

**RESTATED INTERLOCAL AGREEMENT BETWEEN COLLIN COUNTY,
THE CITY OF SACHSE AND THE CITY OF WYLIE
CONCERNING THE CONSTRUCTION OF
WOODBIDGE PARKWAY FROM SH 78 TO HENSLEY LN. IMPROVEMENTS
2003 BOND PROJECT #03-072
(Partial Funding ILA #1)**

WHEREAS, the County of Collin, Texas ("County"), the City of Sachse, Texas ("Sachse"), and the City of Wylie, Texas ("Wylie") (Sachse and Wylie herein sometimes collectively referred to as "Cities"), desire to enter into an agreement concerning the construction of improvements to Woodbridge Parkway from SH 78 to Hensley Ln.(the "Project") in the Cities of Wylie and Sachse, Collin County, Texas ("Partial Funding ILA #1"); 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, County, Sachse, and Wylie have determined that the improvements related to the Project may be constructed most economically by implementing this Partial Funding ILA #1; and

WHEREAS, the Collin County Commissioners Court approved an Interlocal Agreement for Engineering and Construction of the Maxwell Creek Bridge at Hooper Road with the City of Wylie on October 24, 2006, Court Order #2006-987-10-24 and amended on July 26, 2010, Court Order #2010-487-07-26 for an amount not to exceed \$569,250.00 of which the County has already tendered to Wylie \$217,500.00, leaving \$351,750.00 untendered and available ("Available Funding"); and

WHEREAS, the Collin County Commissioners Court approved the use of Discretionary Bond funds for Woodbridge Parkway on February 20, 2012, Court Order #2012-121-2-20.

WHEREAS, this Partial Funding ILA #1 shall extend the limits of the Project to include engineering and construction of Woodbridge Parkway from SH 78 to Hensley Lane, as well as the construction of the Maxwell Creek Bridge; and

WHEREAS, this Partial Funding ILA #1 will supersede and repeal Court Order #2006-987-10-24 and Court Order #2010-487-07-26; and

WHEREAS, parties intend for the Available Funding to be distributed according to the terms and conditions set forth in two (2) separate interlocal agreements, specifically, this Partial Funding ILA #1 and a future Partial Funding ILA # 2; and

WHEREAS, this Partial Funding ILA #1 shall provide the terms and conditions for engineering, right of way acquisition and some construction costs, as herein defined; and

WHEREAS, the parties hereto have investigated and determined that is in the best interest of each of their respective jurisdictions to enter into this Partial Funding ILA #1.

NOW, THEREFORE, this Partial Funding ILA #1 is made and entered into by and between the County, Sachse, and Wylie upon and for the mutual consideration stated herein, the receipt and sufficiency of which is hereby acknowledged:

WITNESSETH:

ARTICLE I.

The Cities shall arrange to cause the construction of the improvements for the Project. The Project shall consist of constructing Woodbridge Parkway from SH 78 to Hensley Lane and includes the construction of approximately 5,280 feet of 4-lane concrete divided roadway, a 320 foot bridge, and crossing of the KCS railroad. The Project improvements shall also include construction of underground storm sewers as part of the road improvements.

The Project shall consist of five (5) phases: Woodbridge Parkway & KCS Railroad Crossing, Phase 1, Phase 2, Maxwell Creek Bridge, and Woodbridge Parkway north of Maxwell Creek Bridge, all of which are depicted in Exhibit "A", attached hereto and incorporated herein for all purposes. All Project improvements shall be designed to meet or exceed the current County design standards and shall be constructed in accordance with the plans and specifications approved by the respective Cities.

ARTICLE II.

Sachse shall be obligated to deliver or cause to have delivered Phase 1 and the Woodbridge Parkway & KCS Railroad Crossing portions of the Project as a roadway system. The projected cost for this portion of the project is \$1,874,018.13. Sachse shall also be responsible for the design of Phase 2. Sachse's participation is estimated to be \$2,113,148.78 which includes \$277,000 in reallocated 2007 Collin County Transportation Bond funds, approved on February 20, 2012, court order #2012-122-2-20, to be applied toward the Project. The total cost to construct Phase 1 and the Woodbridge Parkway & KCS Railroad Crossing portions of the project shall be computed based on the unit prices for the construction of Phase 2, Maxwell Creek Bridge, and Woodbridge Parkway north of Maxwell Creek Bridge to the maximum extent possible.

Wylie shall be responsible for the construction of Phase 2, and the design and construction of Maxwell Creek Bridge, and design and construction of Woodbridge Parkway, north of Maxwell Creek Bridge. The projected cost for this portion of the Project is \$6,612,990.92. Wylie's total participation is estimated to be \$2,289,661.50. Wylie shall prepare specifications for Phase 2; plans and specifications for the Maxwell Creek Bridge and Woodbridge Parkway north of Maxwell Creek Bridge, accept bids and award contracts to construct such improvements and administer the construction contract(s).

In all such activities, the Cities shall comply with all state statutory requirements. The Cities shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The Cities shall also acquire the necessary property in the vicinity of the Project improvements for use as right-of-way.

ARTICLE IV.

The County and Cities estimate the total actual cost of the Project to be \$8,487,009.05, which shall include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

The total funds remitted by the County for the Project identified in this Partial Funding ILA #1 shall not exceed \$1,351,750.00. The County's available funds for this Partial Funding ILA #1 consist of 2003 County Bond funds in the amount of \$569,250.00 of which \$217,500.00 has already been sent to

Wylie, and 2007 County discretionary bond funds in the amount of \$782,500.00. The use of discretionary bond funds was approved on February 20, 2012, by Court Order #2012-121-2-20.

The Payment Schedule is as follows:

- (a) Within thirty (30) days after the Cities (1) execute a Professional Services Agreement for the design of the Project, and (2) request payment from the County, the County shall remit a portion of the Available Funds to the Cities to cover those engineering costs required under the Professional Service Agreement.
- (b) Within thirty (30) days after the Cities request payment from the County, the County shall remit a portion of the Funds to the Cities to cover any and all right of way acquisition costs for the Project, including but not limited to, the cost to acquire the right of way through eminent domain.
- (c) Within thirty (30) days after all of the following have occurred, the County shall remit to the Cities the remaining Funds not already disbursed under (a) or (b) above:
 - (1) the Cities issue a Notice to Proceed to the lowest responsible bidder for the construction of Phase 2, Maxwell Creek Bridge, and Woodbridge Parkway north of Maxwell Creek Bridge;
 - (2) the Cities request payment from the County; and
 - (3) County bond money is available.
- (d) Upon the completion of the Project, the Cities shall provide to the County 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 Cities shall remit to the County fifty percent (50%) 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 with prior written notice and approval by the Cities.

ARTICLE V.

The Cities 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 VI.

County and Cities agree that the party paying for the performance of governmental functions or services pursuant to this Partial Funding ILA #1 shall make those payments only from current revenues legally available to the paying party.

ARTICLE VII.

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 PARTIAL FUNDING ILA #1.

ARTICLE VIII.

COUNTERPARTS. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

ARTICLE IX.

NOTICE. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to:

City of Sachse
Attn: City Manager

If to the City, to:

City of Wylie
Attn: City Manager
300 Country Club Rd., Bld. 100
Wylie, Texas 75098

ARTICLE X.

VENUE. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Partial Funding ILA #1. The parties agree that this Partial Funding ILA #1 is performable in Collin County, Texas and that exclusive venue shall lie in Collin County, Texas.

ARTICLE XI.

NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

ARTICLE XII.

SEVERABILITY. The provisions of this Partial Funding ILA #1 are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Partial Funding ILA #1 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 Partial Funding ILA #1 shall be enforced as if the invalid provision had never been included.

ARTICLE XIII.

ENTIRE AGREEMENT. This Partial Funding ILA #1 embodies the entire agreement between the parties regarding the subject matter of this Partial Funding ILA #1 and may only be modified in a writing executed by both parties.

ARTICLE XIV.

SUCCESSORS AND ASSIGNS. This Partial Funding ILA #1 shall be binding upon the parties hereto, their successors and assigns. No party may assign or transfer an interest in this Partial Funding ILA #1 without the written consent of the other parties.

ARTICLE XV.

IMMUNITY. It is expressly understood and agreed that, in the execution of this Partial Funding ILA #1, none of the parties waive, 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 Partial Funding ILA #1, the parties do not create any obligations, express or implied, other than those set forth herein, and this Partial Funding ILA #1 shall not create any rights in parties not signatories hereto.

ARTICLE XVI.

TERM. This Partial Funding ILA #1 shall be effective upon execution by all parties and shall continue in effect annually until final acceptance of the Project. This Partial Funding ILA #1 shall automatically renew annually during this period.

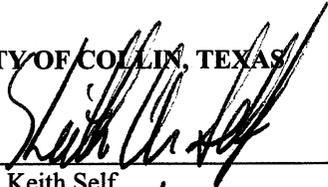
ARTICLE XVII.

This Partial Funding ILA #1 supersedes previous Court Order #2006-987-10-24 and Court Order #2010-487-07-26.

APPROVED AS TO FORM:

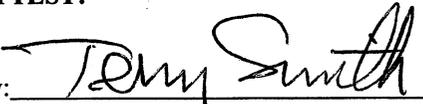
By: _____
Name: _____
Title: _____
Date: _____

COUNTY OF COLLIN, TEXAS

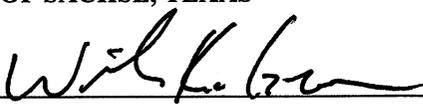
By: 
Keith Self
County Judge
Date: 5/9/12

Executed on this 10th day of May, 2012,
by the County of Collin, pursuant to
Commissioners' Court Order No.
2012-262-05-07

ATTEST:

By: 
Terry Smith
City Secretary
Date: 4-23-12

CITY OF SACHSE, TEXAS

By: 
William K. George
City Manager
Date: 4/23/12

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

APPROVED AS TO FORM:

By: *Peter G. Smith*
for Peter G. Smith
City Attorney
Date: April 23, 2012

ATTEST:

By: *Carole Ehrlich*
Carole Ehrlich
City Secretary
Date: April 10, 2012

CITY OF WYLIE, TEXAS

By: *Mindy Manson*
Mindy Manson
City Manager
Date: April 10, 2012

Executed on behalf of the City of Wylie
pursuant to City Council Resolution No.
2012-12(R).

APPROVED AS TO FORM:

By: *Courtney A. Kuykendall*
Courtney A. Kuykendall
City Attorney
Date: 4-10-12

