

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF FRISCO
CONCERNING THE CONSTRUCTION OF:
GAYLORD PARKWAY/JOHN HICKMAN PARKWAY/LEBANON CONNECTOR
2007 DISCRETIONARY BOND PROJECT #07-00-32**

WHEREAS, the County of Collin, Texas ("County") and the City of Frisco, Texas ("City") desire to enter into an agreement ("Agreement") concerning the construction of improvements to Gaylord Parkway (Warren Parkway to John Hickman Parkway), John Hickman Parkway (Lebanon Connector to Dallas Parkway), and Lebanon Connector (John Hickman Parkway to Lebanon Road) (collectively, "Project") in Frisco, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (TEX. GOV'T 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 Collin County Commissioners Court approved the 2007 Discretionary prioritization list to include this project on October 20, 2014, Court Order #2014-810-10-20; and

WHEREAS, in addition to the Discretionary Funding, the City has 2007 Bond funds available from 2007 Bond Project #07-026, Coit Road from Panther Creek Parkway to US 380 ("Project #07-026") to construct the Project.

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 construction of four (4) lane divided roadways, a distance of approximately 1.25 miles, and traffic signal improvements at eight (8) locations along the roadways. All improvements shall be designed to meet or exceed the current City design standards 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 estimates the total actual cost of the Project to be \$8,100,000.00 ("Estimated Project Cost"). The County agrees to participate in the Project by funding \$2,000,000.00 from Discretionary

Funds and \$2,050,000.00 in re-allocated funds from the 2007 Bond Project #07-026, Coit Road from Panther Creek Parkway to US 380, for a total funding of \$4,050,000.00. The County shall remit fifty percent (50%) of this amount, \$2,025,000.00, to the City within thirty (30) days after the City issues a Notice to Proceed to the lowest responsible bidder and the City submits a written request for payment to the County. The County will remit the remaining fifty percent (50%) (i) within thirty (30) days after receipt of notice from the City that the Project is fifty percent (50%) complete, 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, traffic signal, and construction administration costs including contingencies.

ARTICLE IV.

The County's participation in the Project shall not exceed \$4,050,000.00.

ARTICLE V.

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 VI.

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 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 AGREEMENT.

ARTICLE VIII.

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 IX.

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 X.

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

ARTICLE XI.

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 XII.

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 XIII.

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.

[Signature page follows.]

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

By: *Keith Sells*
Name: Keith Sells
Title: County Judge
Date: 9/29/15

Executed on this 28th day of September,
2015, by the County of Collin, pursuant to
Commissioners' Court Order No. 2015-701.09.28



ATTEST:

By: *Jenny Hage*
Name: Jenny Hage
Title: City Secretary
Date: 7-1-2015

CITY OF FRISCO, TEXAS

By: *George Purefoy*
Name: George Purefoy
Title: City Manager
Date: 7-1-2015

APPROVED AS TO FORM:

By: *Ryan D. Pittman*
Name: Ryan D. Pittman
Title: Assistant City Attorney
Date: June 16, 2015