

## **PROJECT SPECIFIC AGREEMENT**

**RE: PAVEMENT REPAIRS ON ALPHA ROAD BETWEEN INWOOD ROAD AND MIDWAY ROAD; “TYPE B” PUBLIC ROADWAY -- MADE PURSUANT TO MASTER ROAD & BRIDGE INTERLOCAL MAINTENANCE AGREEMENT BETWEEN DALLAS COUNTY, TEXAS AND CITY OF FARMERS BRANCH, TEXAS**

This Project Specific Agreement, (hereinafter “PSA”), supplemental to the Master Interlocal Agreement, is made by and between Dallas County, Texas (hereinafter “County”) and the City of Farmers Branch, Texas (hereinafter “City”), acting by and through their duly authorized representatives and officials, for the purpose of transportation-related maintenance, repairs and improvements to be undertaken in certain designated blocks of enumerated public roadway as more fully set forth and described in Attachments “A” and “B”, incorporated herein by reference (“Project”).

### **WITNESSETH**

**WHEREAS**, Chapter 791 of the Texas Government Code provides authorization for local governments to contract amongst themselves for the performance of governmental functions and services; and

**WHEREAS**, on or about January 22, 2013, County and City entered into a Master Interlocal Agreement (“Master Agreement”), whereby County agreed to provide partial funding for such duly qualified “Type B” road and bridge maintenance projects, said projects situated within the territorial limits and jurisdiction of City; and

**WHEREAS**, City now desires County to provide partial funding for such a duly qualified project consisting of reconstruction of designated blocks of enumerated public roadway situated in the City of Farmers Branch, Texas, as more fully described on Attachment “A”.

**NOW THEREFORE THIS PSA** is made by and entered into by County and City, for the mutual consideration stated herein.

### **Article I** **Project Specific Agreement**

This PSA is specifically intended to identify a Project authorized under the Master Agreement. This document sets forth the rights and responsibilities pertaining to each party hereto, and is additional and supplemental to the Master Agreement, and all amendments and supplements thereto, which are incorporated herein. All terms of the Master Agreement remain in full force and effect, except as modified herein. In the event of any conflict between the Master Agreement and this PSA, this PSA shall control.

## **Article II**

### **Incorporated Documents**

This PSA incorporates, as if fully reproduced herein word for word and number for number, the following items:

1. Master Interlocal Agreement authorized by County Commissioners Court Order. 2013-0277 dated February 12, 2013, and additions thereto as incorporated herein,
2. The Construction Estimate (Attachment “A”), and
3. Map/Diagram of the Proposed Work Site (Attachment “B”).

## **Article III**

### **Term of Agreement**

This PSA becomes effective when signed by the last party whose signature makes the PSA fully executed and shall terminate upon the completion and acceptance of the Project by City or upon the terms and conditions in the Master Agreement.

## **Article IV**

### **Project Description**

This **PSA** is entered into by the parties for purpose of jointly identifying and funding repair, maintenance and improvements on duly qualified “Type B” public roadway within the City of Farmers Branch, Texas. The Project shall consist of **pavement section repairs and asphalt overlay along Alpha Road between Midway Road and Inwood Road** in the City of Farmers Branch, Texas, (hereinafter “Project”), and as more fully described in Attachments “A” and “B”. The Project is authorized by the aforementioned Master Agreement, with the parties’ obligations and responsibilities governed thereby, as well as by the terms and provisions of this PSA. The Project will facilitate the safe and orderly movement of public transportation to benefit both the City and County. The City has and hereby does give its approval for expenditure of County funds for the construction, improvement, maintenance, or repair of a street located within the municipality.

## **Article V**

### **Fiscal Funding**

Notwithstanding anything to the contrary herein, this **PSA** is expressly contingent upon the availability of County funding for each item and obligation contained herein. City shall have no right of action against the County of Dallas as regards this PSA, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this **PSA** as a result of the lack of sufficient funding for any item or obligation from any source utilized

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

## **Article VI** **Agreements**

### **I. City's Responsibilities:**

1. Where necessary, City, at its own expense, shall be responsible for the following: (a) managing construction of the Project; (b) informing the public of the proposed reconstruction of the Project; (c) locating all manholes, water valves, and other utilities within the Project, (d) making or causing to be made all utility relocations or adjustments necessary for execution and completion of the Project; (e) acquiring any right-of-way necessary to complete the Project; (f) remediating any hazardous or regulated material, or other environmental hazard in the Project location, (g) receiving and processing all payments due contractors City hires to work on the Project; (h) contracting through formal bidding procedures to acquire the services of contractors; and (i) funding the purchase of all materials necessary to perform the Project construction.
2. City shall further be responsible for all maintenance when the Project is completed.

### **II. County Responsibilities:**

1. County shall reimburse City for proportionate Project Costs, as more fully set forth in Section III below.
2. County, its Auditor or its designated representative(s) shall have the unrestricted right to audit any and all accounting or other records regarding any funds paid or claimed under this **PSA**, including, but not limited to all books, records, reports, tickets, deposits, expenditures, budget or any item therein, supporting data,

computer records and programs, and all items of hardware, software or firmware, or any other item utilized by the City regarding this PSA. City agrees that all related records shall be retained for a period of time not less than four (4) years from the date of the termination of this PSA. Such records shall be provided to the County in Dallas County, Texas and available for any audit at any time upon request. The results of any audit may be furnished to City for comment.

III. Funding:

County and City mutually agree that the initial and anticipated Project cost is approximately \$700,000.00 as set forth in Attachment "A". The parties hereto further agree that City shall be totally responsible for the construction and maintenance of said Project, and that County shall only be responsible to City for a contribution, in the form of reimbursements, of \$150,000.00, anticipated Project cost.

1. Should the final cost of the Project exceed the initial and anticipated Project costs, City agrees to either reduce the scope of the Project, or to seek additional funding to facilitate its completion. In either event, City shall be solely responsible for all such costs in excess thereof, and County shall bear no additional responsibilities beyond those contemplated herein.
2. City shall submit invoices to County, which invoices shall provide complete information and documentation to substantiate City's charges. County's acceptances of City's invoices are contingent upon City's compliance with County's invoicing procedures. County may withhold any disputed amounts until such time as the underlying dispute is resolved to County's satisfaction, but shall pay all undisputed amounts timely.

**Article VII**  
**Miscellaneous:**

- I. **Indemnification.** County and City agree that each shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiving any governmental immunity available to County or City 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.
- II. **No Third Party Beneficiaries.** The terms and provisions of this PSA are for the benefit of the parties hereto and not for the benefit of any third party. It is the express intention of County and City that any entity other than County or City receiving services or benefits under this PSA shall be deemed an incidental beneficiary only. This PSA is intended only to set forth the contractual right and responsibilities of the parties hereto.

- III. Applicable Law. This PSA is and shall be expressly subject to the County's and City's Sovereign Immunity and/or Governmental Immunity of City, Title 5 of the Texas Civil Practice and Remedies Code, as amended, and all applicable Federal and State Law. This PSA shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action regarding this PSA shall lie in Dallas County, Texas.
- IV. Notice. All notices, requests, demands, and other communication under this PSA shall be tendered in writing and shall be deemed to have been duly given when either delivered in person, via e-mail, or via certified mail, postage prepaid, return receipt requested to the respective parties as follows:

**COUNTY:**

Director of Public Works  
Dallas County  
411 Elm Street, Suite 400  
Dallas, Texas 75202

and

Commissioner Mike Cantrell  
Road & Bridge District #2  
411 Elm Street, Second Floor  
Dallas, Texas 75202

**CITY:**

Charles Cox, City Manager  
City of Farmers Branch  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

With copy to:

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

and

Peter G. Smith  
Nichols, Jackson, Dillard, Hager &  
Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

- V. Assignment. This PSA may not be assigned or transferred by either party without the prior written consent of the other party.
- VI. Binding Agreement; Parties Bound. Upon execution by the parties, this PSA shall constitute a legal, valid and binding obligation of the parties, their successors and permitted assigns.
- VII. Amendment. This PSA may not be amended except in a written instrument specifically referring to this PSA and signed by the parties hereto.
- VIII. Counterparts. This PSA 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.

- IX. Severability. If one or more of the provisions in this PSA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not cause this PSA to be invalid, illegal or unenforceable, but this PSA shall be construed as if such provision had never been contained herein, and shall not affect the remaining provisions of this PSA, which shall remain in full force and effect.
- X. Entire Agreement. This PSA embodies the complete agreement of the parties, and except where noted, it shall supersede previous and/or contemporary agreements, oral or written, between the parties and relating to matters in the PSA.
- XI. Contingent. This PSA is expressly subject to and contingent upon formal approval by the Dallas County Commissioners Court and by resolution of the City Council of the City of Farmers Branch.

The City of Farmers Branch, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution No. 2016-103, dated the 15th day of November, 2016.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number \_\_\_\_\_ and passed on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Executed this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF FARMERS BRANCH:**

\_\_\_\_\_  
CHARLES COX  
CITY MANAGER

**ATTEST:**

\_\_\_\_\_  
AMY PIUKANA  
CITY SECRETARY

**APPROVED AS TO FROM:**

\_\_\_\_\_  
PETER G. SMITH  
CITY ATTORNEY

Executed this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**COUNTY OF DALLAS:**

\_\_\_\_\_  
CLAY LEWIS JENKINS  
COUNTY JUDGE

**APPROVED AS TO FORM:\***  
SUSAN HAWK, DISTRICT 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).

**ATTACHMENT “A”**

PROJECT SPECIFIC AGREEMENT  
TYPE B ROADWAY PROJECT

**Dallas County Road and Bridge Funding**

Improvements in City of Farmers Branch 2016-2017

Projects:     Location: Alpha Road from Midway Road to Inwood Road  
Concrete section repairs, with new 2” asphalt overlay and new lane markings, and  
other associated cost with pavement repairs on this section of street.  
Estimated Cost for the entire section is \$700,000.00.

ATTACHMENT “B”

Map/Diagram of the Proposed Work Site  
Location



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