

**AMENDED INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF FRISCO
CONCERNING THE CONSTRUCTION OF
ROCKHILL ROAD (FROM COUNTY ROAD 26 TO DALLAS PARKWAY)
2007 BOND PROJECT # 07-028**

WHEREAS, the County of Collin, Texas ("County") and the City of Frisco, Texas ("City") desire to enter into this agreement ("Agreement") concerning the construction of improvements to Rockhill Road (from County Road 26 to Dallas Parkway) ("Project") in Frisco, Collin County, Texas; 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, the City and County have determined that the improvements may be constructed most economically by implementing this Agreement; and

WHEREAS, the County approved an Interlocal Agreement with the City for 2012 funding for the Project in the amount of \$1,351,500.00 on September 24, 2012, Court Order #2012-691-9-24 ("2012 Agreement"); and

WHEREAS, the County sold bonds in 2008 for project #07-028 in the amount of \$1,351,500.00 ("2008 Bond Sale"). \$1,003,750.00 was transferred to bond project #07-022 per court order 2009-666-09-14, leaving a balance of \$253,750.00; and

WHEREAS, the County sold bonds in 2012 ("2012 Bond Sale") and approved an Interlocal Agreement with the City for 2012 funding in the amount of \$1,351,500.00 on September 24, 2012, Court Order # 2012-691-9-24; and

WHEREAS, Parcel 9 on the Project was owned by Collin County and valued at \$94,000.00. By Court Order 2013-351-05-13, Parcel 9 was acquired from Collin County by the City and reduced the amount of available 2012 Collin County Bond Funding for the Project by \$94,000.00 from \$1,351,500.00 to \$1,257,500.00. This funding has already been sent to the City; and

WHEREAS, the City constructed 2007 Bond Project #07-025, Independence Parkway from Main Street to the Frisco north City limits ("Project #07-025"), and completed the Project #07-025 with a savings in Collin County Bond funds in the amount of \$822,296.00. This funding has already been sent to the City; and

WHEREAS, the City constructed 2007 Bond Project #07-022, Rolater Road from Independence Parkway to Custer Road ("Project #07-022"), and completed the Project #07-022 with a savings in Collin County Bond funds in the amount of \$1,003,750.00; and

WHEREAS, the City and County hereby agree and intend that this Agreement supersedes the 2012 Agreement in its entirety.

NOW, THEREFORE, this 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 shall arrange to construct the Project. The Project shall consist of widening a two lane undivided roadway to a six lane divided urban roadway, a distance of approximately 0.5 miles. All improvements shall be designed to meet or exceed the Collin County design standards in existence as of the effective date of the 2012 Agreement and shall be constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

The City shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, the City shall comply

with all state statutory requirements. The City shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City shall also acquire 9.5 acres of real property in the vicinity of the improvements for use as right-of-way in connection with the Project.

ARTICLE IV.

The City estimates the total actual cost of the Project to be \$9,500,000.00 ("Estimated Project Cost"). The County agrees to participate in the Project by funding \$253,750.00 from the 2008 Bond Sale and \$1,351,500.00 from the 2012 Bond Sale. In addition, the County agrees to reallocate the savings from the following projects for use in the County's participation in the Project: (i) Project #07-025, Independence Parkway from Main Street to the Frisco north City limits, in the amount of \$822,296.00, which has already been received by the City, and (ii) Project #07-022, Rolater Road from Independence Parkway to Custer Road, in the amount of \$1,003,750.00 (collectively, "Reallocated Savings"). The County agrees to further participate in the Project by funding the total amount of Reallocated Savings (\$1,826,046.00), for a total funding of \$3,431,296.00 ("County Project Funding"). The County shall remit all remaining portions of the County Project Funding to the City (i) within thirty (30) days after the date this Agreement is fully executed and the City submits a written request for payment to the County; or (ii) upon the availability of bond funds for this Project, whichever occurs later. If the actual cost to construct the Project ("Actual Project Cost") is less than the Estimated Project Cost, and the County has participated up to fifty percent (50%) of the Estimated Project Cost, then the City shall reimburse the County in an amount equal to fifty percent (50%) of the difference between the Estimated Project Cost and the Actual Project Cost. The County Commissioners Court may revise this payment schedule based on the progress of the Project. As used herein, the term "Actual Project Cost" 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 \$3,431,296.00.

ARTICLE VI.

The City 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 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 a 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.

ARTICLE XV.

This Agreement supersedes the 2012 Agreement and supersedes and repeals court order #2012-691-9-24.

[Signature page follows.]

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

By: Keith Self
Name: Keith Self
Title: County Judge
Date: 12/17/14

Executed on this 17 day of December
2014, by the County of Collin,
pursuant to Commissioners' Court
Order No. 2014-974-12-15.



ATTEST:

By: Jenny Page
Name: Jenny Page
Title: City Secretary
Date: November 4, 2014

CITY OF FRISCO, TEXAS

By: George Purefoy
Name: George Purefoy
Title: City Manager
Date: November 4, 2014

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

APPROVED AS TO FORM:

By: Ryan D. Pittman
Name: Ryan D. Pittman
Title: Assistant City Attorney
Date: Oct. 15, 2014

