

**INTERLOCAL AGREEMENT TO FACILITATE ROAD  
IMPROVEMENTS ON ORR ROAD**

THIS INTERLOCAL AGREEMENT TO FACILITATE ROAD IMPROVEMENTS ON ORR ROAD ("Agreement"), dated as of the \_\_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date"), is made and entered into by and between COLLIN COUNTY, TEXAS ("County"), THE TOWN OF FAIRVIEW, TEXAS ("Fairview"), all political subdivisions of the State of Texas and the NORTH TEXAS MUNICIPAL WATER DISTRICT, a governmental agency and body politic and corporate, ("District"). This Agreement is being entered into as authorized and provided by Chapter 791 of the Texas Governmental Code. County, Fairview, and the District are collectively referred to herein as "Parties". This Agreement is entered into by and between the Parties to facilitate the upgrade of Orr Road from Stacy Road to the Southern driveway of the District (the "Property").

WHEREAS, the portion of Orr Road within the Project area extends from Stacy Road south to the main entrance of the Wilson Creek Regional Wastewater Treatment Plant (the Wilson Creek Plant) with portions within the town limits of Fairview and the remainder being located within the jurisdiction of Collin County; and

WHEREAS, Orr Road is operated as a governmental function of these entities to provide the public with a system of roads and streets to facilitate vehicular travel; and

WHEREAS, that portion of Orr Road within the Project is currently an asphalt road; and

WHEREAS, the Parties desire to upgrade this portion of Orr Road to a concrete road; and

WHEREAS, District operates a wastewater treatment plant known as the Wilson Creek Plant; and

WHEREAS, the District's operation of the Wilson Creek Plant requires it to transport biosolids from the Plant by use of trucks across Orr Road to Stacy Road and then to U.S. Hwy 75; and

WHEREAS, to efficiently transport biosolids, the roadway shall accommodate 80,000 pounds per vehicle; and

WHEREAS, the District has utilized Orr Road for an extended period and the condition of the road has been negatively impacted by District vehicles transporting biosolids; and

WHEREAS, upgrading Orr Road would benefit all Parties to this agreement by providing a safer and more reliable road for their citizens and the travelling public; and

WHEREAS, the total estimated project cost (including design, construction, construction oversight, and testing) of upgrading two lanes of Orr Road (the "Project") to a concrete street is approximately \$1,658,123; and

WHEREAS, the Parties desire to cooperate in a joint effort to improve this portion of Orr Road to concrete paving; and

WHEREAS, such improvement would be for the benefit of the District as it would provide for the District's optimal operation of the Wilson Creek Plant; and

WHEREAS, the County is willing to manage the design and construction of this Project; and

WHEREAS, Chapter 791 of the Government Code provides authority for political subdivisions to contract with each other to facilitate the governmental functions and services of said political subdivisions; and

WHEREAS, the Parties have investigated and determined and find, acknowledge and agree that the County, Fairview and District have the authority to enter into this Agreement and to perform the obligations of each governmental entity pursuant to this Agreement; and

WHEREAS, the Parties have determined that it is in their mutual best interest to enter into this Agreement.

NOW THEREFORE, for and in consideration of the covenants and conditions contained in this Agreement, the County, Fairview, and District agree as follows:

1. The County shall manage the design and construction of the Project to improve Orr Road with concrete paving to a 24-foot wide roadway utilizing the Texas Department of Transportation (TxDot) design standards and construction materials to support the projected traffic (including ~~NTMWD~~ <sup>District</sup> sludge trucks at 80,000 pounds per vehicle) for a 30 year design life. The proposed section shall be based upon the recommendations of a licensed geotechnical engineer.
2. The County shall be solely responsible for managing the construction of the improvements to the Affected Portion of Orr Road including, but not limited to design and engineering, advertising and soliciting bids, entering into contracts for the construction, oversight and management of construction, along with being responsible for all warranty or construction issues and maintenance of Orr Road during

the warranty period, notwithstanding that portions of the Road that are within the Town Limits of Fairview.

3. The Parties agree to fund the Project, the following being the estimated obligations of each Party for the Project:

Entity	Cost	
District <del>NTMWD</del> <i>nr</i>	\$ 1,500,702	90.5%
County	\$ 120,000	7.2%
Fairview	\$ 37,420	2.3%
Total	\$ 1,658,123	

4. The above estimates are based upon upgrading that portion of Orr Road within the Project area to a two lane, 24-foot wide, concrete road that will support the projected traffic for a 30 year design life. These estimates include all components of the Project including design, construction, inspection, right-of-way, materials, labor and testing. However, these estimates do not include amounts for curbs and gutters, sidewalks, bike or jogging paths. In the event any party, other than the District, desires to make those improvements, they shall be at the party's sole cost and expense. The party's request may be included in the bids as an additive alternative and additional funding shall be provided prior to award. The design, engineering and construction cost for any such improvements will be borne by the requesting entity and funding by the requesting entity shall be provided at the same time as funding for the Project. The District shall not be responsible for the cost of any such improvements.
5. Upon completion of the Project design, the County shall advertise and receive bids for the Project. Within 10 days of receipt of the bids, the County shall provide copies of the bids to the other parties.
6. Within 30 days of the bid opening and the County providing an invoice to each entity, each entity shall provide funds to the County in the full amount of its commitment noted in this agreement, such being its proportionate share of the estimated cost of the Project as revised following receipt of bids and an award to the lowest responsible bidder. In the event a party's cost for the Project cost exceeds 10% of the estimated obligation set forth in paragraph 3 above, then a party may terminate its participation in this Agreement by giving notice to the County prior to the time that a bid is awarded to the lowest responsible bidder. The County shall manage the construction and make all payments for the work. Any increase in contract price is subject to approval of the parties.
7. The County shall construct the road improvements in such a manner to allow continued access along Orr Road during the hours of 6:00 a.m. to

8:00 p.m. daily. Upon completion of the Project, Fairview and the County shall be responsible for the operation and maintenance of the portions of Orr Road located within their respective jurisdictions. The District will grant temporary work space or permanent easements across its property as may be required to construct the Project.

8. The District shall provide the County with funds of up to \$25,000 annually to provide interim maintenance of Orr Road within the project limits from the time of Agreement execution until the Project begins construction.
9. This Agreement is intended solely for the benefit of the Parties hereto and does not confer any rights on any person or entity not a party to this Agreement, nor does it create any Third-Party Beneficiaries to this Agreement.
10. Any agreement, notice, correspondence, information and/or other documentation required and/or referred to in this Agreement shall be in writing. Any agreement required and/or referred to in this Agreement shall be in writing and executed by the Parties. No agreement required and/or referred to in this Agreement may be amended and/or modified except on written consent of the Parties thereto. This agreement does not commit the Parties to any future obligations.
11. Waiver by any Party of any breach of this Agreement affecting such Party, or the failure of any Party to enforce any of the provisions of this Agreement, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance.
12. The Parties acknowledge and agree that the performance by the Parties of their respective obligations under this Agreement constitute governmental functions.
13. No Party shall be in default under this Agreement until written notice of the default has been given to the defaulting Party (which notice shall describe in reasonable detail the nature of the default) and the defaulting Party has been given fifteen (15) business days to cure said default. If a Party is in default under the Agreement, the non-defaulting Party may, at its option, and without prejudice to any other right under this Agreement, law or equity, seek any relief available at law or in equity, including but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus and injunctive relief. No Party shall have the right to terminate this Agreement as a remedy for default or to suspend or be relieved of the Party's continuous performance of its obligations hereunder.

Notwithstanding the foregoing, each Party agrees that if any threatened or actual breach of this Agreement arises, which reasonably constitutes immediate, irreparable harm to the other Party for which monetary damages is an inadequate remedy, equitable remedies may be sought by the non-defaulting Party, without providing the notice stated above, and awarded in a court of competent jurisdiction without requiring the non-defaulting Party to post bond.

14. All Payments, if any, required to be made by District hereunder shall be payable from current revenues or other funds lawfully available for such purpose.
15. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by the Parties.
16. The Agreement shall be construed in accordance with Texas law without regard to its conflict of laws provisions.
17. Venue for any action arising hereunder shall be in Collin County, Texas.
18. Any notice or other communication required by this Agreement to be given, provided, or delivered shall be in writing addressed as set forth below. Notices shall be considered "given" for purposes of this Agreement: (a) if by Certified Mail, five (5) business days after deposited with the U.S. Postal Service, Certified Mail, Return Receipt Requested; (b) if by private delivery service (e.g. FedEx or UPS), on the date delivered to the notice address as evidenced by a receipt signed by any person at the notice address; or (c) if by any other means (including but not limited to, FAX and E-mail), when actually received by the Party at the notice address.

Town of Fairview: Town Manager  
Town of Fairview  
372 Town Place  
Fairview, Texas 75069

With a copy to:  
Clark McCoy  
Wolfe, Tidwell & McCoy, LLP  
2591 Dallas Parkway  
Suite 300  
Frisco, Texas 75034

Collin County, Texas: Jon Kleinheksel  
Director of Public Works  
700A Wilmeth  
McKinney, Texas 75069

With a copy to: Greg Hudson  
Hudson, O'Leary  
1010 Mo-Pac Circle #201  
Austin, Texas 78746

To District: Thomas W. Kula  
Executive Director  
North Texas Municipal Water District  
501 E. Brown Street  
P.O. Box 2408  
Wylie, Texas 75078  
Telephone: (972) 442-5405  
Facsimile: (972) 295-6440  
[tkula@NTMWD.com](mailto:tkula@NTMWD.com)

With a copy to:  
Lewis Isaacks  
Saunders, Walsh & Beard  
6850 TPC Drive, Suite 210  
McKinney, Texas 75070  
Telephone: (214) 919-3555  
Facsimile: (214) 615-9019  
[lewis@saunderswalsh.com](mailto:lewis@saunderswalsh.com)

Each Party has the right to change, from time to time, its notice addresses by giving at least ten (10) business day's written notice to the other Party. If any time period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the period shall be extended to the first business day following such Sunday, Saturday, or legal holiday.

19. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; and (c) reflect the final intent of the Parties with regard to the subject matter of this Agreement. If it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be given full effect. The Parties have relied, to their material detriment, upon the recitals as part of the consideration for entering into this Agreement and, but for the recitals, would not have entered into this Agreement.

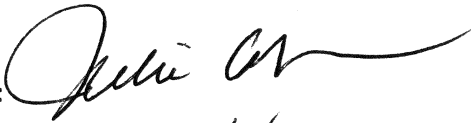
20. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. A facsimile signature will also be deemed to constitute an original if properly executed.
21. The individuals executing this Agreement on behalf of the respective Parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his signature hereto is authorized to do so, and such authorization is valid and effective on the date of this Agreement.
22. The Parties agree that they have not waived their respective sovereign immunity by entering into and performing their respective obligations under this Agreement.
23. This Agreement is not assignable.
24. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had the opportunity to confer with its counsel.
25. In case any 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 shall not affect any other provision thereof, and this Agreement shall be construed as is such invalid, illegal, or unenforceability provision had never been contained herein.
26. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.
27. Expenses for Enforcement. In the event either Party hereto is required to employ an attorney to enforce the provisions of this Agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including collection.

28. No Partnership or Agency. The Parties hereto have not created a partnership and nothing contained in this Agreement shall in any manner whatsoever constitute any Party the partner, agent or legal representative of the other Party, nor create any fiduciary relationship between them for any purpose whatsoever. No Party shall have any authority to act for, or to assume any obligations or responsibility on behalf of, the other party except as may be, from time to time, agreed upon in writing between the Parties or as otherwise expressly provided in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the Effective Date.



TOWN OF FAIRVIEW

By: 

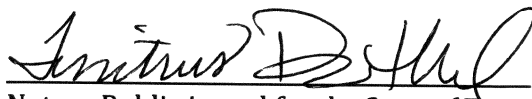
Date: 10/25/18

STATE OF TEXAS :

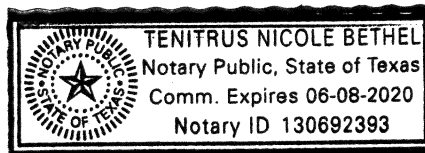
COUNTY OF COLLIN :

Before me, the undersigned authority, on this day personally appeared Julie Couch, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that she is the duly authorized representative of and for the TOWN OF FAIRVIEW, TEXAS, a Texas political subdivision, and she executed the said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 24<sup>th</sup> day of October, 2018.

  
Notary Public in and for the State of Texas

My Commission Expires:



COLLIN COUNTY, TEXAS

By:

*[Signature]*

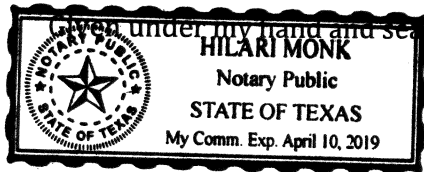
Date:

12/18/18

STATE OF TEXAS :

COUNTY OF :

Before me, the undersigned authority, on this day personally appeared Keith Self, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the duly authorized representative of and for the COLLIN COUNTY, TEXAS, a Texas political subdivision, and he executed the said instrument for the purposes and consideration therein expressed and in the capacity therein stated.



Given under my hand and seal of office this 18th day of December, 2018.

*[Signature]*  
Notary Public in and for the State of Texas

My Commission Expires: April 10, 2019

NORTH TEXAS MUNICIPAL WATER DISTRICT,  
A Texas political subdivision

By: Thomas W. Kula

Date: 9/27/18

STATE OF TEXAS :  
:  
COUNTY OF :

Before me, the undersigned authority, on this day personally appeared Thomas W. Kula, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the duly authorized representative of and for the NORTH TEXAS MUNICIPAL WATER DISTRICT, a Texas political subdivision, and he executed the said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 27<sup>th</sup> day of September, 2018.

Leann Bumpus  
Notary Public in and for the State of Texas

My Commission Expires: 5/18/20

