



RESOLUTION NO. 2017-114

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS AUTHORIZING A MASTER INTERLOCAL AGREEMENT WITH DALLAS COUNTY FOR REIMBURSEMENT OF ROAD MAINTENANCE FUNDS RELATIVE TO THE ROAD AND BRIDGE FUND PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Dallas County provides the opportunity to cities within Dallas County to obtain partial funding for certain qualifying road and bridge maintenance type projects subject to execution of a Master Interlocal Agreement and related Project Specific Agreements; and

WHEREAS, Dallas County has offered, and City Administration recommends accepting, a Master Interlocal agreement for a period of five years to provide future qualifying Road and Bridge Project funding opportunities; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, finds it to be in the public interest to comply accept said offer to authorize execution of Master Interlocal Agreement with Dallas County.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is authorized to sign, on behalf of the City of Farmers Branch, the Master Interlocal Agreement with Dallas County set forth in Exhibit "A" attached hereto.

SECTION 2. This Resolution shall become effective upon approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 26th DAY OF SEPTEMBER 2017.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Robert Dye, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:5/9/17:86095)

Exhibit "A"
MASTER INTERLOCAL AGREEMENT

**BETWEEN DALLAS COUNTY AND THE CITY/TOWN OF FARMERS BRANCH
PERTAINING TO TRANSPORTATION-RELATED MAINTENANCE ON OR ABOUT
CERTAIN DESIGNATED ROADWAYS SITUATED WITHIN THE TERRITORIAL
LIMITS OF THE CITY/TOWN OF FARMERS BRANCH**

This Master Interlocal Agreement ("Master Agreement") is made by and between Dallas County, Texas (hereinafter "County") and the City/Town of Farmers Branch, Texas (hereinafter "City/Town" refers to the applicable City or Town, which is a party to this Master Agreement) acting by and through their duly authorized representatives and officials, for the purpose of Transportation Improvements on roads inside Dallas County.

WHEREAS, pursuant to Court Order _____, dated _____, County Commissioners Court approved participation in Transportation Projects within the City/Town of Farmers Branch; and

WHEREAS, Chapter 791 of the Texas Government Code and Chapters 251 and 472 of the Texas Transportation Code provide authorization for local governments to contract amongst themselves for the performance of governmental functions and services;

WHEREAS, the County and the City/Town desire to enter into an Interlocal Agreement (hereinafter "Master Agreement") for the purpose of jointly coordinating, facilitating and/or funding improvements and/or maintenance activity on certain duly qualified "Type B" Roadways, also situated wholly within the territorial limits of the City/Town; and

WHEREAS, the County and the City/Town desire to enter into a Master Agreement for the purpose of jointly coordinating, facilitating and/or funding improvements and/or maintenance activity on certain duly qualified "Type C" Roadways, also situated wholly within the territorial limits of the City/Town; and

WHEREAS, the County and the City/Town desire to enter into a Master Agreement for the purpose of the City/Town retaining and authorizing County, through its Road & Bridge forces, to maintain and/or improve various "Type E" Roadways, situated wholly within the territorial limits of the City/Town; and

WHEREAS, the County and the City/Town desire to enter into a Master Agreement for the purpose of the City/Town authorizing and retaining County, through its Road & Bridge forces, to perform minor transportation-related improvements and/or maintenance services, including but not limited to pothole repair, cleaning and clearing of drainage culverts, roadway debris removal, and the like, which services do not fall squarely within the purview of "Type B" or "Type E" Roadway Projects, such projects to be performed on or about public roadways and alleyways situated wholly within the territorial limits of the City/Town; and

WHEREAS, this collaboration between the County and the City/Town is consistent with Strategy 4.2 of Dallas County's Administrative Plan in that it fosters partnership between the County and local cities therein on local transportation projects;

NOW THEREFORE, THIS AGREEMENT is hereby made and entered into between the County and the City/Town for the mutual consideration stated herein:

I. DEFINITIONS

The following definitions are incorporated by reference into this agreement for all purposes.

1. Type B: Improvements and maintenance of thoroughfares and bridges of major cross-county importance which are either existing or proposed. The Regional Thoroughfare Plan for North Central Texas Council of Governments will be used as a guide to determine which thoroughfares are of major cross-county importance.
2. Type C: Improvements and maintenance of thoroughfares which are affected by state highway programs, planning and policies, including right-of-way, curb and gutter, and storm sewer projects that participate with state department of highways and public transportation as designated by the state as being part of the state highway system.
3. Type E: Improvements and maintenance of streets, alleys, roads, bridges and drainage facilities for a local governmental entity as defined under Chapter 791 of the Texas Government Code.

II. PURPOSE

City/Town has requested in the past, and will likely request in the foreseeable future (1) that the County participate in the funding of, certain roadway improvements and/or maintenance projects

("projects") on the City/Town's street system, which projects shall be duly qualified "Type B" Roadway Projects; (2) that County participate in the funding of, certain roadway improvements and/or maintenance projects ("projects") on the City/Town's street system, which projects shall be duly qualified "Type C" Roadway Projects; (3) that the County provide certain roadway improvements and/or maintenance services ("projects") on the City/Town's street system, which projects shall be duly qualified "Type E" Roadway Projects; or (4) that the County, through its Road & Bridge forces, perform certain minor transportation-related improvements and/or maintenance services on or about the City/Town's streets and alleyways, which do not fall squarely within the collaborations contemplated by either of the aforementioned. The terms and conditions set forth herein provide the cooperative framework for the County and the City/Town to jointly undertake one or more of these transportation-related maintenance projects upon public roadways situated wholly within the incorporated and territorial jurisdiction of the City/Town.

Each roadway maintenance project commenced hereunder shall be fully and specifically set forth and described in a separate Project Specific Agreement (“PSA”), and shall be approved by specific order of the Dallas County Commissioners Court, as well as the governing body of the City/Town.

Projects undertaken pursuant to this Agreement are for the benefit of the City/Town and the County, and not the purposeful benefit of any third parties. It is the express intention of the City/Town and the County that any person or entity, other than the City/Town or the County, receiving services or benefits hereunder shall be deemed incidental beneficiaries only.

Nothing herein shall be construed so as to prevent the County and the City/Town from collaborating and working jointly, without prior and formal approval of their respective governing bodies, in cases of national, state or local emergencies or natural disasters.

III. CITY/TOWN’S CONTRIBUTION

For duly qualified “Type B” and “Type C” Roadway Projects contemplated hereunder, the City/Town shall be responsible for the total funding and payment for the roadway maintenance services, less any amounts contributed by the County, which contributions, if any, may not exceed fifty percent (50%) of the total project costs, and may be made through commitment of financial resources or in-kind services, i.e. use of County’s labor, equipment and/or materials.

For all other projects contemplated hereunder, the City/Town shall be responsible for one hundred percent (100%) of the funding for services provided in whole or in part through the use of County Road & Bridge personnel, equipment and/or materials.

All expenditures herein undertaken by the City/Town or the County for the performance of these government functions shall be made from current revenues available to them.

IV. CITY/TOWN’S OBLIGATIONS

Prior to the commencement of any project hereunder, the City/Town shall clearly detail the location, scope and nature of the services it desires performed. Should the City/Town desire that the County, through deployment of its Road & Bridge workforces, perform such services, the County shall prepare a written and detailed proposal for the City/Town’s consideration and approval, indicating all work to be performed by the County, and at what costs and expense to the City/Town. Before any such work commences, the City/Town and the County must have a clear and mutual understanding of the scope of services to be provided by the County and the costs associated with each such project. Said mutual understanding shall be evidenced by written documentation, i.e. project specific agreements, which shall only be binding once approved by the County and the governing body of the City/Town.

For all projects wherein the County is obligated to provide improvements and/or maintenance services, immediately upon the County's commencement of work duly authorized by them, the City/Town shall set aside, segregate and escrow for the County's benefit, the full agreed amount for costs and expenses for each project undertaken. County may elect to bill against segregated funds on a monthly basis for services performed during the course of the month, or it may bill against the segregated funds in full once a project is completed. In either event, the County shall be paid promptly, and in full once the project is completed.

Where required by the nature of the projects undertaken, the City/Town, at its own expense, shall be responsible for the following: (1) informing the public of the proposed maintenance or construction activity regarding the project; (2) acquiring any right-of-way necessary to complete the project under consideration; (3) locating all manholes, water valves, and other utilities within the project; (4) making or causing to be made, all utility relocations or adjustments necessary for the execution and completion of the project; (5) remediating any hazardous or regulated materials, or other environmental hazards on or near the project site; and (6) where necessary, providing appropriate traffic control support, including but not limited to flagging, cones, barricades, shadow vehicles, arrow boards, signage, police presence, etc., to enable the project to be completed in a timely and safe manner. City/Town agrees to accomplish these functions, if required by projects under consideration, in a timely and efficient manner to ensure that such activity will not delay the County's timely performance of its improvements and/or maintenance activities.

City/Town agrees to permit the County, at the County's expense, to conduct routine special studies of traffic conditions within the City/Town, which studies may include traffic counts, measurements of speeds, delays, congestion, etc.

V. COUNTY'S CONTRIBUTION

For all projects contemplated hereunder, the County shall contribute as follows:

1. For all duly qualified "Type B" and "Type C" Roadway Projects, the County shall contribute an amount not to exceed fifty percent (50%), which contribution may be through pledge and commitment of County Road and Bridge funds, use of County Road and Bridge personnel and/or equipment, or a combination of the two.
2. For all other duly qualified projects, the County's contribution hereunder shall be limited solely to supplying labor, materials and/or equipment necessary to provide improvements and/or maintenance services, all of which shall be provided at the City/Town's, or another funding source's, expense.

VI. COUNTY'S OBLIGATIONS

County shall not undertake performance of any project hereunder, until such time as same has

been specifically approved per the protocol set forth in Section II., as listed above and incorporated herein by reference. Once so approved, if called upon to do so, the County shall perform all services contemplated hereunder in a good and workmanlike manner. Further, the County shall not assign its rights, or delegate its duties and obligations hereunder to any third party without prior written approval of the City/Town. Nothing herein shall be construed to prohibit the County from using subcontractors, where reasonably necessary, to aid in the completion of projects.

Should the County, in executing any project contemplated hereunder, encounter adverse conditions unforeseen by the City/Town or the County, the County shall immediately bring same to the attention of the City/Town, and await direction and guidance from the City/Town on the resolution of same. Where reasonably required by nature of the unknown condition, the County may cease performance hereunder until such time as adverse conditions are rectified or remedied by the City/Town, and such delay shall not constitute a material breach of this Agreement.

VII. TERM

The initial term of this Agreement shall be from the date of last execution by any required signatory party hereto until December 30, 2022. However, either party hereto, shall have the absolute right to terminate this Agreement, without cause, at any time, upon providing sixty (60) days written notice to the other party. If necessary, notice of termination shall be tendered consistent with the notice provisions and protocol, which is stated below and incorporated herein by reference.

VIII. LIABILITY

County and City/Town agree that each shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Master Agreement, without waiving any governmental/sovereign immunity available to the County or the City/Town or their respective officials, officers, employees, or agents under Texas or other law and without waiving any available defenses under Texas or other law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

IX. FISCAL FUNDING

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of County funding for each item and obligation contained herein.

City/Town shall have no right of action against the County as regards this Master Agreement, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of

any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of City/Town funding for each item and obligation contained herein.

County shall have no right of action against the City/Town as regards this Master Agreement, specifically including any funding by City/Town of the Project in the event that the City/Town is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City/Town, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

X. MISCELLANEOUS PROVISIONS

A. **Entire Agreement.** This Master Agreement and any attachments hereto, set forth the entire agreement between the parties respecting the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, whether oral or in writing, between the parties respecting the same.

B. **Applicable Law.** This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and exclusive venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Agreement is expressly made subject to the County's and the City/Town's Governmental and/or Sovereign Immunity, pursuant to Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and federal laws.

C. **Severability.** If any term, covenant, condition or provision of this Master Agreement shall be declared invalid, illegal, or unenforceable in any respect by a tribunal of competent jurisdiction, the remaining terms, covenants, conditions, and provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

D. **Not an Agent.** County and City/Town mutually agree that neither entity acting hereunder shall be considered an agent of the other, and that each entity is responsible, if at all, for its own acts, forbearance, and deeds.

E. **Venue.** This Master Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in Dallas County, Texas.

F. **Amendment.** This Master Agreement may be supplemented and/or amended at any time through the mutual consent of both the County and the City/Town, so long as all amendments, changes, revisions, and discharges of this Master Agreement, in whole or in part, are reduced to writing and executed by the parties thereto.

G. **Notice.** All notices, requests, demands, and other communication under this Master Agreement shall be tendered in writing and shall be deemed to have been duly given when either delivered in person, or via certified mail, postage prepaid, return receipt requested to the respective parties as follows:

COUNTY:

Director of Public Works
411 Elm Street, Fourth Floor
Dallas, Texas 75202

CITY:

Director of Public Works
13000 William Dodson Parkway
Farmers Branch, Texas 75234

H. **Counterparts.** This Master Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

I. **Headings.** The headings and titles used herein are for sake of convenience only, and are not intended to affect the interpretation or construction of such provisions.

J. **Contingent.** This Master Agreement is expressly contingent upon formal approval by the Dallas County Commissioners Court and the governing body of the City/Town of Farmers Branch, Texas.

The City of Farmers Branch, State of Texas, has executed this Master Agreement pursuant to duly authorized City Council Action on the 26th day of September 2017.

The County of Dallas, State of Texas, has executed this Master Agreement pursuant to Commissioners Court Order Number _____ and passed on the ____ day of _____, 2017.

Executed this the _____ day of
_____, 2017.

Executed this the _____ day of
_____, 2017.

CITY OF FARMERS BRANCH:

COUNTY OF DALLAS:

CHARLES COX, CITY MANAGER

CLAY LEWIS JENKINS
COUNTY JUDGE

ATTEST:

AMY PIUKANA, CITY SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:*

FAITH JOHNSON
DISTRICT ATTORNEY

Peter G. Smith, City Attorney

Sherri Turner
Assistant District Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).