INTERLOCAL COOPERATION AGREEMENT BETWEEN COLLIN COUNTY AND THE CITY OF LAVON REGARDING THE USE OF THE COUNTY ACCESS ROAD FUNDS FOR RIGHT-OF-WAY PARTICIPATION ON SH 78 FROM SH 205 TO FM 6 CONCERNING THE AMENDED AND RESTATED CITY/DEVELOPER MASTER DEVELOPMENT AGREEMENT

This **Interlocal Cooperation Agreement** (the "Access Road Funds Interlocal Agreement" or "Agreement" herein) is made and entered into as of the date last executed below ("Effective Date"), by and between the **CITY OF LAVON, TEXAS,** a Type A general law municipality, created, existing and organized under the laws of the State of Texas, situated in the County of Collin, State of Texas (the "City") and the **COUNTY OF COLLIN, TEXAS,** a political subdivision of the State of Texas (the "County"), (each individually referred to as "Party" and collectively referred to as "Parties"), acting by and through their respective authorized representatives, for the purposes set forth herein, under and in accordance with the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code.

WHEREAS, the Interlocal Cooperation Act, Chapter 791, Texas Government Code, authorizes local government such as the County and the City to contract with one another to perform governmental functions and services under the terms of the Act; and

WHEREAS, the Parties have determined that the execution of this Agreement inures to their mutual benefit; and

WHEREAS, on September 30, 2004, the City of Lavon, Texas ("City"), and the County of Collin, Texas ("County"), entered into a City/County Interlocal Agreement (the "City/County ILA") which was contemplated and required by a Modernization and Development Plan for the City (the "Plan") which the City adopted in Resolution No. 2004-06-1 of the City (the "Plan Resolution"), and which the County adopted by Court Order Number 2004-829-09-28; and

WHEREAS, on February 20, 2007, the City and World Land Developer (the "Developer") entered into the Amended and Restated City/Developer Master Development Agreement (the "Master Development Agreement") for the development of Grand Heritage (f/k/a the "Bear Creek" and/or the "Heritage" development); and

WHEREAS, the Plan required the Developer to provide funds to the County (the "County Access Road Funds" (described in the City/County ILA") to assist the County in providing certain access road improvements (the "County Access Road Improvements" (described in the City/County ILA") or "Improvements" hereinafter); and

WHEREAS, the County and the City, desire to enter into this Agreement concerning the use of the County Access Road Funds (a/k/a the "Access Road Funds" in the Master Development Agreement and also referred to as the "Access Road Funds" hereinafter) for local participation costs for right-of-way with the Texas Department of Transportation ("TxDOT") on State Highway 78 ("SH 78") from State Highway 205 ("SH 205") to FM 6 (the "Project") in the City of Lavon, Collin County, Texas; and

WHEREAS, TxDOT is seeking a ten percent (10%) local participation for right-of-way for the Project being: 1) SH 78 from SH 205 to Business SH 78, ROW CSJ # 0281-02-066; and 2) SH 78 from Business SH 78 to FM 6, ROW CSJ #0281-01-031; and

WHEREAS, the City approved the Master Development Agreement for the development of Grand Heritage which allocated $2,000,000 in Access Road Funds of which $1,000,000 of the Access Road Funds are to be used for the improving, upgrading, and/or widening of SH 205 and/or SH 78; and

WHEREAS, the City/County ILA approved the Access Road Funds for such funds to be provided to the County and TxDOT for making said Improvements on SH 205 and/or SH 8; and

WHEREAS, the City and the County have determined that the Improvements may be constructed most economically and expeditiously by the execution and implementation of this Agreement.

NOW, THEREFORE, in consideration of the representations set forth above, and for the terms and covenants hereinafter set forth, the County and the City, for the mutual consideration stated herein, understand and agree as follows:

ARTICLE I.

The County shall enter into two (2) agreements with TxDOT (Right-of-Way Agreements") which shall provide for ten percent (10%) local government participation in the right-of-way Improvements totaling $169,500. The two Right-of-Way Agreements shall be used for Improvements for: 1) SH 78 from SH 205 to Business SH 78 (ROW CSJ # 0281-02-066) in the sum of $130,000; and 2) SH 78 from Business SH 78 to FM 6 (ROW CSJ #0281-01-031) in the sum of $39,500.

ARTICLE II.

The County shall initially use bond funds to fund the Right of Way participation and forward those funds to TxDOT after the execution of the Right-of-Way Agreements. The County's participation shall not exceed $169,500.

ARTICLE III.

The City shall request the Access Road Funds in the amount of $169,500 from the developer pursuant to the terms and conditions of the Master Developer Agreement. Upon receipt of the Access Road funds, the city shall reimburse the county in the amount of $169,500 for its share of the Right of Way participation, no later than thirty (30) days after receipt of the Access Road funds.

ARTICLE IV.

The Remaining Access Roads Funds shall be reserved for other and/or future Improvements or other uses pursuant to the Master Developer Agreement.

ARTICLE V.

Any Party to this Agreement paying for the performance of governmental functions or services shall make such payments only from current revenues legally available to the paying Party.

ARTICLE VI.

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.

ARTICLE VII.

TERMINATION. This Agreement may be terminated upon the following terms and conditions:

a. by the written agreement of the Parties; or
b. upon final acceptance of the Project; or
c. at the conclusion of any budget period of a Party if such Party seeking to terminate this Agreement has used its best efforts to obtain and appropriate funds for the Project but has not appropriated such funds; or
d. by the City, by delivering written notice of termination to the County at least thirty (30) days prior to the date of termination due to the failure by the Developer to deliver the Access Road Funds to the City.

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.

INTEGRATION. This Agreement constitutes the entire agreement and understanding between the Parties hereto and supersedes any prior understanding or written or oral agreements between the Parties respecting the subject matter hereof. This Agreement cannot be modified or changed except by the written consent of all of the Parties.

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.

EFFECTIVE DATE OF AGREEMENT. The term "effective date of this Agreement" as used herein shall mean the later of the two (2) dates for which this Agreement has been fully signed by all Parties, as indicated by their signatures below, which later date shall be the date of final execution and agreement by the Parties.

ARTICLE XII.

NO JOINT VENTURE. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or joint venture or of any association whatsoever between the Parties.

ARTICLE XIII.

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

ARTICLE XIV.

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 XV.

NO THIRD-PARTY BENEFICIARIES. The provisions and conditions of this Agreement are solely for the benefit of the City and the County, and any lawful successor or assign, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

ARTICLE XVI.

TIME OF ESSESSENCE. Time is of the essence of this Agreement in all things pertaining to the performance of this Agreement.

ARTICLE XVII.

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 only.

SIGNATURE PAGE TO FOLLOW

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

By: Keith Self
Name: _____
Title: County Judge
Date: 5/24/11
Executed on this 23rd day of May, 2011, on behalf of the **County of Collin, Texas**, pursuant to Commissioners' Court Order No. 2011-326-05-23

ATTEST:

By: Linda Ardis
Name: Linda Ardis
Title: City Secretary
Date: 4-25-11

CITY OF LAVON, TEXAS

By: Norma Martin
Name: Norma Martin
Title: Mayor
Date: 4-25-2011
Executed on this 25 day of April, 2011, on behalf of the **City of Lavon, Texas**, pursuant to City Council Resolution No. _____.

APPROVED AS TO FORM:

By: Andy Messer
Name: _____
Title: City Attorney
Date: 4/20/11