

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF ALLEN
CONCERNING THE IMPROVEMENTS OF
EAST BETHANY DRIVE FROM ALLEN HEIGHTS TO ANGEL PARKWAY
COLLIN COUNTY 2007 BOND PROJECT #07-004
2011 FUNDING**

WHEREAS, the County of Collin, Texas (“County”) and the City of Allen, Texas (“City”) desire to enter into an agreement concerning the design and construction of **EAST BETHANY DRIVE** from Allen Heights Drive to Angel Parkway (FM 2551) in Collin County, Texas (location map attached – see Exhibit A); and,

WHEREAS, the Collin County 2007 Bond Program allocated \$1,250,000 for improvements to East Bethany Drive from Allen Heights to Angel Parkway (FM 2551).

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local governments 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 the 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 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 design and construct improvements to East Bethany Drive, hereinafter called the “Project.” The Project shall consist of the design and construction of the interior two (2) lanes of the 6-lane divided roadway including pavement markings, streetlights, traffic signal adjustment, and grass restoration within the project limits, from Allen Heights Drive to Angel Parkway (FM 2551). All improvements shall meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City and the County.

ARTICLE II.

The scope of the Project is as indicated below:

Phase I: Engineering – COMPLETE

The City prepared engineering design plans and specifications, surveying, geotechnical investigation, and coordination with affected utility companies for the Project improvements. The City administered the engineering services agreement as set forth in Article III below.

Phase II: Construction

The City shall advertise for and accept bids for the construction of the Project, award a contract to construct the improvements, and administer the construction contract and perform inspection services. In general, these improvements shall consist of the construction of two (2) lanes of concrete pavement, interior to the existing 4-lane divided roadway.

ARTICLE III.

Phase I – The City shall select a properly licensed engineering firm and execute an engineering services agreement. The City will provide administration of the engineering services agreement and all necessary review of the plans and specifications associated with this Project. The City will provide the County with copies of the plans and specifications at 50%, 65% and 100% plan completion. The City will conduct a meeting with all affected utility companies and coordinate relocation efforts. This phase is complete.

Phase II – The City shall publicly bid the Project, through City of Allen procurement policy, consistent with statutory requirements.

ARTICLE IV.

The City estimates the total cost of the Project to be \$2,500,000. The total amount of the 2010 Funds remitted by the County was \$150,000 for Phase I. However, the total amount of the Phase II funding shall not exceed \$1.1 million for a total County participation of \$1.25 million.

- (a) Within thirty (30) days after receipt of written notice from the City that the selected contract has been issued a written notice to proceed, the County shall remit the 2011 funding of \$1.1 million.
- (b) At the completion of Phase I and Phase II 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 \$2,500,000, 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 V.

Allen and the County agree that the parties 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 attorney's 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. This agreement and the indemnity provided herein is not intended to and shall not create any cause of action for the benefit of third parties or any person not a party to 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 the state courts of competent jurisdiction of 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 all 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. No 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, no 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, expressed or implied, other than those set forth herein, and this agreement shall not create any rights in parties not signatories hereto.

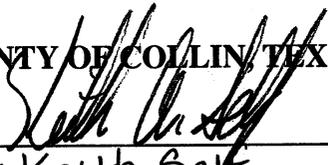
ARTICLE XII.

Term. This agreement shall be effective upon execution by all 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 Self _____
Title: County Judge _____
Date: 6/12/12 _____

Executed on this 11th day of June,
2012 by the County of Collin, pursuant to
Commissioners' Court Order No. 2012-344-06-11

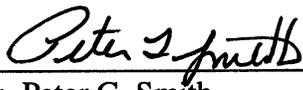
ATTEST:

By: 
Name: Shelley B. George
Title: City Secretary
Date: May 23, 2012

CITY OF ALLEN, TEXAS

By: 
Name: Peter H. Vargas
Title: City Manager
Date: May 23, 2012
Executed on behalf of the City of Allen
Pursuant to the City Council Resolution
No. 3085-5-12(R)

APPROVED AS TO FORM:

By: 
Name: Peter G. Smith
Title: City Attorney
Date: 5-22-12

