

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF WYLIE
FOR CONSTRUCTION OF McMILLEN ROAD FROM EAST OF MCCREARY
RD TO FM 1378 BOND PROJECT # 07-091 (2009 FUNDING)**

WHEREAS, the County of Collin, Texas (“County”) and the City of Wylie, Texas (“City”) desire to enter into an agreement concerning the construction of McMillen Road and other improvements from east of McCreary Road to FM 1378 in 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.

WHEREAS, the 2007 Bond Program allocated \$4,149,375 to the Project #07-091; McMillen Road from East of McCreary to FM 1378.

WHEREAS, a 2008 Funding Interlocal Agreement for \$500,000 was approved on October 14, 2008; Court Order # 2008-861-10-14.

WHEREAS, this Interlocal Agreement will cover bonds sold in 2009 in the amount of \$500,000.

NOW, THEREFORE, this Agreement is made and entered into by the County and the City upon and for the mutual consideration stated herein, the receipt and sufficiency of which is hereby acknowledged.

WITNESSETH:

ARTICLE I.

The City shall arrange to construct improvements to McMillen Road, hereinafter called (the “Project”). The Project shall consist of constructing a 4-lane divided concrete roadway, a distance of approximately 6,000 feet. The improvements shall also include construction of underground storm sewers as part of the road improvements. All improvements shall be 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.

The City shall acquire all necessary right-of-way for the Project. The City shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and 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 estimates the total cost of the Project to be \$8,298,750, which shall include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies. The total amount of the 2009 Funds remitted by the County shall not exceed \$500,000. The Payment Schedule is as follows:

- (a) Within thirty (30) days after the City issues a notice that the Engineering Project is fifty percent (50%) complete and requests payment from the County, the County shall remit the 2009 Funds covered under this Agreement.
- (b) At the completion of the Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost of the Project is less than the estimated cost of \$8,298,750, the City shall reimburse the County so that the County will have only paid fifty percent (50%) of the actual cost of the Project.
- (c) The Commissioners Court may revise this payment schedule based on the progress of the Project.

ARTICLE IV.

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 V.

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 VI.

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 VII.

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 VIII.

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 IX.

ENTIRE AGREEMENT. This Agreement embodies the entire agreement between the parties and may only be modified in a writing executed by both parties. This Agreement supersedes all prior negotiations, representations and/or agreements, either written or oral.

ARTICLE X.

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 XI.

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 XII.

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: [Signature]
Name: _____
Title: County Judge
Date: 12/6/10

Executed on this 6th day of December,
2010 by the County of Collin,
pursuant to Commissioners' Court
Order No. 2010-976-12-06.

ATTEST:

By: [Signature]
Name: Carole Ehrlich
Title: City Secretary
Date: October 12, 2010

CITY OF WYLIE, TEXAS

By: [Signature]
Name: Mindy Manson
Title: City Manager
Date: October 12, 2010

Executed on behalf of the City of
Wylie pursuant to City Council
Resolution No. 2010-32(R)

