INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF WYLIE
CONCERNING THE CONSTRUCTION OF FM 1378 FROM BROWN STREET
TO PARKER ROAD, BOND PROJECT #03-071

WHEREAS, the County of Collin, Texas ("County") and the City of Wylie, Texas ("City") desire to enter into an agreement concerning the construction of improvements to FM 1378 from Brown Street to Parker Road (the "Project") in Collin, 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 to construct improvements to FM 1378, hereinafter called the "Project". The Project shall consist of constructing a 6-lane divided concrete roadway, a distance of approximately 11,500 feet. The improvements shall also include construction of underground storm sewers as part of the road improvements. All improvements have been designed to meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

Collin County prepared plans and specifications for the improvements. The City has accepted bids and awarded a 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 has acquired all necessary right-of-way for the Project.

ARTICLE IV.

The City has awarded a construction contract to Lacy Construction in the amount of $9,236,980.12 for the Project. The County agrees to fund a portion of the improvements in an amount not to exceed $2,178,147.79. The County shall remit $2,178,147.79 to the City within thirty (30) days after the City issues a Notice to proceed to the lowest responsible bidder and the City requests payment or upon the availability of bond funds for this Project, whichever occurs later. Following completion of the Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the City shall remit 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, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

ARTICLE V.

The County's participation in the Project shall not exceed $2,178,147.79.

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 Project 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 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 that 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:_____
Name: Keith A. Self
Title: County Judge
Date: 11/11/09

Executed on this 9th day of November 2009, by the County of Collin, pursuant to Commissioners' Court Order No. 2009-942-11-09.

ATTEST:

By:_____
Name: Carole Ehrlich
Title: City Secretary
Date: 10-13-09.

CITY OF WYLIE, TEXAS

By:_____
Name: Mindy Manson
Title: City Manager
Date: 10-13-09

Executed on behalf of the City of Wylie pursuant to City Council Resolution No. 2009-27

APPROVED AS TO FORM:

By:_____
Name:
Title: City Attorney
Date:_____