

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF DALLAS
CONCERNING THE CONSTRUCTION OF
FRANKFORD ROAD FROM SH 289 (PRESTON RD.) TO COIT RD.
2018 BOND PROJECT #RI18012**

WHEREAS, the County of Collin, Texas ("County") and the City of Dallas, Texas ("City") desire to enter into this agreement ("Agreement") for the design and construction of improvements to Frankford Road from State Highway 289 (Preston Road) to Coit Road (hereinafter referred to as "Project") located in the City of Dallas and in Collin County, Texas, as depicted on Exhibit A, attached hereto; 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, as well as joint funding of road construction or improvements of roads and streets under the terms of the Act; and

WHEREAS, the parties have determined that the Project is beneficial and in the best interests for the residents of City of Dallas and Collin County; and

WHEREAS, the City and County will share in the funding of the construction of the improvements to the Project with City being the lead agency to administer the design and construction as more fully described in this Agreement; and

WHEREAS, the Commissioners Court allocated One Million Six Hundred Ninety-One Thousand Two Hundred Forty-Four Dollars (\$1,691,244) from the 2018 Bond Program to the City of Dallas for 2018 Bond Project, Frankford Rd. from SH 289 (Preston Rd.) to Coit Rd.; and

WHEREAS, There is a total of nine hundred and eighty-six thousand and eighty-two dollars (\$986,082) of left over 2007 Bond funding that was allocated to the City of Dallas for the 2007 Bond Project #RI07015, Preston Road from Frankford to Lloyd Circle (\$962,500) and the 2007 Bond Project RI070061; City of Dallas Intersection Project; (\$23,582).

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 for the reconstruction improvements of the six-lane divided arterial Frankford Road from State Highway 289 (Preston Road) to Coit Road by performing base repair and asphalt overlay, curb and gutter replacement where needed, pavement markings, and traffic sign replacement, upgrading the traffic signals at the intersections of Frankford Road at Davenport Road, Hillcrest Road, Meandering Way, Preston Ridge Trail and Osage Plaza Parkway. Also included in the scope of work are pedestrian improvements such as sidewalks, driveway approaches, and barrier free ramps and crosswalk enhancements. In addition, there will be streetlights, benches, trash receptacles, bike racks, and other minor landscaping and irrigation improvements.

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 statutory requirements applicable to a municipal public work project. The City shall provide the County with a copy of the executed design and construction contract(s) for the Project. Changes to the Project, other than what was submitted for the initial project ranking or which alter the initial funding set forth in Article IV, must be reviewed and approved by Collin County.

ARTICLE III.

The City shall not acquire real property for use as right-of-way or easements in connection with the Project.

ARTICLE IV.

The City estimates the total actual cost of the Project to be six million, six hundred seventeen thousand, seven hundred and five dollars and zero cents (\$6,617,705.00) ("Estimated Project Cost"). The County agrees to participate in the Project by allocating two million, six hundred seventy seven thousand, three hundred twenty-six dollars and zero cents (\$2,677,326.00) (the "County Participation Amount") to the performance of the Project. The County shall remit fifty percent (50%) of the County Participation Amount 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%) of the County Participation Amount to the City (i) within thirty (30) days after the City receives bids for the construction of the Project and the City submits a written request for payment to the County. The County Commissioners Court may revise this payment schedule based on the progress of the Project. If the payment schedule is revised and that revision results in the City facing the potential of incurring an unfunded debt in violation of the Texas Constitution the City, in its sole discretion, shall be free from any obligation or commitment to continue working on or complete the Project until the next installment of the County Participation Amount is paid to City.

If the actual cost to design, acquire right-of-way for, and construct the Project (collectively the "Actual Project Cost") is less than the Estimated Project Cost, and the County has participated up to fifty percent (50%) of the total Estimated Project Cost for the 2018 Bond funding, then the City shall reimburse to the County an amount equal to the difference between the Estimated Project Cost and the Actual Project Cost such that the county has only contributed fifty percent (50%) of the Actual Project Cost. Notwithstanding the foregoing, County acknowledges and agrees to remit the County Participation Amount as set forth in this Article. The City shall remit any such reimbursement to the County following City's final acceptance of the Project and along with an itemized final accounting of expenditures for the Project. As used herein, the terms "Estimated Project Cost" and "Actual Project Cost" may 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 two million, six hundred seventy-seven thousand, three hundred twenty-six dollars and zero cents (\$2,677,326.00)

ARTICLE VI.

The City shall install a **project sign** identifying the Project as being partially funded by the Collin County 2007 and 2018 Bond Programs. The City shall also provide **quarterly progress reports throughout the Project as well as before, during and after photos** during the construction process, in electronic format or via US mail to the Collin County Engineering Department. Following completion of the Project, the City shall provide an **itemized final accounting of expenditures** for the Project.

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. The County, not waiving any rights or its sovereign immunity, agrees to the extent allowed by law to be responsible for any liability or damages the County may suffer as a result of claims, demands, costs or judgments, including all reasonable attorney's fees, against the County including workers compensation claims, arising out of the performance of the County employees under this Agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s) or corporations(s)

occurring during the performance of this Agreement and caused by the sole negligence of the County, its agents, officers, and/or employees.

The City, not waiving any rights or its sovereign immunity, agrees to the extent allowed by law to be responsible for any liability or damages that the City may suffer as a result of claims, demands, costs or judgments, including all reasonable attorney's fees, against the City including workers compensation claims, arising out of the performance of the City employees under this Agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s) or corporations(s) occurring during the performance of this Agreement and caused by the sole negligence of the City, its agents, officers, and/or employees.

County and City agree that any such liability or damages as stated above occurring during the performance of this Agreement caused by the joint or comparative negligence of their employees, students, agents, or officers shall be determined in accordance with comparative responsibility laws of the State of Texas.

This Section shall survive termination, expiration, or suspension of this Agreement.

ARTICLE IX.

VENUE. This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Collin County, TX.

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.

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.

ARTICLE XV.

FORCE MAJEURE. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

ARTICLE XVI.

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.]

EXECUTED THIS 4th DAY OF August 2021. ("Effective Date")

Authorized by City Council Resolution No. 21-1092 adopted by the Dallas City Council on 6/23/2021.

APPROVED AS TO FORM:
CHRISTOPHER J. CASO
City Attorney

BY: Christine Lannan
Assistant City Attorney CL
C.L.

CITY OF DALLAS
T. C. BROADNAX
City Manager

BY: [Signature]
Assistant City Manager

APPROVED AS TO FORM:

COUNTY OF COLLIN, TEXAS

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

By: [Signature]
Name: Chris Hill
Title: County Judge
Date: 8-16-2021

Executed on this 16 day of August
2021, by the County of Collin,
pursuant to Commissioners' Court
Order No. 2021-776-08-16.

Signature: CL
C.L. (May 24, 2021 12:16 CDT)

Email: christine.lanners@dallascityhall.com