

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF RICHARDSON
CONCERNING THE ENGINEERING AND CONSTRUCTION OF
PERFORMANCE DRIVE PAVING AND DRAINAGE IMPROVEMENTS**

WITNESSETH:

WHEREAS, the County of Collin, Texas ("County") and the City of Richardson, Texas ("City") desire to enter into an agreement concerning the design and construction of Performance Drive from Renner Road to Glenville Drive in Collin County, Texas as described in Exhibit 1 (the "Project"); and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791 (the "Act") authorizes units of local governments to contract with one or more units of local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the parties have determined that the Project may be designed and constructed most economically by implementing this Agreement.

WHEREAS, the City requests that County funds be reallocated from the following projects:

07-081	Alma/Renner Intersection	\$57,500
07-082	Jupiter/Renner Intersection	147,500
07-083	Jupiter/SH190 Intersection	92,500
07-084	SH190/Renner Intersection	72,500
07-085	Performance Drive SH190 to Renner (Engineering)	127,000
07-086	Renner – North Star to Murphy (Engineering)	450,000
03-067	Infocom Drive Plano Road to US75	2,645,613
03-066	Brand Road (Exeter to South City Limits)	339,507
TOTAL		\$3,932,120

WHEREAS, the City requests that County funding in the amount of \$3,932,120 be reallocated to County project 03-122 Performance Drive; and

WHEREAS, the reallocation of \$3,932,120 when combined with the current County funding of \$4,100,000 will increase the total County funding for Project 03-122 Performance Drive to \$8,032,120 and

WHEREAS, this Interlocal Agreement shall replace the Interlocal Agreements for Performance Drive executed by the City and County on December 29, 2006 and Infocom Drive executed by the City and County on June 3, 2005; and

WHEREAS, with this reallocation of County funding, the City agrees to assume financial responsibility for the projects from which the funding was reallocated.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants set forth in this Agreement and other consideration the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

ARTICLE I.

The City shall arrange to design and construct improvements to Performance Drive, hereinafter called the "Project." The Project shall consist of the design and construction of a 4-lane divided roadway, bridge, underground storm sewers, sidewalks, traffic signals, right-of-way acquisition, quality control testing, and street lighting between Renner Road and Glenville Drive. All improvements shall meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City and the County.

ARTICLE II.

The Project will be separated into two phases. Phase I shall involve the engineering design work associated with the Project and Phase II shall involve the right-of-way acquisition, construction, and quality control testing of the improvements. Activity in each phase shall be as indicated below:

Phase I: Engineering

The City shall prepare engineering design plans and specifications, perform surveying and geotechnical investigation, prepare right-of-way schematics and field notes, and coordinate with affected utility companies for the Project improvements. The City shall administer the engineering services agreement as set forth in Article IV below.

Phase II: Right-of-way acquisition and Construction

The City shall acquire all necessary right-of-way for the Project. The City shall advertise for and award bids for the construction of the Project; and the City will provide the County with the bid tabulation and the recommendation of the award of such contract(s) to the lowest qualified bidders and administer the construction and testing contracts and perform inspection services.

ARTICLE III.

The County estimates the total actual cost of both phases of the Project, including design, construction, testing, right-of-way acquisition and administration/inspection to be approximately \$8,200,000. The County agrees to fund \$8,032,120 for the project. Any project costs in excess of this amount will be paid by the City. Final Collin County costs shall be fixed at a maximum of \$8,032,120

ARTICLE IV.

Phase I – The City shall select a properly licensed engineering firm and execute an engineering services agreement. The City will provide administration of the engineering services agreement and all necessary review of the plans and specifications associated with this Project. The City will provide the County with copies of the plans and specifications at 30%, 50%, and 100% plan completion. The City will conduct a meeting with all affected utility companies and coordinate relocation efforts.

ARTICLE V.

Phase I - The County shall remit fifty percent (50%) of the total cost of the executed engineering services agreement within thirty (30) days after the City issues a Notice to Proceed to the selected engineering firm. When the Project design is 50% completed, the County will remit to the City all remaining costs associated with engineering services, to be paid within thirty (30) days after receipt of the notice from the City that the Project design is fifty percent (50%) complete. The City and the County will review and agree on any increases in the cost of the engineering services.

Phase II - The County shall remit fifty percent (50%) of the funds allocated to the Project to the City within thirty (30) days after the City issues a Notice to Proceed to the lowest qualified bidder. The County will remit the remaining fifty percent (50%) within thirty (30) days after receipt of the notice from the City that the Project is fifty percent (50%) complete. The City and the County will review and agree on any increases in the construction cost.

ARTICLE VI.

Each party paying for the performance of governmental functions or services hereunder shall make those payments only from current revenues or other funds 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 attorney's 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. This Agreement and the indemnity provided herein is not intended to and shall not create any cause of action for the benefit of third parties or any person not a party to 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 the State District Courts of 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 all parties. This Agreement supersedes all prior negotiations, representations and/or agreements, either written or oral.

ARTICLE XI.

Successors and Assigns. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. No 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, no 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 the last date of execution by the parties and shall continue in effect annually until final acceptance of the Project.

EXECUTED this 5th day of January, 2010.

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

By: [Signature]
Name: Keith Self
Title: County Judge
Date: 1/5/10

Executed by the County of Collin, pursuant
to Commissioners' Court
Order No. 2010-004-01-04

ATTEST:

By: _____
Name: Pamela Schmidt
Title: City Secretary
Date: _____

CITY OF RICHARDSON, TEXAS

By: [Signature]
Name: Bill Keffler
Title: City Manager
Date: 11-13-09

Executed on behalf of the City of
Richardson pursuant to the City Council
Authorization action on _____

APPROVED AS TO FORM:

By: _____
Name: Peter G. Smith
Title: City Attorney
Date: _____

RESOLUTION 09-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN COLLIN COUNTY AND THE CITY OF RICHARDSON, TEXAS, CONCERNING THE ENGINEERING AND CONSTRUCTION OF PERFORMANCE DRIVE PAVING AND DRAINAGE IMPROVEMENTS, AS MORE SPECIFICALLY DESCRIBED IN EXHIBIT "A"; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Richardson, Texas has been presented a proposed Interlocal Agreement by and between Collin County and the City of Richardson, Texas, to enter into an agreement concerning the design and construction of Performance Drive from Renner Road to Glenville Drive in Collin County, Texas, as more particularly described in Exhibit "A" thereto, a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the Agreement on behalf of the City of Richardson, Texas.

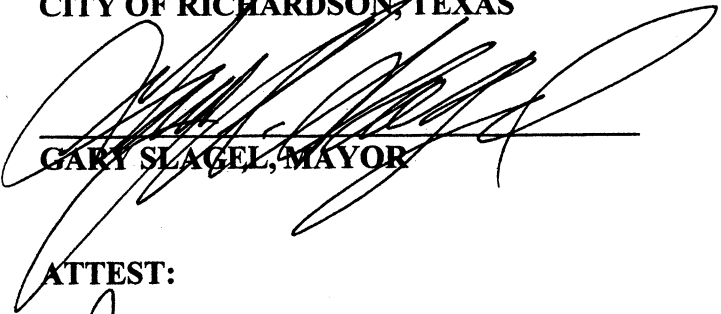
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS;

SECTION 1. That the Agreement attached hereto having been reviewed by the City Council of the City of Richardson, Texas, and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved, and the City Manager is hereby authorized to execute the Agreement and any necessary amendments thereto, on behalf of the City of Richardson, Texas.

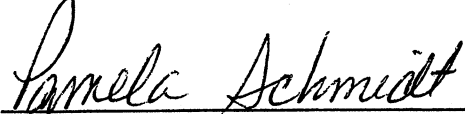
SECTION 2. That this resolution shall become effective immediately from and after its passage, and it is accordingly so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Richardson, Texas, on this the 9th day of November, 2009.

CITY OF RICHARDSON, TEXAS


GARY SLAGEL, MAYOR

ATTEST:


PAMELA SCHMIDT, CITY SECRETARY

APPROVED AS TO FORM:


PETER G. SMITH, CITY ATTORNEY
(PGS/tlo; 10/19/09; 39947)

Exhibit "A"
Interlocal Agreement
(to be attached)