

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF MELISSA
CONCERNING THE DESIGN AND CONSTRUCTION OF
DAVIS RD FROM US 75 TO FANNIN ROAD
2007 BOND PROJECT # 07-051**

WHEREAS, the County of Collin, Texas ("County") and the City of Melissa, Texas ("City") desire to enter into this agreement ("Agreement") concerning the improvements to Davis Rd (from US 75 to Fannin Road) ("Project") in Melissa, 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 2007 Bond Program allocated \$1,150,000 to The City of Melissa for Bond Project #07-051, Davis Rd from US 75 to Fannin Road; and

WHEREAS, the City of Melissa wishes to reallocate \$1,350,000 in funding from their 2007 Bond Project #07-052, Fannin Rd. from Melissa Rd to SH 121, to this Davis Road Project; and

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 Project shall consist of 2,300 linear feet of a six (6) lane roadway and will include the design, right-of-way, and construction of Davis Rd from US 75 to Fannin Road. All improvements shall be designed to meet or exceed Collin County 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 shall also acquire 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 \$5,000,000 ("Estimated Project Cost"). The County agrees to participate in the Project by allocating **\$2,500,000** from the 2016 Bond Sale. The County shall remit fifty percent (50%) of this amount, \$1,250,000 to the City within thirty (30) days after the City issues a Notice to Proceed to the design engineer and the City submits a written request for payment to the County. The County shall remit the remaining fifty percent (50%) (i) 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; 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 **\$2,500,000**.

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.

[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: 10/25/16

Executed on this 25th day of October
2016, by the County of Collin,
pursuant to Commissioners' Court
Order No. 2016-808-10-24.

ATTEST:

By: Linda Bannister
Name: Linda Bannister
Title: City Secretary
Date: 8/11/16

CITY OF MELISSA, TEXAS

By: Jason Little
Name: Jason Little
Title: City Manager
Date: 8/11/16

Executed on behalf of the City of
Melissa pursuant to City Council
Resolution No. 16-37

APPROVED AS TO FORM:

By: Fred Pitt
Name: _____
Title: City Attorney
Date: 8/15/16

