or latent defects; however, LTISD agrees that it will be solely responsible for payment of all costs for the Road Improvements whether known at the time of execution of this Agreement or discovered after execution of the Agreement. In the event that utilities have been constructed in the Right of Way and the Roadway Improvements will cause such utilities, if not relocated, to be covered by the construction, such utilities shall be relocated outside of the area of the Right of Way impacted by the Roadway Improvements as determined by the City. In the event that utilities have to be relocated, relocation and the associated costs of relocation of utilities should be borne by the respective utility; but in no event will the City be responsible for such costs. City will cooperate with LTISD in contacting and coordinating with utility companies regarding utility relocation.

### **5. NOTICE OF DEFAULT; OPPORTUNITY TO CURE; REMEDIES**

Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and providing an opportunity to cure the default before exercising any remedy related to the alleged default.

Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled. Provided however, if the Party in default commences with performance of a cure within the 30 day period and diligently pursues correction of any deficiencies or the default, then the 30 day period shall be automatically extended for a reasonable period of time to allow the Party the opportunity to completely correct and cure the default.

Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.

The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by LTISD under this Agreement, should LTISD fail to comply with the Code of Ordinances, the applicable Site Plan Permits, or any other applicable development regulation, the City may terminate this Agreement. LTISD shall remain responsible for all cost to construct or complete the Road Improvements whether or not this Agreement is terminated.

No prior written notice shall be required if there is an imminent threat to the public health, safety and welfare, and the City may take any and all actions as necessary to mitigate the immediate threat and assess the costs to LTISD.

## **6. MISCELLANEOUS**

A. **Entire Agreement.** This Agreement together with any fiscal security agreement and including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein.

B. **Amendment.** No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

C. **Other Instruments, Actions.** The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement.

D. **No Third Party Rights or Obligations.** No person or entity not a party to this Agreement shall have any third party beneficiary or any other rights against the parties to this Agreement.

E. **Applicable Law; Venue.** This Agreement shall be construed under and according to the laws of the State of Texas. Jurisdiction and venue for any suit arising hereunder shall be in Travis County, Texas.

F. **Severability.** The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

H. **Notices.** For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

**CITY:**

City of Bee Cave  
Attn: Travis Askey, City Manager  
4000 Galleria Parkway  
Bee Cave, TX 78738-6619  
Telephone: (512)  
Fax: (512):

**LTISD:**

Lake Travis Independent School District  
Attn: Director of Facilities, Construction and  
Auxiliary Services and Assistant Superintendent for  
Business, Financial Auxiliary Services  
16101 Hwy 71 West, Building B  
Austin, Texas 78738  
Telephone: (512) 533-5963  
winovitchr@ltisdschools.org

With copy to: Robert Kleeman  
Sneed, Vine & Perry, P.C.  
900 Congress Avenue, Suite 300  
Austin, Texas 78701

Telephone: (512) 494-3135  
[rkleeman@sneedvine.com](mailto:rkleeman@sneedvine.com)

The Parties will have the right from time to time to change their respective addresses upon written notice to the other Party. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

I. **No Waiver of Development Ordinances.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision of any other agreement, or of any regulation, requirement or ordinance, if any, applicable to the Property or to the Roadway Improvements. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Nothing herein shall waive any obligations of LTISD under applicable ordinances, including but not limited to the Code of Ordinances or the water and wastewater regulations.

J. **Attorney's Fees.** Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party. If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

K. **Governmental Authority.** Nothing in this Agreement shall be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities and Roadway Improvements contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor the City's duty to provide for the public health, safety, and welfare in the construction or maintenance of the same.

L. **Assignability.** This Agreement shall not be assignable by LTISD without the prior written consent of the City.

M. **Binding Obligation.** This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

N. **Indemnification.** This Agreement is not intended to alter or reallocate any defense or immunity presently authorized to either party by law. The City shall not be subject to any obligations or liabilities of the LTISD incurred in the performance of this Agreement. **LTISD SHALL, TO THE EXTENT ALLOWED BY LAW, INDEMNIFY AND HOLD CITY HARMLESS FROM ANY AND ALL CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO LTISD'S SUCCESSORS, ASSIGNS, GRANTEEES, VENDORS, TRUSTEES OR REPRESENTATIVES, BROUGHT PURSUANT TO THIS AGREEMENT OR THE CLAIMS OR TYPES OF CLAIMS DESCRIBED IN THIS**



**PARAGRAPH. CITY SHALL HAVE NO RESPONSIBILITY OR OBLIGATION FOR INDEMNIFICATION OR DEFENSE OF LTISD IN THIS AGREEMENT.**

O. **Ambiguities Not to Be Construed against Party Who Drafted Agreement.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

P. **No Special Relationship.** The parties do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship by executing this Agreement.

Q. **Authorized Signature.** The person executing this Agreement on behalf of the LTISD warrants to the City that LTISD is a duly authorized to do so, is qualified to do business in the State of Texas, and that LTISD has full right and authority to enter into this Agreement, and that every person signing on behalf of LTISD is authorized to do so.

R. **Force Majeure.** The performance of this Agreement, except for the payment for services already rendered, may be suspended by either Party in the event performance of this Agreement is prevented by a cause or causes beyond the reasonable control of such Party. Such causes shall include, but not be limited to, acts of God, acts of war, riot, fire, explosion, accidents, inclement weather, sabotage, lack of adequate fuel or power. The Party which is prevented from performing by a cause beyond its reasonable control shall use its best efforts to eliminate such cause or event.

**[Signature pages begin on next page]**

**CITY OF BEE CAVE, TEXAS**

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_  
Caroline Murphy, Mayor

ATTEST:

\_\_\_\_\_  
Kaylynn Holloway, City Secretary

**LAKE TRAVIS INDEPENDENT SCHOOL  
DISTRICT**, a Texas public independent school district and  
political subdivision of the State of Texas

By: \_\_\_\_\_  
Name: Robert Winovitch  
Title: Director of Facilities and construction

Date: \_\_\_\_\_

**Exhibit “A” – Description of LTISD Property**

**Exhibit “B”-Internal Roadway Drawing**

**Exhibit “C”-Internal Roadway Construction cost Estimate**

**Exhibit “D”-Road Improvements Drawing**

**Exhibit “E”-Road Improvements Construction Cost Estimate**