

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF WYLIE
CONCERNING THE CONSTRUCTION OF FM 1378 FROM FM 544
TO BROWN STREET, COLLIN COUNTY REGIONAL TOLL REVENUE PROJECT #GT111A**

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 FM 544 to Brown Street (the “Project”) in Wylie, 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 RTC has selected the Project to be funded from the SH 121 Subaccount, and the Commission concurred in the selection and authorized the expenditure of money in Minute Order No. 112121, Dated January 28, 2010; and

WHEREAS, the County has executed an Advance Funding Agreement for the project using funds held in the State Highway 121 Subaccount; and

WHEREAS, \$7,463,905.00 will be released to Collin County for construction of the project per the Advance Funding Agreement; 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 3,400 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 County and City have acquired all necessary right-of-way for the Project.

ARTICLE IV.

The County agrees to fund the construction of the improvements. The County shall remit \$3,233,598.46 to the City within thirty (30) days after the City issues a Notice to proceed to the lowest

responsible bidder and the City requests the funds. The City of Wylie will deposit the funds into an interest bearing account. The County shall also remit any additional funds as necessary to cover any approved construction change orders for the Project. 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 to the County the difference between the estimated cost and the actual cost to include any interest earned. 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 \$7,463,905.

ARTICLE VI.

The City of Wylie shall provide to Collin County on a monthly basis a report of expenses, including the City's expenditure of the 20% local match funds. The report shall list separately the expenditures by Project's phase, including but not limited to engineering, environmental review, right of way acquisition, and construction and will include supporting documentation. The report shall further describe the status of developing the Project. Not less than 60 days before the environmental review document is submitted to the governing body of the City for final approval, the City shall submit the document to the County, who will then forward the documents to NCTCOG for review and comment. NCTCOG may provide the Local Government technical assistance on the environmental review of the Project as mutually agreed between NCTCOG and the Local Government.

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 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: Leith A. Self
Name: _____
Title: County Judge
Date: 7/26/10

Executed on this 26th day of July
2010, by the County of Collin,
pursuant to Commissioners' Court
Order No. 2010-488-0726.

ATTEST:

By: Carole Ehrlich
Name: Carole Ehrlich
Title: City Secretary
Date: 7/13/10

CITY OF WYLIE, TEXAS

By: Mindy Manson
Name: Mindy Manson
Title: City Manager
Date: 7/13/10

Executed on behalf of the City of
Wylie pursuant to City Council
Resolution No. _____

