

INTERLOCAL COOPERATION AGREEMENT

WHEREAS, the Interlocal Cooperation Act, Title 7, Chapter 791, Texas Government Code (the "Act"), and the Constitution of the State of Texas, Article III, Section 64(b) (the "Constitution") specifically authorize counties and other political subdivisions comprised or located within the county, to contract with one another for the performance of governmental functions and/or services required or authorized by the Constitution, or the laws of the State, under the terms and conditions prescribed in the Act: and

WHEREAS, the functions and/or services contemplated to be performed by Collin County, Texas, as set out herein, are governmental functions and/or services contemplated by the terms of the Act and are functions and/or services which each of the parties hereto have independent authority to pursue, notwithstanding this Agreement; and

WHEREAS, both the County and the municipality named herein are desirous of entering into this Interlocal Cooperation Agreement, as is evidenced by the ordinances, resolutions or orders of their respective governing bodies approving this Agreement which are attached hereto and made a part hereof.

NOW, THEREFORE, THIS AGREEMENT is hereby made and entered into by and between Collin County, Texas a political subdivision of the State of Texas, (hereinafter "Collin County") and the City of ~~Josephine~~ ^{Josephine}, a political subdivision of the State of Texas, (hereinafter "City") which is wholly or partially located within Collin County. Consideration for this Agreement consists of the mutual covenants contained herein, as well as any monetary consideration exchanged hereunder, which may be stated herein. This Agreement is as follows, to wit:

I. THE PROJECT

1.1 As requested by the City, Collin County, acting by and through its duly authorized agents and employees, agrees to provide the City with the following described governmental functions and/or services:

**ROAD IMPROVEMENTS IN ACCORDANCE WITH COURT ORDER
NO. 97-576-08-25 (COPY APPENDED HERETO AS EXHIBIT "A").**

**THE ROAD IMPROVEMENTS SUBJECT TO THIS AGREEMENT
ARE SET FORTH IN THE MAP AND DOCUMENTATION
APPENDED HERETO AS EXHIBIT "B" AND SHALL
CONSTITUTE THE "PROJECT".**

1.2 Portions of such road improvements include property that is incorporated into the City, and therefore subject to the City's responsibility for repair and maintenance; however, City desires such work to be performed by Collin County and in exchange has promised to reimburse Collin County for the City's portion of the Project costs as is set forth herein.

II. ALLOCATION OF PROJECT COSTS

2.1 As consideration for the above-described Road Improvements, the City agrees to pay to Collin County, in accordance with the cost estimate and payment schedule appended hereto as **Exhibit "C"**. Payment by the City for the Project shall be as set forth in the payment schedule set forth in **Exhibit "C"**. Such payment shall be upon the City's acceptance of the Project, or portion of the Project applicable to such payment, such acceptance not to be unreasonably withheld.

2.2 The amounts paid by the City pursuant to the payment schedule in **Exhibit "C"** shall constitute the "City Construction Funds". The remainder of the Project Costs will be paid from funds appropriated and allocated to the Project by Collin County, and referred to hereinafter as the "County Project Funds". The City Construction Funds and the County Project funds will be used to reimburse the County for its costs incurred in connection with the Project. Collin County expects all direct Project costs, including labor, equipment and material will be paid from the City Construction Funds and the County Project Funds.

2.3 Within thirty (30) days after the Project is complete or this Agreement is terminated, Collin County shall render a final written accounting to the City of all costs paid or borne by, or credited to, each party under this Agreement for the Project, taking into account any amount each party has previously paid toward the Project as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the Project.

2.4 Upon acceptance of the final Project accounting by the City, Collin County and the City shall modify the City's payment schedule appended hereto as **Exhibit "C"** as necessary so as to properly allocate to the City its proportionate share of the Project costs. Any such amendment to **Exhibit "C"** shall be made in writing and approved by the parties.

III. TERM AND TERMINATION

3.1 This Agreement shall be effective from and after the passage of enabling resolutions or orders by the governing bodies of the parties hereto and the execution hereof by the authorized representatives of the parties and shall remain in effect until the following events have occurred:

- a) the County has completed the Project and the City has accepted the final accounting therefrom; and
- b) the City has made all of its payment obligations hereunder.

3.2 In the event the City shall at any time not have in effect a budget which contains funds to fulfill its obligations herein, the City shall be deemed to have non-appropriated funds on the last effective date of a legally adopted budget containing funds to pay charges provided for hereunder. Upon the expiration of such a budget, the City shall have no further liability under this Agreement and shall be deemed to be in default as provided in this section of the Agreement. In the event of nonappropriation the City shall provide written notice to Collin County thereof as soon as is practicable. In addition, at any time during the term of this Agreement, should the City Manager or Town Administrator of the City propose a budget that fails to make appropriations in amounts sufficient to cover the City's obligations hereunder, the City shall notify Collin County of same and arrange for a meeting prior to the budget adoption, such meeting including the City's Mayor and the County Judge of Collin County to discuss the ramifications of the City's non-appropriation.

3.3 If either party fails to make any payment of any sum due or fails to perform as required by any other provision hereunder, and continues in such failure for fifteen (15) days after written notice has been sent to the party by the non-defaulting party, the party shall be deemed in default under this Agreement.

3.4 Collin County reserves its rights under subchapter I of Chapter 271 of the Texas Local Government Code to seek to recover its damages should the City be in default of its obligations under this Agreement and fail to cure such default, save and except for an event of default as a result of nonappropriation as set forth in section 4.2 above.

IV. MISCELLANEOUS

4.1 This Agreement contains the complete and entire Agreement between the Parties respecting the Project, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties. This Agreement may not be modified, discharged, or changed except by a further written agreement, duly executed by the Parties. However, any consent, waiver, approval or other authorization will be effective if signed by the Party granting or making such consent, waiver, approval, or authorization.

4.2 No official, representative, agent, or employee of the County has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the governing body of the County, or as is expressly set forth herein.

4.3 The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement as determined by each of the Parties.

4.4 This Agreement will be governed by and interpreted under the laws of Texas, as such laws are applied to agreements entered into and to be performed entirely within Texas between Texas residents. If a suit, action or proceeding under or regarding the subject matter of this Agreement ("Action") is brought, the party bringing such Action will bring such Action in

the federal and state courts of Collin County, Texas and, in such event, (i) any counterclaims will be brought in such courts, (ii) each party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such Action in Collin County, Texas and (iii) each party further irrevocably waives any claim that Collin County, Texas is not a convenient forum for any such Action. Notwithstanding the foregoing, in actions seeking to enforce any order or any judgment of such federal or state courts located in Texas, such personal jurisdiction will be nonexclusive.

4.5 Dispute Resolution. Any and all disputes arising between the parties pertaining to or arising out of this Agreement shall be resolved in Collin County, Texas, and in the following order of preference:

(a) by good faith negotiation between representatives of the parties who have authority to fully and finally resolve the dispute;

(b) if necessary, by non-binding mediation at a location acceptable to both using a neutral mediator having relevant experience, with costs of mediation shared equally; or

(c) if (a) and (b) fail to resolve the dispute, then by litigation.

4.6 This Agreement may be amended only by a written amendment executed by both parties, except that any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

4.7 Notwithstanding the foregoing, it is understood that each party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party, whether from general funds, bond proceeds, reserve funds, or other funds in the possession of the paying party. All payments must be in an amount that fairly compensates the performing party for the services or functions performed under this agreement. Payments shall be made on a timely basis in accordance with the Texas Prompt Payment Act, ch. 2251 Texas Government Code.

4.8 Collin County and the City agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible in accordance with the laws of the State of Texas for its own acts, forbearance, negligence and deeds, and for those of its officers, agents or employees in conjunction with the performance of the Project covered under this Agreement. Nothing herein shall be construed to create a partnership, joint venture, joint enterprise, or agency relationship between the parties hereto.

4.9 Collin County agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Agreement.

4.10 This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not create or grant any rights, contractual or otherwise, to any other person or entity.

4.11 This Agreement shall be expressly subject to the governmental immunity of Collin County and the City, Title 5 of Texas Civil Practice and Remedies Code, and all applicable federal and state law.

4.12 The provisions of this Agreement are severable, and in the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. In lieu of any such invalid, illegal, or unenforceable provision, the parties agree to negotiate to add to this Agreement another provision that would be permitted that is as close to the intent of the invalid, illegal, or unenforceable provision as possible.

4.13 Each party to this Agreement acknowledges that it has read and understands the terms and provisions of this Agreement.

THIS INSTRUMENT HAS BEEN EXECUTED IN TWO ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:

Date: 11/6/12

COLLIN COUNTY, TEXAS

By: [Signature]

Title: County Judge

Date: _____

CITY OF Josephine TEXAS

By: [Signature]

Title: Mayor Pro-Tem

Exhibit "A"

COLLIN COUNTY COMMISSIONERS COURT ORDER NO. 97-576-08-25

EXHIBIT "B"

**ROAD IMPROVEMENTS MAP AND DOCUMENTATION
CONSTITUTING THE PROJECT**

EXHIBIT "C"

COST ESTIMATE AND CITY PAYMENT SCHEDULE