

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF MCKINNEY, TEXAS
CONCERNING PRELIMINARY ENGINEERING AND RIGHT-OF-WAY
ACQUISITION RELATED TO THE FM 546 REPLACEMENT ALONG A NEW
ROUTE BETWEEN SH 5 AND AIRPORT DRIVE
COUNTY BOND PROJECT #07-037
CITY CIP PROJECT ST9107
2008 FUNDING**

WHEREAS, the County of Collin, Texas (“County”) and the City of McKinney, Texas (“City”) desire to enter into an agreement concerning the preliminary engineering and right-of-way acquisition for improvements to the FM 546 Replacement along a New Route from SH 5 to Airport Drive (the “Project”) in McKinney, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the City and County have determined that the improvements may be constructed most economically by implementing this agreement.

NOW, THEREFORE, this agreement is made and entered into by the County and the City upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

The City shall arrange for the preliminary engineering of the FM 546 Replacement along a New Route between SH 5 and Airport Drive, hereinafter called the “Project”. The Project shall consist of the preliminary engineering and land acquisition for a new roadway, a distance of approximately 1.5 miles. All documents will be prepared to meet or exceed the current Collin County and the current Texas Department of Transportation (“TxDOT”) requirements and standards.

ARTICLE II.

The City shall manage the preliminary engineering and land acquisition for this new roadway. Upon approval receipt of the environmental clearance, receipt of all necessary rights-of-way and the relocation of all utilities, it is anticipated TxDOT will then complete the design of the improvements and accept bids and award the contract to construct the improvements and will administer the construction contract. In all such activities, the City shall comply with all state statutory requirements. The City shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City shall also acquire approximately 22 acres of real property in the vicinity of the improvements for use as right-of-way.

ARTICLE IV.

The City estimates the initial contract amount of the project to be \$2,000,000. The 2008 funding request shall not exceed \$500,000. The City shall notify the County when an engineering firm has been selected, at which time the County shall remit the total 2008 funding to the City. Following completion of the contract, the City shall provide a final accounting of expenditures for the project. If the actual cost for engineering and right-of-way acquisition for the Project is less than the estimated amount set forth herein, the City shall remit to the County 50 percent of the difference between the estimated cost and the actual cost. The Commissioners Court may revise this payment schedule based on the progress of the Project. The "total cost of the Project" shall include land acquisition and engineering, including contingencies.

ARTICLE V.

The 2008 funding shall not exceed \$500,000.

ARTICLE VI.

The City shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit detailed Project cost and progress reports every thirty (30) days until completion.

ARTICLE VII.

The City and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE VIII.

INDEMNIFICATION. TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY

THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

ARTICLE IX.

VENUE. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this agreement. The parties agree that this agreement is performable in Collin County, Texas and that exclusive venue shall lie in Collin County, Texas.

ARTICLE X.

SEVERABILITY. The provisions of this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE XI.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in a writing executed by both parties.

ARTICLE XII.

SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this agreement without the written consent of the other party.

ARTICLE XIII.

IMMUNITY. It is expressly understood and agreed that, in the execution of this agreement, neither party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this agreement shall not create any rights in parties not signatories hereto.

ARTICLE XIV.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

COUNTY OF COLLIN, TEXAS

By: Keith Self
Name: Keith Self
Title: County Judge
Date: 6/10/09

Executed on this 27th day of May
2009, by the County of Collin,
pursuant to Commissioners' Court
Order
No. 2009-364-05-27.

ATTEST:

By: Sandy Hart
Name: Sandy Hart, TRMC, MMC
Title: City Secretary
Date: 4/13/09

CITY OF MCKINNEY, TEXAS

By: Frank Ragar
Name: Frank Ragar by Rick Chaffin, Assistant City
Title: City Manager Manager and authorized signatory
Date: 4/13/09



Executed on behalf of the City of
McKinney, Texas pursuant to
City Council Resolution
No. _____

APPROVED AS TO FORM:

By: _____
Name: Mark Houser
Title: City Attorney
Date: 4/13/09