

RESOLUTION NO. 2014-10-14(R)

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of the amended Interlocal Agreement (ILA) between City of Plano and Collin County for improvements on McDermott Road from Coit Road to Ohio Drive. This amended Interlocal Agreement will supersede and will repeal the Interlocal Agreement approved on January 25, 2010 by Resolution 2010-1-12(R); authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, the City Council has been presented a proposed amended Interlocal Cooperation Agreement for improvements McDermott Road from Coit Road to Ohio Drive by and between County of Collin, Texas and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the amended Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

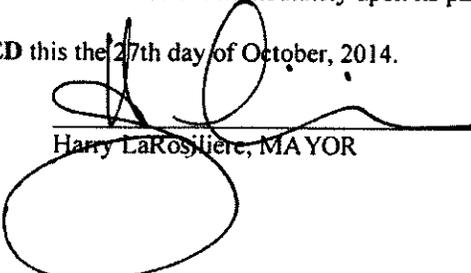
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the amended Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest of the City of Plano and its citizens, are hereby in all things approved.

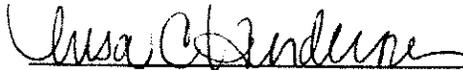
Section II. The City Manager or his designee is hereby authorized to execute the amended Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the amended Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 27th day of October, 2014.


Harry LaRosiliere, MAYOR

ATTEST:


Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

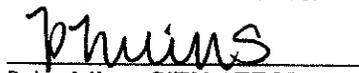

Paige Mims, CITY ATTORNEY

EXHIBIT A

**AMENDED INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING THE**

WIDENING OF MCDERMOTT ROAD FROM COIT ROAD TO OHIO DRIVE

03-055 and 07-074 BOND PROJECTS

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), entered into an Interlocal Agreement for construction of McDermott Road from Coit Road to Ohio Drive (the "Project"), in Plano, Collin County, Texas, dated February 22, 2010, court order 2010-161-02-22 ("Agreement") with the County's fifty percent (50%) participation limited to \$800,000. This Amended Interlocal Agreement will supersede and will repeal the Interlocal Agreement approved on February 22, 2010; and

WHEREAS, the project is now complete, and the actual cost of the project is \$2,967,836.49; and

WHEREAS, the County has agreed to their share of the project cost in the amount of \$1,104,798; and

WHEREAS, the 2003 County Bond Program included project 03-055 in the amount of \$400,000 and the 2007 County Bond Program included project 07-074 in the amount of \$400,000, both amounts allocated to the McDermott Road Project ; and

WHEREAS, the Chaparral Road from K Avenue to East City Limits Project, 2003 Bond Project 03-056, is completed and has \$61,624 of funding remaining, which the City proposes to reallocate to the McDermott Project; and

WHEREAS, the Razor Road from Ohio to SH 121 Project, 2003 Bond Project 03-063, is completed and has \$9,700 of funding remaining, which the City proposes to reallocate to the McDermott Project; and

WHEREAS, the 14th Street from K Avenue to Ridgewood, 2007 Bond Project 07-061, is completed and has \$902,333 of funding remaining, of which the City proposes to reallocate \$233,474 to the McDermott Project, leaving an unallocated balance of \$668,859 in the 14th Street Project available to be reallocated to another mutually acceptable project; 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.

NOW, THEREFORE, this Amended Interlocal Agreement is made and entered into by the County and the City upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

The City arranged to construct the widening of McDermott Road from Coit Road to Ohio Drive. The project widened McDermott Road to a six-lane divided thoroughfare from Coit Road to Razor Road, a distance of approximately 7500 feet, and widened a four-lane divided thoroughfare from Razor Road to Ohio Drive, a distance of 1500 feet. The total distance is approximately 9,000 feet. The improvements also included construction of underground storm sewers and a bridge over White Rock Creek as part of the road improvements. All improvements have been designed to meet or exceed the current Collin County design standards and have been constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

The City prepared plans and specifications for the improvements, accepted bids and awarded a contract to construct the improvements and administered the construction contract. In all such activities, the City has complied with all state statutory requirements. The City has provided the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City acquired no real property for use as right-of-way.

ARTICLE IV.

The actual cost of the project totaled \$2,967,836.49. The Texas Department of Transportation funded \$1,818,640.31 toward the project. The project included an ineligible expense, in the amount of \$25,305.06, paid to the City by a developer. The County hereby agrees to fund the eligible expenses that were not funded by TxDOT, for an amount not to exceed \$1,104,798. The County has already remitted \$400,000 to the City, leaving a remaining amount of \$704,798 due. The County will remit the remaining amount within thirty (30) days after receipt of notice from the City. The City shall provide a final accounting of expenditures for the Project. The "total cost of the Project" shall include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

ARTICLE V.

The County's participation in the Project shall not exceed \$1,104,798. The County funding includes \$400,000 from 03-055, \$400,000 from 07-074, \$61,624 from 03-56, \$9,700 from 03-63, and \$233,474 from 07-061. The City and County agree that any remaining funds in the project will be reallocated to a mutually agreed upon project.

ARTICLE VI.

The City shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit a final accounting of the expenditures for the Project. The total cost of the Project shall include land acquisition, engineering,

construction, inspection, testing, street lighting, and construction administration costs including contingencies.

ARTICLE VII.

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 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.

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 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.

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

ARTICLE XII.

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 XIII.

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 XIV.

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: Keith Self
Name: Keith Self
Title: County Judge
Date: 12/8/14

Executed on this 8th date of December, 2014, by the County of Collin, pursuant to Commissioners' Court Order No. 2014-900-12-01

ATTEST:

By: Lisa C. Henderson
Name: Lisa C. Henderson
Title: City Secretary
Date: 10/30/2014

CITY OF PLANO, TEXAS
By: Bruce D. Glasscock
Name: Bruce D. Glasscock
Title: City Manager
Date: 10/30/14

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

APPROVED AS TO FORM:

for By: Paige Mims
Name: Paige Mims
Title: City Attorney
Date: October 29, 2014