

## Temporary Transportation Improvement Cost Participation Agreement

This Temporary Transportation Improvement Cost Participation Agreement (this “**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”), between the City of Manor, Texas, a Texas home rule municipality (the “**City**”), and Whole Foods Market Rocky Mountain/Southwest L.P., a Texas limited partnership (“**Whole Foods**”). The City and Whole Foods are herein sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS:

WHEREAS, on August 23, 2022, the City passed an ordinance authorizing that certain tax note to fund the construction costs for roadways in the City, including construction of a segment of Hill Lane and associated infrastructure improvements (the “**Overall Project**”); and

WHEREAS, Whole Foods is the tenant at that certain 25 acre tract commercial development out of the JAMES MANOR SURVEY NO. 40, ABSTRACT NO, 546, in Travis County, Texas being out of that certain 275.66 acre trace of land described in the Deed recorded in Volume 122271, Page 782, Real Property Records, Travis County, Texas (the “**Development**”) adjacent to Hill Lane; and

WHEREAS, the City and Whole Foods desire to construct temporary improvements to Hill Lane, including the design and construction of a segment of Hill Lane and associated infrastructure improvements, being more particularly described in **Exhibit A** and depicted in **Exhibit A-1**, as “**Hill Lane Area B**” (the “**Transportation Improvements**”) and the widening of a portion of Hill Lane and associated infrastructure improvements (the “**Additional Transportation Improvements**”), being more particularly described in **Exhibit A-2**(collectively, the “**Project**”); and

WHEREAS, Whole Foods, and adjacent property owners, benefit from this Agreement and the construction of the Project because Whole Foods, is the tenant for the Development; and

WHEREAS, the Parties wish to proceed without delay with the design, engineering and construction plans for the Project (the “**Design Phase**”); and

WHEREAS, immediately following the Design Phase, the Parties wish to proceed with the bidding of the Project, selection of the Contractor (as hereinafter defined) and construction of the Project (the “**Construction Phase**”); and

WHEREAS, the Parties wish to enter into this Agreement for the purpose of setting forth their respective rights, obligations and understandings with respect to the design and construction of the Project.

### AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Whole Foods hereby agree as follows:

**ARTICLE I.  
INCORPORATION OF RECITALS; TERM**

**1.01. Incorporation of Recitals.** The recitals set forth above are incorporated herein and made a part of this Agreement to the same extent as if set forth herein in full.

**1.02. Term.** The term of this Agreement shall commence on the Effective Date and continue until completion of the Construction Phase, which in no event shall be later than April 14, 2023.

**ARTICLE II.  
DESIGNATION AND DUTIES OF PROJECT ENGINEER**

**2.01. Designation of Project Engineer.**

(a) The City has engaged Kimley-Horn (“**Kimley-Horn**”) to design the Overall Project and act as engineer for the Overall Project under that certain Professional Services Agreement dated \_\_\_\_\_, 2023 (the “**Kimley-Horn Agreement**”) in an amount not to exceed \$175,325.00 (the “**Design Fee**”). Whole Foods agrees to pay for half of the Design Fee as set forth in this Agreement.

(b) The City hereby designates Kimley-Horn as the engineer to design and act as project engineer for the Project (“**Project Engineer**”) and approves the the Design Fee. Pursuant to the Kimley-Horn Agreement, the City shall cause Kimley-Horn to design and obtain City approval of the construction plans for the Project (the “**Project Construction Plans**”). Except as provided for in this Agreement, the City shall pay to Kimley-Horn all amounts due under the Kimley-Horn Agreement. Upon request, the City shall provide Whole Foods with reasonable documentation of all such amounts paid to Kimley-Horn.

**2.02. Duties of Project Engineer.** The Project Engineer will complete the preparation of the design, construction plans and specifications, and supporting documentation for the Project in accordance with good engineering practices, the design and construction standards of all applicable federal, state and local regulations and the terms of this Agreement. The Project Engineer will work and coordinate with the City Engineer to obtain the timely review and approval by the City Engineer and the Director of Development Services of the design, plans, specifications and construction of the Project. The City shall be responsible for ensuring that the Project Engineer complies with the terms of this Agreement, including with regard to the duties and responsibilities assigned to Project Engineer herein.

**ARTICLE III.  
CITY DUTIES AND RESPONSIBILITIES**

**3.01. Duties of City.** The City shall perform the following design, permitting and construction duties:

(a) Create a detailed hard cost (construction fees) and soft cost (consultant fees) budget, including contingency, for the Project (the “**Budget**”). The Budget is estimated to be approximately \$375,000.00, and shall in no event exceed \$375,000.00 without the express written consent of Whole Foods. City may update the Budget as needed from time to time based on changed conditions, subject to approval by City Council, and consent of Whole Foods as stated herein. The Parties will not be responsible for paying any amounts that are not approved in the Budget.

(b) Interview and select consultants (“**Consultants**”) and a general contractor (“**Contractor**”) and negotiate scope and fee of the Consultant’s and Contractor’s work for the Project. The City will approve the selection of the Consultants and Contractor, the scope of their work and fee they charge, such approval not to be unreasonably withheld, conditioned or delayed so long as such Consultants’ and Contractor’s fees are consistent with the Budget. Such Consultants may include a Project engineer, Project architect, Project designer, Project landscape architect, Project lighting designer and other consultants reasonably required to develop the overall design and engineering for the Project. Consultants and Contractor shall be selected by City and, after approval of the Consultant by the City, retained by the City pursuant to the Consultant Contracts (as hereinafter defined) and Construction Contract (as hereinafter defined), as applicable. The Consultant and Contractor budgets shall be within the approved Budget. In the event that the Budget requires revision due to Consultants’ and/or Contractor’s scopes and fees, the City will obtain approval by the City Council before authorizing work outside of the approved Budget and scope of work, such approval not to be unreasonably withheld, conditioned or delayed.

(c) Cause the Consultants and Contractor to identify and disclose in writing the following: (1) the relationships and/or any gifts identified in Section 176.006(a)(1)-(3), Texas Local Government Code that Consultants or Contractor may have with (in the case of a relationship) or may have given (in the case of a gift) City Council members, the City Manager, the Finance Director, the City Attorney, and Whole Foods; and (2) conflicts of interests; and complete Form 1295 (pursuant to HB 1295, as amended), at the time Consultants and/or Contractor are presented to City for approval. The Consultant Contracts and Construction Contract will require Consultants and Contractor, as applicable, to identify and disclose such business relationships and conflicts of interest as they may arise from time to time during the design and construction of the Project.

(d) Prepare all contracts with Consultants with not-to-exceed amounts using the City’s standard form, unless the City approves otherwise (each, a “**Consultant Contract**” and, collectively, the “**Consultant Contracts**”). In addition, Consultant Contracts shall be performance based, in that payments will be made based on percentage of completion of the applicable Consultant’s work. The Consultant Contracts shall provide for the City to own the deliverables upon the periodic payment of amounts due and owning under the applicable Consultant Contract and shall entitle the City to use such deliverables to continue the Project in the event this Agreement or any Consultant Contracts are terminated before completion of the Design and Permitting Phase. Copies of executed Consultant Contracts, together with any related amendments and/or addenda, shall be provided to Whole Foods upon request. The Consultant Contracts shall provide that the

City and Whole Foods, shall be named as an additional insured on the insurance policies required to be carried by Consultant under the applicable Consultant Contract and shall include the City and Whole Foods, as an indemnified party under the indemnity provision of the applicable Consultant Contract.

(e) Prepare the contract with Contractor (the “**Construction Contract**”) in accordance with the guidelines included on **Exhibit B** attached hereto. A copy of the executed Construction Contract, together with any related amendments and/or addenda, shall be provided to Whole Foods upon request.

(f) Provide a monthly status report to the Whole Foods.

(g) Review work performed by Consultants and Contractor, approve invoices and applications for payment submitted by Consultants and Contractor.

(h) Cause construction plans for the Project to be prepared and submitted to the City and for approval, such approval not to be unreasonably withheld, conditioned or delayed (as so approved, the “**Construction Plans**”).

(i) Manage all hired Consultants’ work related to the preparation of schematic design and design development drawings, construction drawings, specifications, cost estimating, and other plans necessary to achieve the vision of the Project.

(j) Perform the Design and Permitting Phase. The City shall be responsible for the costs to design, permit, install, and construct the Project.

(k) Advertise the Project for sealed, competitive bids in compliance with Chapter 252 and Chapter 271, Texas Local Government Code, including requirements for payment and performance bonds for the full cost of constructing the Project that comply with Chapter 2253, Texas Government Code and that name the City as the beneficiary under the payment and performance bonds, based on the Construction Plans, and recommend a qualified bidder/contractor to the City. Prior to bidding the Project, Project Engineer shall provide George Butler Associates, Inc. (“**City Engineer**”) with a copy of the documents and materials soliciting the bids, including but not limited to the notice to bidders, instructions to bidders, construction contracts, general, special and supplemental conditions, and technical specifications. The City Engineer will review the description of the Project for compliance with this Agreement. The Project Engineer shall make any changes to the bid documents required by the City Engineer that do not comply with the terms of this Agreement. The Project Engineer will coordinate the receipt and opening of the bids with the City Engineer and will provide a copy of the bids and bid tabulations to the City Engineer for review and approval, such approval not to be unreasonably withheld, conditioned or delayed. Upon receipt of the bids, the City Engineer shall evaluate the bids to determine whether the bids are fair and balanced prior to accepting a recommendation of bid award. Any unbalanced or skewed bids, as determined by bid tabulations, will be appropriately corrected or rejected by the City. Within two (2) days after receipt of the bids, the City Engineer will notify Whole Foods and City of the City’s Engineer’s approval or rejection of the bids and the City Engineer’s and Project

Engineer's recommendation of the lowest responsible bidder/contractor. If City agrees with the City Engineer's and Project Engineer's recommendation, the bid will be submitted to the City Council with a recommendation for approval. If the City Council approves the bid, the City will enter into the Construction Contract with the approved bidder/contractor for the construction of the Project; provided, the Construction Contract shall not exceed \$199,675.00 ("**Project Cost**"). In the event the lowest responsible bid exceeds the Project Cost, the Parties shall reasonably cooperate to modify the scope of the Project so that the cost to construct the Project does not exceed the Project Cost. In no event shall the City be required to enter into a Construction Contract that exceeds the Project Cost. The City shall approve the form of the Construction Contract and the form of the payment and performance bonds. No changes will be made to the Project Cost without the City's approval.

(l) Manage Contractor's work related to the construction of the Project in accordance with the Construction Plans, good engineering practices, applicable local, state, and federal regulations, and the deadlines for completion set forth in the Construction Contract. This also includes reviewing and overseeing the quality and timeliness of Contractor's work, alerting City and Whole Foods of any deficiencies in Contractor's work, and recommending termination of the Construction Contract by the City, if and as necessary.

(m) Approve change orders provided Whole Foods has received the City Engineer's and City Manager's prior written approval of such change order and the expenditure under such change order. The City Manager shall be authorized to approve change orders that involve an increase or decrease of \$25,000 or less, provided that the original contract price is not increased by more than twenty-five percent (25%), of the Budget, and provided further that the City's obligation to fund and pay for the costs of the Project shall not exceed the Project Cost.

(o) Perform the Construction Phase.

**3.02 City Responsibilities During the Design and Permitting Phase.** In order to support the Project, the City shall:

(a) Promptly review and reasonably approve the Budget.

(b) Within thirty (30) days after approving the Budget, dedicate funds for the Project in a not to exceed amount of \$187,500.00 which is one-half of the Design Fee and Transportation Improvements. In no event will the City pay more than one-half of the Design Fee and Transportation Improvements.

(c) Promptly review and reasonably approve Consultants' scopes of service, not-to-exceed contract amounts, performance milestones, and deliverables and execute the Consultant Contracts.

(d) Pay Consultants when and as required under the Consultant Contracts within thirty (30) days following receipt for payment, subject to Chapter 2251, Texas Government Code.

(e) Promptly review and approve the Construction Plans.

(f) Execute the Construction Contract, and review construction draw requests from the Contractor submitted in accordance with the terms of the Construction Contract, which shall be provided no more frequently than once a month. Not later than ten (10) days after receipt of a request for payment, the City Engineer shall review such requests and recommend the amount included in such requests to be paid. The City Engineer may reject a payment request for any reason set forth in the Construction Contract. The City's Engineer's rejection of a payment request shall impose no additional monetary obligation to Whole Foods. Whole Foods' monetary obligation for the Transportation Improvements shall be capped at \$256,911.50, unless agreed upon in writing, and signed by the Parties. Within thirty (30) days after the City Engineer's recommendation, the City shall then advance the amount so recommended by check payable to Contractor or by electronic means as approved by the City's Finance Director.

(g) During the Construction Phase, to review, approve and sign necessary and appropriate change orders in a timely manner; to perform all inspections of the Project in a timely manner; and to approve the Project in a timely manner if constructed in accordance with the Construction Plans.

(h) After completion of the installation of the Project in accordance with applicable contracts and requirements to be constructed as part of the Project, to allow the testing of such transportation improvements as may be required for the final acceptance by the City.

#### **ARTICLE IV. WHOLE FOODS RESPONSIBILITIES**

**4.01. Whole Foods Responsibilities.** In order to support the Project, the Whole Foods shall:

(a) Subject to the Budget limits set forth in 3.01 (a) above, Whole Foods will pay all Design Fee and Project Cost that collectively exceed \$375,000.00 as they become due. No changes will be made to the Design Fee and/or Project Cost without the City's approval. In no event will the City pay more than one half of the Design Fee and Project Cost.

(b) Whole Foods will pay to the City \$256,911.50 within fifteen (15) days after the Effective Date of this Agreement which payment represents Whole Foods 50% share of the Transportation Improvements, and Whole Foods payment of all costs associated with the Additional Transportation Improvements as stated in Exhibit A-2 . If payment is not received by the City, the Parties agree that the City shall not be obligated to move forward with the Project.

(c) Whole Foods will pay all of the costs associated with the design and construction of the Additional Transportation Improvements. In no event will the City pay for any of the costs associated with the Additional Transportation Improvements. The City shall not approve any changes, additional costs or fees associated with the Additional Transportation Improvements without the express written consent of Whole Foods.

(d) Promptly review documents presented by City in accordance with this Agreement.

**ARTICLE V.  
TIMING OF PHASES**

**5.01. Timing of Design and Permitting Phase and Construction Phase.** The Parties shall each use good faith, commercially reasonable efforts with respect to items for which such Party is responsible in accordance this Agreement to (i) cause the Design and Permitting Phase for the Project to be completed within five(5) days of execution of this Agreement; (ii) cause the Project to be bid, the Contractor to be selected and the Construction Contract to be executed within five (5) days following completion of the Design and Permitting Phase; (iii) cause a notice to proceed under the Construction Contract to be issued within two (2) days after the City's approval and execution of the Construction Contract; and (iv) cause the Construction Phase to be completed within the time period required pursuant to the Construction Contract.

**ARTICLE VI.  
COMPLIANCE WITH APPLICABLE LAW**

**6.01. Compliance with Applicable Law.** The Parties will work in good faith to cause the Project to be bid and administered in a manner that is compliant with Chapter 252, Texas Local Government Code and Subchapter C, Chapter 271, Texas Local Government Code and shall approve amendments to this Agreement and include terms in the Construction Contract as necessary to comply with said laws. Neither party will violate or knowingly permit anyone to violate any applicable anti-corruption or bribery laws in performing under this Agreement. The City will reasonably cooperate with Whole Foods in any investigation for a suspected breach of these obligations.

**ARTICLE VII.  
GENERAL PROVISIONS**

**7.01. Choice of Law and Venue.** This agreement shall be construed according to the laws of the State of Texas, with venue in the courts of Travis County, Texas or in the Western District of Texas.

TO THE EXTENT PERMITTED BY LEGAL REQUIREMENTS, THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN THE PARTIES ARISING OUT OF THIS AGREEMENT.

**7.02. Default.**

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, email shall be sufficient, the Party alleged to have failed to perform of the alleged failure

and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within three (3) business days of the receipt of such notice. Upon a breach of this Agreement for which cure has not commenced as provided above, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

**7.03. Personal Liability of Public Officials.** To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

**7.04. Notices.** Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed by registered or certified mail, return receipt requested, or personally delivered to an officer of the receiving party at the following addresses:

If to the City:

City of Manor  
Attn: City Manager  
105 E. Eggleston Street  
Manor, Texas 78653  
Email: [smoore@manortx.gov](mailto:smoore@manortx.gov)

with a copy to:

The Knight Law Firm, LLP  
Attn: Paige H. Saenz  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752  
Email: [paige@cityattorneytexas.com](mailto:paige@cityattorneytexas.com)

If to the Whole Foods:

Whole Foods Market Rocky Mountain/Southwest L.P.  
Attn: Kayce McCormick  
550 Bowie Street  
Austin, Texas 78703



with a copy to:

Whole Foods Market Rock Mountain/Southwest L.P.  
Attn: Jay Warren  
550 Bowie Street  
Austin, Texas 78703  
Email: legalrealstate@wholefoods.com

Each Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when deposited with the United States Postal Service, any communication sent by email shall be deemed given on the date on which it was sent, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, an authorized officer of the City or the Owner, as the case may be.

**7.05. Agreement and Amendment.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof unless otherwise provided herein.

**7.06. Partial Invalidity.** If any provisions of this Agreement, or the application thereof to any particular party or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to any other particular party or circumstance, shall be valid and enforceable.

**7.07. Attorneys' Fees.** In the event of any litigation regarding this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees and costs of court.

**7.08. Multiple Counterparts; Multiple Signature Pages.** This Agreement and any amendment or supplement thereto may be executed in two or more counterparts (each of which may bear the original signatures of all or some of the parties to this Agreement) and, if each of the parties to this Agreement has executed at least one such counterpart, then all such counterparts together shall constitute one and the same agreement with the same force and effect as if all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment or supplement thereto may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon, and may be delivered by telecopy or email and attached to another counterpart thereof identical in form thereto but having attached to it one or more additional counterparts of the same or other signature pages to this Agreement.

**7.09. Indemnification.**

(a) To the extent permitted by law, but except to the extent resulting from the negligence or willful misconduct of Whole Foods or any employee, contractor or agent of Whole Foods, or a breach of this Agreement by Whole Foods, indemnify, defend, and hold harmless Whole Foods and its affiliates, as well as their respective agents, servants, directors, officers, and employees (collectively, the "Whole Foods Indemnitees"), from and against any and all losses,

liabilities, damages, costs, and expenses (including reasonable attorneys' fees) resulting from claims by third parties occasioned by (i) death, injuries to any person, or damage to, or theft or loss of, property to the extent caused or alleged to be caused by the gross negligence or willful misconduct of the City or parties under the City's control; or (ii) any actual or alleged breach of this Agreement by the City.

(b) Except to the extent resulting from the negligence or willful misconduct of City or any employee, contractor or agent of City, or a breach of this Agreement by City, Whole Foods shall indemnify, defend, and hold harmless City and its affiliates, as well as their respective agents, servants, directors, officers, and employees (collectively, the "City Indemnitees"), from and against any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) resulting from claims by third parties occasioned by (i) death, injuries to any person, or damage to, or theft or loss of, property to the extent caused or alleged to be caused by the gross negligence or willful misconduct of the Whole Foods or parties under the Whole Food's control; or (ii) any actual or alleged breach of this Agreement by Whole Foods.

#### **7.10. Statutory Verifications.**

(a) To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Whole Foods represents that neither Whole Foods nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Whole Foods (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.

(b) To the extent this Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Whole Foods represents that Whole Foods nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Whole Foods is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

(c) Whole Foods hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to

meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

(d) Whole Foods hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

(e) Notwithstanding anything in this Agreement to the contrary, the City's and Whole Food's sole remedy for any breach or default of this Section 7.10, after any applicable cure period, shall be to terminate this Agreement.

**7.11. Appropriations.** Notwithstanding any provision contained herein, the financial obligations of the City contained herein are subject to and contingent upon appropriations by the City Council of such funds or other revenues being available, received and appropriated by the City in amounts sufficient to satisfy said obligations. In no event shall this instrument be construed to be a debt of the City.

*[Signature pages follow]*

EXECUTED in multiple originals, and in full force and effect as of the Effective Date.

**CITY:**

**CITY OF MANOR, TEXAS,**  
a Texas home-rule municipal corporation

By: \_\_\_\_\_  
Name: Dr. Christopher Harvey  
Title: Mayor

**Attest:**

By: \_\_\_\_\_  
Name: Lluvia T. Almaraz  
Title: City Secretary

WHOLE FOODS  
WHOLE FOODS MARKET ROCKY MOUNTAIN/  
SOUTHWEST ,L.P.

By; it's general partner, Whole Foods Market  
Rocky Mountain/Southwest, I, Inc.

By: \_\_\_\_\_

Name: Matt Ray

Title: Regional President Southwest

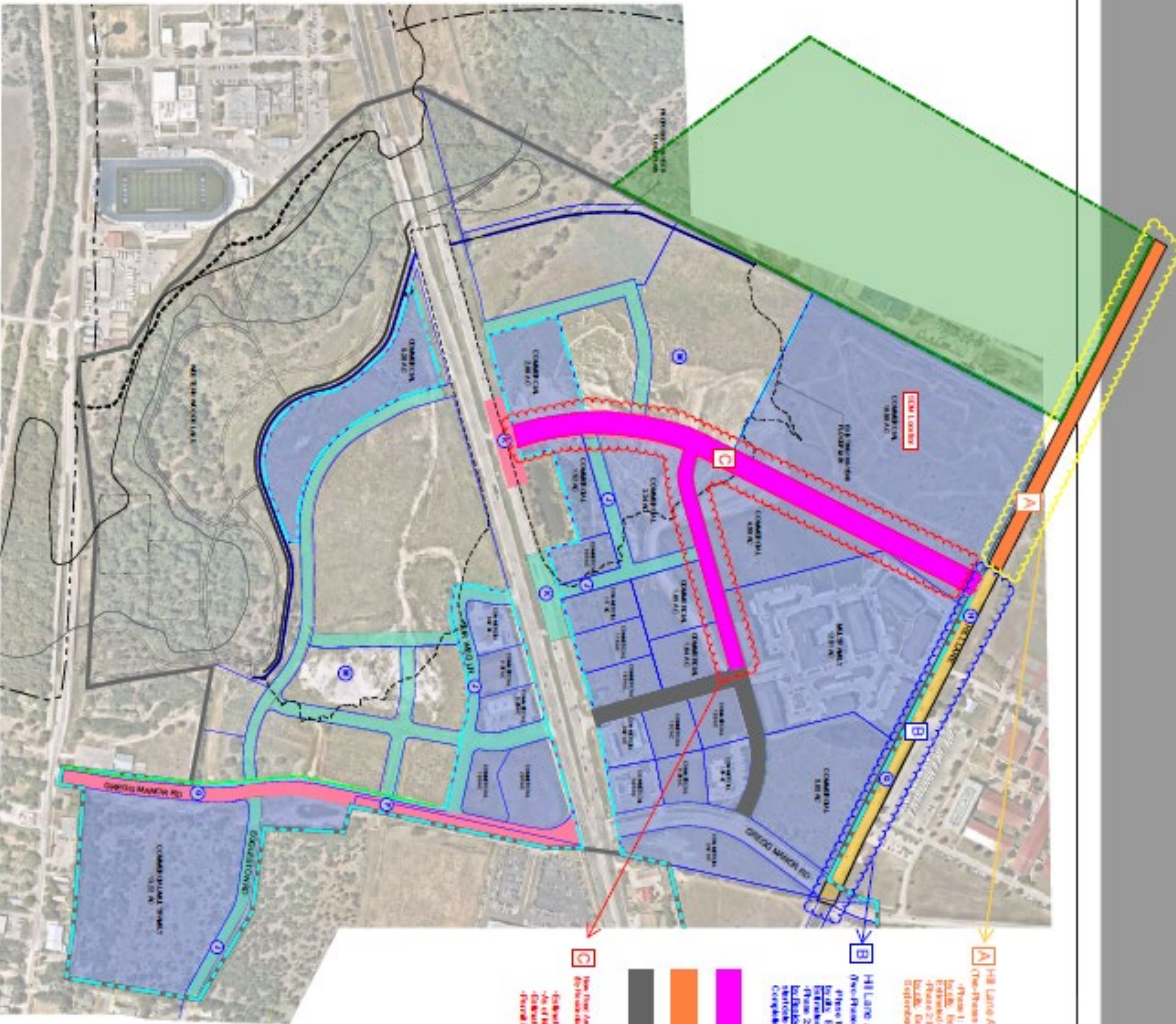
**Exhibit A**  
**Description of Project**

The Transportation Improvements consist of the design, construction, and installation the following Hill Lane improvements and associated infrastructure improvements:

- (i) Design of the Transportation Improvements;
- (ii) Approximately 3,250 linear feet of asphalt overlay; and
- (iii) Approximately 6,500 linear feet of stripping.

**Exhibit A-1**  
**Depiction of Project**

[attached]



**A Hill Lane Area A**  
 Two phases of work for the existing Hill Lane. Temporary construction of a temporary road for the duration of the project. Estimated completion of 2023. Completed in 180.

**B Hill Lane Area B**  
 One phase of work for the existing Hill Lane. Temporary construction of a temporary road for the duration of the project. Estimated completion of 2023. Completed in 180.

**C Hill Lane Area C**  
 One phase of work for the existing Hill Lane. Temporary construction of a temporary road for the duration of the project. Estimated completion of 2023. Completed in 180.

**Blue** City Portion Hill Lane  
 City Portion Hill Lane. Estimated completion of 2023. Completed in 180.

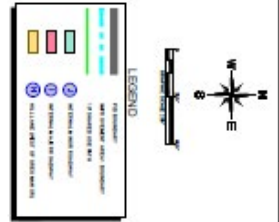
**Orange** Hill Lane Area B  
 Hill Lane Area B. Estimated completion of 2023. Completed in 180.

**Pink** Hill Lane Area A  
 Hill Lane Area A. Estimated completion of 2023. Completed in 180.

**Yellow** Hill Lane Area C  
 Hill Lane Area C. Estimated completion of 2023. Completed in 180.

**Grey** EXISTING  
 Existing roadways.

**Red** New Roadway  
 New Roadway. Estimated completion of 2023. Completed in 180.



ENTRADAGLEN  
 IMPROVEMENT AREA 1

ROADWAY &  
 MISCELLANEOUS PLAN  
 (LAS ENTRADAS)

DATE	DESCRIPTION
11/11/2023	ISSUED FOR PERMIT
11/11/2023	ISSUED FOR PERMIT
11/11/2023	ISSUED FOR PERMIT
11/11/2023	ISSUED FOR PERMIT

**Kimley Horn**

1100 N. 10th Street, Suite 100, Las Vegas, NV 89101  
 702.735.1100  
 www.kimleyhorn.com

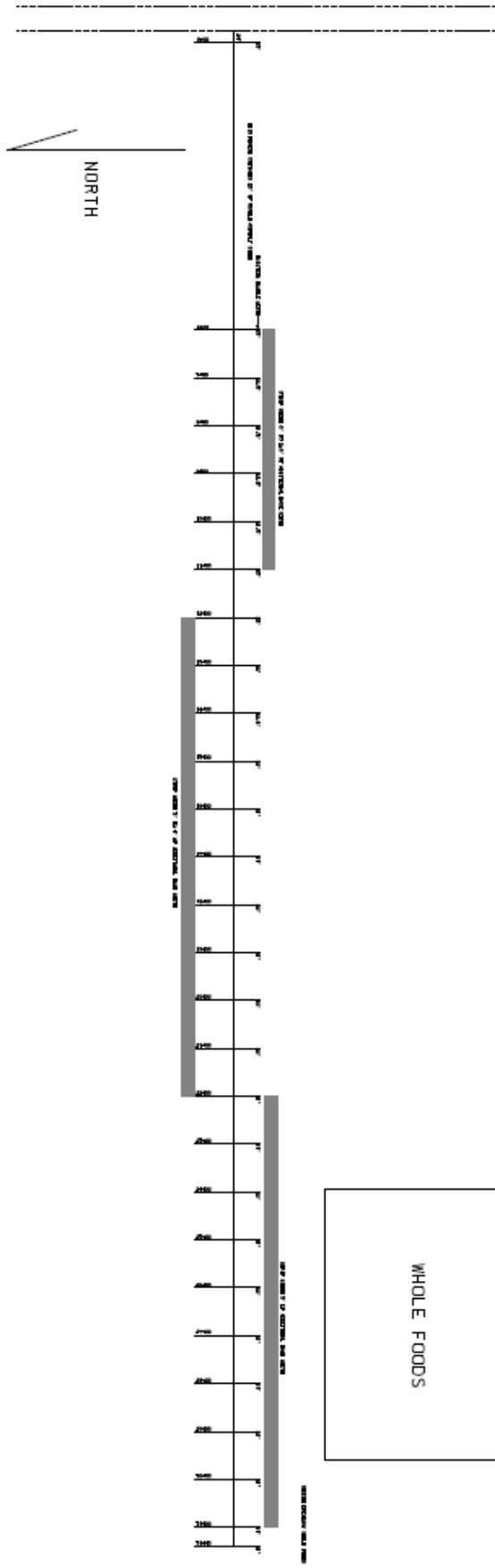
NO.	DATE	DESCRIPTION
1	11/11/2023	ISSUED FOR PERMIT
2	11/11/2023	ISSUED FOR PERMIT
3	11/11/2023	ISSUED FOR PERMIT
4	11/11/2023	ISSUED FOR PERMIT
5	11/11/2023	ISSUED FOR PERMIT
6	11/11/2023	ISSUED FOR PERMIT
7	11/11/2023	ISSUED FOR PERMIT
8	11/11/2023	ISSUED FOR PERMIT
9	11/11/2023	ISSUED FOR PERMIT
10	11/11/2023	ISSUED FOR PERMIT

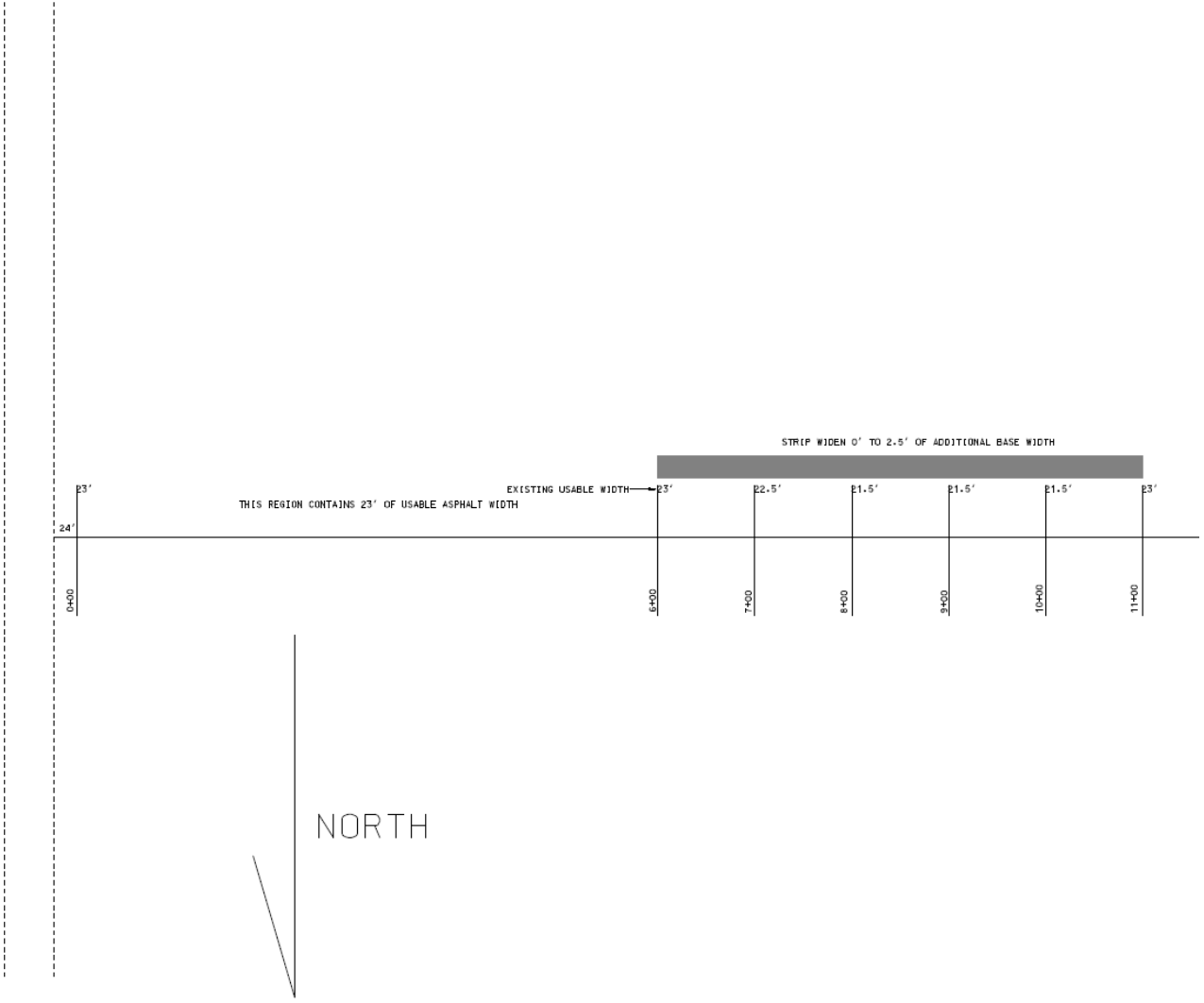


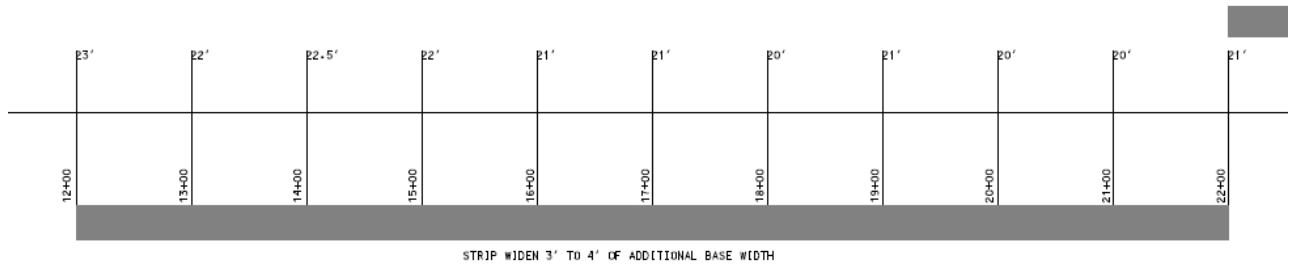
**Exhibit A-2**  
**Description and Depiction of Temporary Transportation Improvement**

The Additional Transportation Improvements consist of the design, construction, and installation the following Hill Lane improvements and associated infrastructure improvements:

- (i) Extra asphalt and base work for approximately 2,300 linear feet to widen Hill Lane to approximately 23 feet;
- (ii) shoulder base work for Hill Lane at \$50,000.00; and
- (iii) Extra asphalt at \$26,786.00.

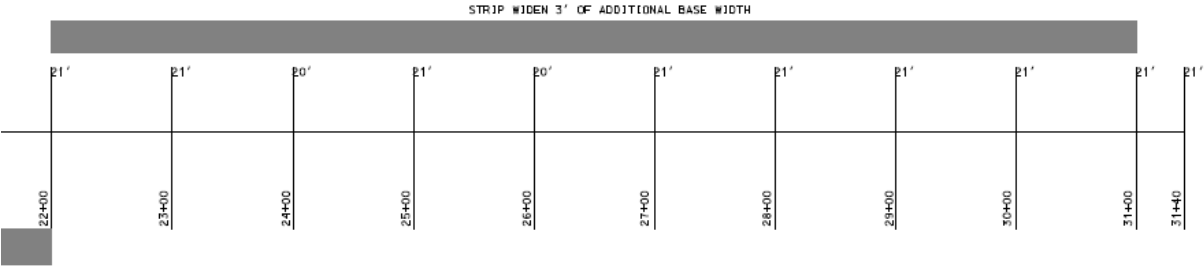








SECOND DRIVEWAY WHOLE FOODS



**Exhibit B**  
**Construction Contract Terms**

The Construction Contract shall contain the following terms, unless approved otherwise by the City:

1. The Contractor will be required to post payment and performance bonds in the full contract amount, and to carry commercial general liability insurance written on a “per-occurrence” basis in a minimum amount of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and the City will be named as an additional insured or beneficiary, as appropriate, of such insurance and bonds. The performance bond shall include a one-year maintenance period following substantial completion of the Transportation Improvements, or such other period set forth in the Construction Contract.
2. A minimum of five percent (5%) retainage shall be withheld from each payment made to the Contractor, such retainage to be paid to Contractor following final completion of the Project and delivery of final lien waivers, as further set forth in the Construction Contract.
3. The Contractor will indemnify the City from any liability arising out of claims arising due to Contractor’s activities related to installation and construction of the Transportation Improvements.
4. In order to obtain any progress payment payable to the Contractor, Contractor must deliver to Whole Foods and the City a copy of the certified construction draw request containing sufficient detail for the City to verify the payment request completed to the date of the contractor’s draw request and has been approved by the Project Engineer and the Whole Foods; (ii) the Project Engineer’s certification of the amount of the contract price remaining to be paid; and (iii) an affidavit signed by the contractor, in the form of a conditional waiver and release of lien upon progress payment, including affirmation of that payment of all subcontractors and vendors supplying labor and or materials for the Transportation Improvements will be made upon receipt of the amount request in the draw request. The City may dispute a draw request by giving written notice to the Whole Foods, Contractor and Project Engineer of the amount of the draw request disputed and the specific basis for the dispute within ten (10) days of receipt of the draw request; provided that a dispute will only be permitted if the City, in good faith, alleges that the work covered by the draw request has not been completed in accordance with the Construction Contract or there is a default by the contractor under the Construction Contract, and the City shall pay any amount that is not in dispute. The parties shall cooperate to resolve any dispute permitted under this Section promptly in order to avoid a default under the Construction Contract.
5. For contracts that have a stated expenditure of at \$1 million for the purchase of goods and services or that result in the City spending at least \$1M during fiscal year, Pursuant to Subchapter J, Chapter 552, Texas Government Code, Contractor shall:
  - a. Preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement;
  - b. Promptly provide to the Owner any contracting information related to the

Agreement that is in the custody or possession of the entity on request of the Owner; and

- c. On completion of the Agreement, either:
  - i. provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the entity; or
  - ii. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the governmental body.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

"Contracting information" includes, but is not limited to, records, communications and other documents related to the bid process, contract, payments, receipts, scope of work/services, and performance."

The Construction Contract shall contain the following terms, unless approved otherwise by Whole Foods:

1. Whole Foods shall be named as an additional insured on the insurance policies required to be carried by Contractor under the Construction Contract.
2. The Contractor will indemnify Whole Foods from any liability arising out of claims arising due to Contractor's activities related to installation and construction of the Transportation Improvements.
3. The Contractor shall commence construction within five (5) days following issuance of a notice to proceed under the Construction Contract.