

**INTERLOCAL AGREEMENT  
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO  
CONCERNING THE WIDENING OF INDEPENDENCE PARKWAY FROM  
MCDERMOTT ROAD TO SH 121**

**2003 BOND PROJECT #03-59**

**WHEREAS**, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning the Widening of Independence Parkway from McDermott Road to SH 121 (the "Project") in Plano, 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.

**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 widen Independence Parkway from McDermott Road to SH 121, hereinafter called the "Project". The Project shall consist of widening from four lanes to six lanes, a distance of approximately 6,000 feet. All improvements shall be designed to meet or exceed the current 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 will acquire no real property in the vicinity of the improvements for use as right-of-way.

### ARTICLE IV.

The City estimates the total actual cost of the project to be \$1,400,000.00. The County agrees to fund one half of the total cost to construct the improvements in an amount not to exceed \$800,000.00. The County shall remit 50 percent of this amount, \$400,000.00, to the City within thirty (30) days after the City issues a Notice to Proceed to the lowest responsible bidder and the City requests payment or upon the availability of bond funds for this Project, whichever occurs later. The County will remit the remaining 50 percent within thirty (30) days after receipt of notice from the City that the Project is 50 percent complete. Following completion of the Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the City shall remit the County 50 percent of the difference between the estimated cost and the actual cost. The Commissioners Court may revise this payment schedule based on the progress of 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.

If the total cost to construct the Project exceeds the amount estimated in Article IV above, the County and City shall share the excess costs equally; however, the County's participation in the Project shall not exceed \$800,000.00. Any County funds not used for this project shall be applied 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 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 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 A. Self  
Name: Keith Self  
Title: County Judge  
Date: 2/3/09

Executed on this 2nd date of February, 2009, by the County of Collin, pursuant to Commissioners' Court Order No. 2009-087-02-62

#### ATTEST:

By: Diane Zucco  
Name: Diane Zucco  
Title: City Secretary  
Date: 1-15-09

#### CITY OF PLANO, TEXAS

By: Thomas H. Muehlenbeck  
Name: Thomas H. Muehlenbeck  
Title: City Manager  
Date: 1/15/09

Executed on behalf of the City of Plano pursuant to City Council Resolution No. 2009-1-4 (R)

#### APPROVED AS TO FORM:

By: Diane Wetherbee  
Name: Diane Wetherbee  
Title: City Attorney  
Date: 1/14/09



## NOTICE OF CERTIFICATION

Pat Evans  
Mayor

Jean Callison  
Mayor Pro Tem

Harry LaRosiliere  
Deputy Mayor Pro Tem

Pat Miner  
Place 1

Scott Johnson  
Place 2

Mabrie Jackson  
Place 3

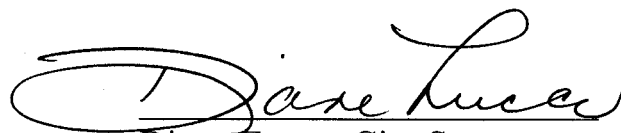
Sally Magnuson  
Place 4

Lee Dunlap  
Place 8

Thomas H. Muehlenbeck  
City Manager

I, Diane Zucco, City Secretary, City of Plano, Texas, do  
hereby certify that the attached document is a true and correct copy  
of Resolution No. 2009-1-4(R) duly passed and adopted on  
January 12, 2009 by the Plano City Council, as the same appears of  
record and filed among the official records in the Office of the City  
Secretary, and that I am the official custodian of same.

WITNESS MY HAND AND OFFICIAL SEAL this 14<sup>th</sup> day  
of January, 2009.

  
Diane Zucco, City Secretary

m:rescert.doc

**RESOLUTION NO. 2009-1-4 (R)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS, PROVIDING FOR THE WIDENING OF INDEPENDENCE PARKWAY FROM MCDERMOTT ROAD TO SH 121; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; 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 Interlocal Cooperation Agreement by and between the City of Plano, Texas, and Collin County, Texas, providing terms and conditions for the Widening of Independence Parkway from McDermott Road to SH 121, 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 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 in his absence an Executive Director, should be authorized to execute it on behalf of the City of Plano.

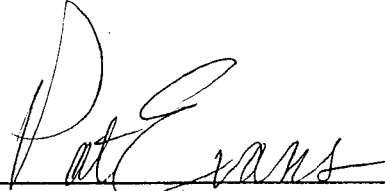
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

Section I. The terms and conditions of the 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.

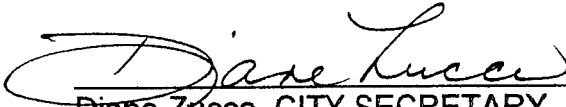
Section II. The City Manager, or in his absence an Executive Director, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

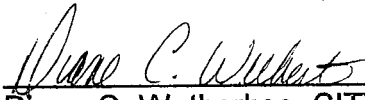
**DULY PASSED AND APPROVED** the 12th day of January, 2009.

  
\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

  
\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

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#### 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.

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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.

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APPROVED AS TO FORM:

COUNTY OF COLLIN, TEXAS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Ron Harris  
Title: County Judge  
Date: \_\_\_\_\_

Executed on this \_\_\_\_ date of \_\_\_\_\_, 2009, by the County of Collin, pursuant to Commissioners' Court Order No. \_\_\_\_\_

ATTEST:

CITY OF PLANO, TEXAS

By: \_\_\_\_\_  
Name: Diane Zucco  
Title: City Secretary  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Thomas H. Muehlenbeck  
Title: City Manager  
Date: \_\_\_\_\_

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

APPROVED AS TO FORM:

By: *Diane Wetherbee*  
Name: Diane Wetherbee  
Title: City Attorney  
Date: 12/31/08