

**INTERLOCAL AGREEMENT  
BETWEEN COLLIN COUNTY AND THE CITY OF MCKINNEY  
CONCERNING THE CONSTRUCTION OF  
WILMETH ROAD FROM LAKE FOREST DRIVE TO HARDIN BOULEVARD  
2018 BOND PROJECT # RI18010**

**WHEREAS**, the County of Collin, Texas (“County”) and the City of McKinney, Texas (“City”) desire to enter into this agreement (“Agreement”) concerning the improvements to Wilmeth Road from Lake Forest Drive to Hardin Boulevard (“Project”) in McKinney, 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; and

**WHEREAS**, the Commissioners Court allocated Eleven Million Three Thousand Nine Hundred Thirty Dollars (\$11,003,930.00) from the 2018 Bond Program to the City of McKinney for Bond Project #RI18010, Wilmeth Rd. from Lake Forest Dr. to Hardin Blvd.; and

**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 design, acquire the necessary Right of Way for, and construct the Project. The Project shall consist of constructing Wilmeth Road as a four-lane divided arterial from Lake Forest Drive to Hardin Boulevard in accordance with the City’s roadway design standards and criteria. The proposed roadway section will provide the ability, if warranted in the future, to be expanded to a 6-lane divided arterial. The Project will include a twin bridge structure over the Franklin Branch and intersection/cross street improvements at Lake Forest Drive, County Road 943, and Hardin Boulevard. All improvements shall be designed to meet or exceed the City’s roadway design standards and criteria 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 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 also acquire real property in the vicinity of the improvements 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 Twenty-Seven Million Seven Hundred Sixty-Five Thousand Dollars (\$27,765,000.00) (“Estimated Project Cost”). The County agrees to participate in the Project by allocating Eleven Million Three Thousand Nine Hundred Thirty Dollars (\$11,003,930.00) (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. 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 Eleven Million Three Thousand Nine Hundred Thirty Dollars (\$11,003,930.00).

#### ARTICLE VI.

The City shall install a **project sign** identifying the Project as being partially funded by the Collin County 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. 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 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.**

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.]*

**APPROVED AS TO FORM:**

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

**COUNTY OF COLLIN, TEXAS**

By: \_\_\_\_\_  
Name: Chris Hill  
Title: County Judge  
Date: \_\_\_\_\_  
Executed on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by the County of Collin,  
pursuant to Commissioners' Court  
Order No. \_\_\_\_\_.

**ATTEST:**

By: \_\_\_\_\_  
Name: Empress Drane  
Title: City Secretary  
Date: \_\_\_\_\_

**CITY OF MCKINNEY, TEXAS**

By: \_\_\_\_\_  
Name: Paul G. Grimes  
Title: City Manager  
Date: \_\_\_\_\_  
Executed on behalf of the City of  
McKinney pursuant to City Council  
Resolution No. \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: Mark S. Houser  
Title: City Attorney  
Date: \_\_\_\_\_