

#14

FIRST AMENDED INTERLOCAL DEVELOPMENT AGREEMENT

By and Between
the CITY OF SAN ANGELO and TOM GREEN COUNTY

FIRST AMENDED INTERLOCAL DEVELOPMENT AGREEMENT (“Agreement”) is entered into on this 6th day of November, 2018, by and between City of San Angelo, Texas, a home rule city located in Tom Green County, Texas (“City”), and Tom Green County, a legal and political subdivision of the State of Texas (“TGC”), and supersedes the INTERLOCAL DEVELOPMENT AGREEMENT entered into by and between the Parties hereto, effective March 7, 2017.

RECITALS

WHEREAS, Tom Green County is developing a new county jail facility (PD16-02) located in the corporate limits of City, in northeast San Angelo, east of the point where south bound Highway 277 merges with southbound Highway 67 (hereinafter “Jail Facility” or “PD”); and,

WHEREAS, TGC and City entered into a Memorandum of Understanding effective October 4, 2016, pursuant to which TGC shall be responsible for construction of certain infrastructure, including extension of sewer main and certain road improvements for access relating to the proposed Jail Facility (the “MOU”); and,

WHEREAS, TGC and City entered into an Interlocal Agreement for Subdivision Regulation within the Extraterritorial Jurisdiction of City, effective April 1, 2014, authorizing City to exercise exclusive jurisdiction to regulate subdivision plats and approve related permits in the entire extraterritorial jurisdiction of City; and,

WHEREAS, TGC petitioned for disannexation of 184.627 acres of property (the “Property”) for purposes of facilitating the county’s eligibility for state funding of necessary infrastructure relating to construction of new jail facilities, effective upon adoption of the disannexation ordinance on March 7, 2017; and,

WHEREAS, TGC was not awarded the grant funding for which it sought eligibility through disannexation; and,

WHEREAS, TGC and City entered into an Interlocal Development Agreement effective upon disannexation pursuant to Chapter 791 of the Texas Government Code and Section 212.172 of the Texas Local Government Code, guaranteeing the continued extraterritorial status of the PD for a period of five years from the effective date of disannexation, extending City’s planning authority over the PD by continuing the development plan proposed in PD16-02, and authorizing enforcement by City of certain of its land use and development regulations in the same manner the regulations are enforced within City’s corporate boundaries; and,

WHEREAS, TGC has submitted a petition for re-annexation of the Property into the corporate limits of the City of San Angelo; and,

WHEREAS, the Parties agree it is in their best interests, and in the best interests of the citizens of City and TGC, to work together on the development of the new county jail facility and related infrastructure substantially in conformance with the provisions of the PD, including application of certain of City's regulatory development and zoning ordinances consistent with City's Comprehensive Plan; and,

WHEREAS, the TGC jail project is unique in that it is subject to construction standards established by the State and that the standard value-based building fee calculation does not accurately reflect City's cost of providing building permitting and inspection services;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, City and Tom Green County agree as follows:

TERMS

1. Recitals. The recitals set forth above are true and correct and are adopted by the Parties as part of this Agreement.
2. Effective Date. This First Amended Interlocal Development Agreement shall become effective when duly executed by each of the Parties as authorized by their governing bodies (Effective Date), and shall supersede in its entirety the Interlocal Development Agreement that became effective upon disannexation.
3. Term. This Agreement shall continue in effect until March 7, 2022.
4. Reaffirmation of MOU. The Parties reaffirm the terms and conditions of the Memorandum of Understanding by and between TGC and City, dated October 4, 2016, and incorporate the terms and conditions of said MOU, as amended by First Amendment effective February 21, 2017, by reference thereto the same as if fully set forth herein.
5. First Amended Interlocal Agreement for Subdivision Regulation in the ETJ. The Parties hereto entered into an Interlocal Agreement for Subdivision Regulation within the Extraterritorial Jurisdiction (ETJ) of City effective April 1, 2014, authorizing City to exercise exclusive jurisdiction to regulate subdivision plats in the ETJ of City, and anticipate entering into an amended interlocal agreement that allocates between City and TGC areas of City's ETJ for subdivision regulation so as to provide for City regulation of subdivisions and approval of related permits in that part of the ETJ within City's Annexation Plan.
6. Conformance with PD16-02. County shall proceed to develop the Jail Facility substantially in conformance with the concept plan and the terms and conditions described in PD16-02, and in conformance with the terms and conditions of the MOU, except as may be otherwise agreed to in writing executed by officers of each Party pursuant to authority of its governing body. Prior to occupancy of any improvement constructed in accordance with PD16-02, County shall finally plat the PD.
7. Use and Application of Zoning Restrictions. During the term of this Agreement TGC shall not use the property for any use other than County Jail Facility pursuant to the terms and conditions of the PD (hereinafter "Primary Use"). During the term of this Agreement, City's Light Manufacturing (ML) Zoning District regulations and restrictions shall apply to the Property to the extent consistent with the Primary Use. In no event shall owner make any use of the Property or any portion thereof, including any use

subsidiary or incidental to the Primary Use that would be in violation of City's Light Manufacturing Zoning District's allowed uses, regulations and restrictions.

8. Prohibited Construction or Subdivision. Except as provided at Section 7 above, TGC covenants and agrees that it shall not construct, or permit to be constructed, any building or improvement on the Property in violation of the concept plan of the PD and that would require a building permit if the construction thereof were within the corporate limits of City. TGC covenants and agrees that during the term of this Agreement the owner shall not file any application for subdivision, preliminary subdivision plat, subdivision plat or related development document for all or any portion of the Property with Tom Green County or any governmental entity having jurisdiction other than City.

9. Inspection Services. City shall provide inspection services for the construction of the Jail Facility and related infrastructure constructed by TGC, pursuant to building and construction trade codes adopted by City ordinance that would otherwise be applicable within the corporate limits of City.

10. Permit Fees. City fees for building permits and inspections shall be calculated and assessed at 50% of the standard fee established by City's adopted fee schedule for a building permit in place at the time of permit application, which shall cover the building permit and all subcontractor permits related to the construction of the Jail Facility.

11. Utility Service. City shall allow and service disannexed property with necessary utilities installed to City specifications by and at the expense of TGC. City owned utilities shall be provided for charges at applicable fee schedule rates established pursuant to Appendix "A" "Fee Schedule" of the City of San Angelo Code of ordinances, excepting there from application of subsection (a)(6) of Section A8.002.

12. Continuation of Extraterritorial Status. Subject to the covenants, conditions and promises under this Agreement, and provided that the Agreement has not been terminated as herein provided, City shall not re-annex the Property and guarantees that the Property shall remain in the extraterritorial jurisdiction of City for the term of this Agreement, with the exception that TGC shall have the option to earlier petition for re-annexation.

13. Annexation. Upon expiration of the term of this Agreement, or upon its earlier termination as herein provided, or on earlier application of TGC for annexation, TGC agrees that City shall proceed to annex the Property for purposes of the Jail Facility, and that such annexation be deemed to be with the consent of TGC.

14. Zoning Designation On Re-annexation. Property re-annexed pursuant to this Agreement and platted as PD 16-02, shall be designated as PD Zoning District and the remainder of the Property shall be designated Light Manufacturing Zoning District (ML) in accordance with applicable City ordinances.

15. Notice to Be Given on Sale or Conveyance. TGC or any other person or entity that sells or conveys the Property or any portion thereof shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to City. In addition, TGC or its successors and assigns shall give City written notice within fourteen (14) days of any change in the use of the Property from Jail Facility in conformance with the PD.

16. Agreement Shall Be a Covenant Running with the Land. This Agreement shall be recorded in Real Property Records of Tom Green County, Texas, and shall be a covenant running with the land binding upon all Parties having any right, title or interest in the Property or any part thereof, including their heirs, successors and assigns, and shall inure to the benefit of the owners of the Property and to the City of San

Angelo.

17. Termination. This Agreement shall terminate upon: (1) Owner's failure to continue to use the Property solely for the Primary Use and uses incidental thereto as permitted at Section 7 entitled "Use and Application of Zoning Restrictions", hereinabove; or (2) owner's violation of Section 8 entitled, "Construction or Subdivision Prohibited", hereinabove.

18. Survival of Provisions. In the event of a termination or expiration of this Agreement for any reason, the Parties agree that all provisions that by their meaning or nature are intended to survive termination or expiration shall survive termination or expiration of this Agreement.

19. Enforcement. This Agreement may be enforced by TGC or City, or by their successors or assigns, by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the Agreement thereafter.

20. Entirety. This Agreement contains all commitments and agreements of the Parties with respect to these matters. No other oral or written commitments of the Parties shall have any force or effect if not contained herein.

21. Ratification. Each Party hereby ratifies the actions of its personnel taken prior to the date of this Agreement.

22. Severability. If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provisions of the Agreement that can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

23. Validity and Enforceability. If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made a part of this Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations, and so modified, this Agreement shall continue in full force and effect.

24. Amendment. This Agreement may be amended only by the mutual written consent of the Parties.

25. Warranty. This Agreement has been officially authorized by the governing body of each Party hereto and each signatory to this Agreement guarantees and warrants that the signatory has full authority to execute this Agreement and to legally bind the respective Party to this Agreement.

26. Payment Out of Current Revenues. Each Party to this Agreement paying for the performance of the governmental functions or services hereunder shall make those payments from current revenues available to the paying Party. Notwithstanding anything to the contrary in the foregoing provisions of this Agreement, neither City nor County are bound to pay to the other any sum of money in consideration for this Agreement. The Parties agree that the mutual covenants herein contained fairly compensates each Party for the performance of the services or functions to be performed under this Agreement.

27. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. Venue for an action arising under this Agreement shall lie exclusively in a court of competent jurisdiction

in Tom Green County, the location of each of the Parties and of the property to which this Agreement pertains.

28. Headings. The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.

29. Notices. Any notice required or permitted to be given to a Party under this Agreement, shall be in writing and shall be deemed given (i) on the day it is delivered personally (with receipt); or (ii) the day after it is deposited with a nationally recognized courier service for next-day delivery; or (iii) three (3) days after it is deposited in the U.S. certified mail, postage prepaid, return receipt requested, addressed as follows:

If to City:

If to Tom Green County

City Manager’s Office
Attention: City Manager
72 West College Avenue
San Angelo, Texas 76903

Office of the County Judge
Attention: County Judge
122 W. Harris Avenue
San Angelo, Texas 76903

[Signature Page Follows]

THIS AGREEMENT having been authorized by the governing body of each of the Parties is EXECUTED by each respective entity acting by and through its duly authorized official as required by law, on multiple counterparts each of which shall be deemed to be an original.

TOM GREEN COUNTY

CITY OF SAN ANGELO, TEXAS

By: *Stephen C. Floyd*
Stephen C. Floyd, County Judge
acting in his official capacity
and not individually

By: _____
Brenda Gunter, Mayor

Email: steve.floyd@co.tom-green.tx.us

Email: brenda.gunter@cosatx.us

Date: 4-2-19

Date: _____

ATTEST:

Julia Antilley, City Clerk

STATE OF TEXAS §
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the 2 day of April, 2019 by, STEPHEN C. FLOYD, County Judge, TOM GREEN COUNTY, Texas, on behalf of said county.

STATE OF TEXAS §
COUNTY OF TOM GREEN §

Elizabeth McGinn
Notary Public, State of Texas
Elizabeth McGinn
County Clerk
Tom Green County, Texas

This instrument was acknowledged before me on the _____ day of _____, 2019 by BRENDA GUNTER, Mayor of the CITY OF SAN ANGELO, a Texas home rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

APPROVED AS TO FORM:

Theresa James, City Attorney