

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF FRISCO
CONCERNING THE ENGINEERING AND CONSTRUCTION OF CUSTER ROAD
(SH 121 TO STONEBRIDGE DRIVE)
2007 BOND PROJECT # 07-043**

WHEREAS, the County of Collin, Texas ("County") and the City of Frisco, Texas ("City") desire to enter into this agreement ("Agreement"), dated the ~~18th~~ day of August, 2014, ("Effective Date") concerning the engineering and construction of improvements to Custer Road (SH 121 to Stonebridge Drive) ("Project") in Frisco, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) ("Act") 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, City and the Texas Department of Transportation ("TxDOT") entered into that certain Pass Through Agreement for Payment of Pass-Through Tolls (Contract No. PT2011-006-01), dated September 25, 2012, a copy of which is incorporated herein by reference for all purposes, for, among other things, the Project that will reimburse City a portion of the total construction cost incrementally over a ten (10) to twenty (20) year period ("Pass Through Reimbursement") based on traffic counts; and

WHEREAS, City, through this Agreement, will receive 2007 Collin County Bond Funds, ("County Funding") for construction of the Project; and

WHEREAS, the sum of the Pass Through Reimbursement and the County Funding shall be hereinafter referred to as the "Total Project Funding"; and

WHEREAS, 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 County and City upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

DESCRIPTION OF PROJECT. City shall arrange to design and construct the Project. The Project shall consist of widening Custer Road from a four (4) lane divided urban roadway to a six (6) lane divided urban roadway, for a distance of approximately 3.0 miles. All 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 City.

ARTICLE II.

CONSTRUCTION OF PROJECT. City shall prepare plans and specifications for the Project, accept bids and award a contract to construct the Project and administer the construction contract. In all such activities, City shall comply with all State statutory requirements. City shall provide County with a copy of the executed design and construction contract(s) for the Project.

ARTICLE III.

REQUIRED RIGHT-OF-WAY. City shall also acquire approximately 0.0 acres of real property in the vicinity of the Project for use as right-of-way.

ARTICLE IV.

PROJECT CONSTRUCTION COSTS. City estimates the total construction costs of the Project to be \$8,150,000.00 ("Estimated Project Construction Costs"). The parties acknowledge and agree that the Actual Project Construction Costs¹ may exceed the Estimated Project Construction Costs, with said amount being based on the construction contract ("Construction Contract") City enters into for the Project. County agrees to fund \$2,500,000.00 ("County Funding") toward the Actual Construction Costs of the Project. County shall remit the County Funding to City within thirty (30) days after the County executes the Agreement, and City requests payment of the County Funding from County. The County Commissioners Court may revise this payment schedule based on the progress of the Project.

ARTICLE V.

COUNTY PARTICIPATION. County's participation in the Project shall not exceed the County Funding.

ARTICLE VI.

PERIODIC PROJECT REPORTING. City shall prepare for 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 after construction of the Project is commenced and shall continue until the Project is completed.

ARTICLE VII.

COUNTY REIMBURSEMENT OF PROJECT CONSTRUCTION COSTS. Upon completion of the Project and final acceptance by City and TxDOT of the same ("Final Acceptance"), City shall, in accordance with this Article, reimburse to County an amount up to the proportionate share of the County Funding of the Actual Project Construction Costs provided the Total Project Funding exceeds the Actual Project Construction Costs ("County's Proportionate Reimbursement"). City and County acknowledge and agree that the County's Proportionate Reimbursement made by City to County pursuant to this Article shall: (i) not exceed the proportionate share of the County Funding; (ii) not include interest; and (iii) be tendered by City to County, incrementally, if applicable, as City receives the Pass Through Reimbursement, with the initial payment being made after City receives the first Pass Through Reimbursement, and subsequently thereafter as City receives any additional Pass Through Reimbursement until County receives an amount not exceeding the County Reimbursement. An illustration of the County's Proportionate Reimbursement is attached hereto as Exhibit "A" and incorporated herein for all purposes.

ARTICLE VIII.

APPROPRIATION OF FUNDS. 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 IX.

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

¹ "Actual Project Construction Costs" as used herein shall mean the total amount paid by City for the Project under the Construction Contract, including, but not limited to, any necessary change orders thereto and/or cost overruns relating to the Project.

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 X.

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 XI.

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 XII.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in a writing executed by both parties.

ARTICLE XIII.

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 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 than those set forth herein, and this agreement shall not create any rights in parties not signatories hereto.

ARTICLE XV.

TERM. This Agreement shall be effective upon execution by both parties and shall continue in effect annually until the latter to occur of, as applicable: (i) Final Acceptance; or (ii) County receiving the County Reimbursement. This Agreement shall automatically renew annually during this period.

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the duly authorized representatives of County and City have executed this Agreement as of the Effective Date.

APPROVED AS TO FORM:

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



ATTEST:

By: Jenny Page
Name: Jenny Page
Title: City Secretary
Date: 8-5-14

COUNTY OF COLLIN, TEXAS

By: Keith Self
Name: Keith Self
Title: County Judge
Date: 8/22/14

Executed on this 18th day of August
2014, by the County of Collin,
pursuant to Commissioners' Court
Order No. 2014-555-08-18.

CITY OF FRISCO, TEXAS

By: George Purefoy
Name: George Purefoy
Title: City Manager
Date: 8-6-14

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

APPROVED AS TO FORM:

By: Rebecca Hendricks Brewer
Name: Rebecca Hendricks Brewer
Title: City Attorney
Date: 8.26.14

Exhibit "A"
County's Proportionate Reimbursement
(for illustrative purposes only)

(The following amounts are estimates, and the Actual Project Construction Costs shall be used in determining the County's Proportionate Reimbursement.)

ESTIMATED PROJECT CONSTRUCTION COSTS

Design		\$1,100,000.00
Construction	+	\$6,350,000.00
Construction Administration	+	<u>\$ 700,000.00</u>
Estimated Project Construction Costs		\$8,150,000.00

TOTAL PROJECT FUNDING

County Funding		\$2,500,000.00
Pass Through Reimbursement	+	<u>\$5,850,000.00</u>
		\$8,350,000.00

COUNTY'S PROPORTIONATE REIMBURSEMENT

Pass Through Reimbursement x (County Funding/Estimated Project Construction Costs)
 $\$5,850,000.00 \times (\$2,500,000.00/\$8,150,000.00)$

County's Proportionate Reimbursement \$1,794,478.00

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS TO EXECUTE THE INTERLOCAL AGREEMENT BETWEEN COLLIN COUNTY AND THE CITY OF FRISCO CONCERNING THE ENGINEERING AND CONSTRUCTION OF CUSTER ROAD (SH 121 TO STONEBRIDGE DRIVE) 2007 BOND PROJECT #07-043, AND TAKE ANY AND ALL OTHER ACTIONS NECESSARY TO EFFECTUATE THE SAME, INCLUDING, BUT NOT LIMITED TO, MAKING ANY NECESSARY REVISIONS TO THE INTERLOCAL AGREEMENT THAT THE CITY MANAGER DEEMS APPROPRIATE AND IN THE BEST INTEREST OF THE CITY, AS SOLELY DETERMINED BY THE CITY MANAGER; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that it is in the best interest of the City of Frisco, Texas ("City") and its citizens to approve the Interlocal Agreement between Collin County and the City of Frisco concerning the Engineering and Construction of Custer Road (SH 121 to Stonebridge Drive) 2007 Bond Project #07-043 ("Agreement"), and authorize the City Manager to execute the same.

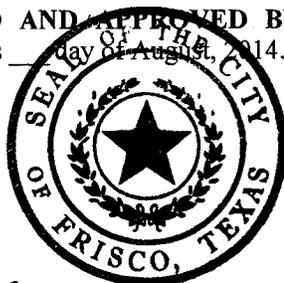
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2: Authority of City Manager to Execute/Make Revisions to Agreement. The City Manager is hereby authorized to execute the Agreement and take any and all other actions necessary to effectuate the same, including, but not limited to, making any necessary revisions to the Agreement that the City Manager deems appropriate and in the best interest of the City, as solely determined by the City Manager. The form of the Agreement is attached hereto as Exhibit "A" and incorporated herein for all purposes. Should the final executed version of the Agreement be revised from the attached Exhibit "A", such form of said Agreement shall replace Exhibit "A" of this Resolution for all purposes.

SECTION 3. Effective Date of Resolution. This Resolution is effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 8th day of August, 2014.



Mh Mm
MAYOR MASO, Mayor

ATTEST TO:
Jenny Page
Jenny Page, City Secretary

Exhibit "A"
(Copy of Agreement)