

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF THE COLONY, TEXAS AND THE CITY OF LEWISVILLE,
TEXAS CONCERNING THE INSTALLATION OF A TRAFFIC SIGNAL AT THE
INTERSECTION OF MEMORIAL DR., STANDRIGE DR. AND LAKE RIDGE DR.**

This Interlocal Agreement (hereinafter referred to as the "Agreement") is entered into pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between the City of The Colony, Texas, a Texas home-rule municipality (hereinafter referred to as "The Colony"), and the City of Lewisville, Texas, a Texas home-rule municipality (hereinafter referred to as "Lewisville").

WHEREAS, the Interlocal Cooperation Act authorizes local governments to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, The Colony and Lewisville mutually desire to be subject to the provisions of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, specifically section 791.011 regarding contracts to perform governmental functions and services; and

WHEREAS, The Colony is a duly organized municipality in Denton County, Texas, engaged in the provision of municipal and related services for the benefit of the citizens of the City of The Colony, Texas; and

WHEREAS, Lewisville is a duly organized municipality in Denton County, Texas, engaged in the provision of municipal and related services for the benefit of the citizens of the City of Lewisville, Texas; and

WHEREAS, a warrant analysis was completed by Cobb, Fendley & Associates, Inc. in 2020 and the results of this warrant study indicate that a traffic signal is warranted at the Memorial Drive, Standridge Drive and Lake Ridge Drive intersection based on current traffic loadings; and

WHEREAS, portions of this intersection are located within the city limits of both cities and both cities agree that a traffic signal is warranted at the intersection based on independent reviews of the above referenced study; and

WHEREAS, The Colony has recently approved the zoning for a 97.55 acre multi-building warehousing development (Live Oaks Logistics Park) on the northeast corner of this intersection and has also approved the Site Plan for Phase 1 of the development which will occupy approximately 22.11 acres of land. The traffic impact analysis ("TIA") completed for this development also demonstrates the need for a traffic signal at this intersection as traffic loads will increase significantly when construction is completed on this development; and

WHEREAS, this project will only include the installation of the traffic signal and associated cabinet and control devices; no pavement modifications and/or addition of turn lanes are included in this project, and these will be considered separate projects if and when completed in the future by each city.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The Colony and Lewisville agree as follows:

Section 1. Incorporation of Premises. The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

Section 2. Term. The term of this Agreement shall be for a period of twenty (20) years. Thereafter, the Agreement will automatically renew for two (2) additional twenty (20) year terms unless notice is given by either party to terminate this Agreement ninety (90) days prior to the expiration of each term, or unless terminated sooner as provided for in section 6, below.

Section 3. Definitions.

- (a) **Agreement.** The word "Agreement" means this Interlocal Cooperation Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Effective Date.** The words "Effective Date" mean the date of execution of this Agreement by The Colony and Lewisville.
- (c) **Lewisville.** The word "Lewisville" means the City of Lewisville, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 151 W. Church Street, Lewisville, Texas 75057.
- (d) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.
- (e) **Traffic Signal.** The words "Traffic Signal" mean the traffic signal to be installed at the intersection of Memorial Drive, Standridge Drive and Lake Ridge Drive, which intersection is located in part within the City of The Colony and in part within the City of Lewisville, Texas, including all mechanical, structural and electrical components related to the installation.
- (f) **The Colony.** The words "The Colony" mean the City of The Colony, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 6800 Main Street, The Colony, Texas 75056.

Section 4. Obligations of The Colony.

- (a) Consistent with Section 791.011(d)(3) of the Texas Government Code, The Colony in making payments hereunder for governmental functions or services, shall make payments

from current revenues available to The Colony. It is understood and agreed that the funding for the Term set forth above has been approved and will be appropriated by The Colony.

- (b) The Colony will be responsible for all funding required to design, construct, inspect, repair, and maintain and/or replace all mechanical, structural and electrical components needed to operate the Traffic Signal.
- (c) The Colony will be responsible for hiring a qualified engineering firm to perform the topographic surveying, intersection geometric analysis, prepare construction specifications and drawings and provide construction management services. Once the design is completed, both The Colony and Lewisville will review the plans and make comments until a final buildable design set of plans and specifications is approved by both cities.
- (d) The Colony will hire the construction firm to install the Traffic Signal and associated components based on the plans and specifications that were approved by both cities.
- (e) Once installed, The Colony will be responsible for the operation, maintenance, repair and/or replacement of the Traffic Signal components throughout the Term of this Agreement. The Colony agrees to respond to a malfunction of the Traffic Signal within twenty-four (24) hours of becoming aware of the malfunction and shall repair immediately if possible. If immediate repair is not possible, The Colony agrees to perform and complete such repairs as soon thereafter as reasonably possible but, in any case, not later than ten (10) days after receipt of written notice from Lewisville. If The Colony fails to provide the service contemplated herein within said ten (10) days, such failure shall constitute an event of default, and Lewisville may terminate this Agreement by giving thirty (30) days notice. Notwithstanding the foregoing to the contrary, The Colony shall not be in default of this Agreement for failing to complete repairs within said ten (10) day period to the extent that repair or replacement cannot reasonably be completed within ten (10) days from the date of receipt of written notice so long as The Colony is reasonably diligent in pursuing completion of such repairs or replacement.

Section 5. Obligations of Lewisville.

- (a) Lewisville agrees to review the Traffic Signal plans and specifications within three (3) weeks of receipt each time they are submitted and provide comments back to The Colony for incorporation into the plans and specifications.
- (b) If Lewisville determines that construction inspection is necessary for the traffic poles and mast arms installed in Lewisville, those services will be provided by Lewisville at no cost to The Colony for this project. The assigned inspector will attend the pre-construction meeting and monthly meetings, as necessary.

- (c) Lewisville will allow at least two (2) Traffic Signal poles and foundations and associated underground conduit and/or electrical wiring/pull boxes to be located in Lewisville's right-of-way so that the project can be completed.
- (d) Once the Traffic Signal is installed and operational, if Lewisville needs to move a Traffic Signal pole and/or associated underground conduit, electric and/or pull boxes located in their right-of-way for a future project, Lewisville will design, manage, and fund the relocation and reinstallation of that necessary work and will allow The Colony to review associated plans for the needed modifications.

Section 6. Termination of Agreement.

This Agreement shall remain in effect as stated above, until such time as either party desires to amend or terminate this Agreement, with or without cause. Either party may terminate this Agreement, for any reason, or no reason, upon ninety (90) days prior written notice of the date of termination to the other party, except as otherwise specifically provided for herein. The written notice of termination shall be mailed to the below-noted addresses via U.S. certified mail, postage prepaid and return receipt requested, and the date of mailing shall be deemed the date of the postmark. Upon notice of the desire to terminate or amend the Agreement, both parties may negotiate any mutually satisfactory amendment or renewal of the Agreement.

In the event of early termination of this Agreement by Lewisville, Lewisville will remove the Traffic Signal and all equipment located within the City of Lewisville in a timely manner, at its expense, and will return said Traffic Signal and equipment to the City of The Colony. In the event of early termination of this Agreement by The Colony, The Colony will remove the Traffic Signal and all equipment located in both cities in a timely manner at its expense. In the case of such removal, Lewisville grants The Colony permission to remove said Traffic Signal and equipment within Lewisville's jurisdiction.

Section 7. Miscellaneous Provisions. The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.

- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Colony warrants and represents that the individual executing this Agreement on behalf of The Colony has full authority to execute this Agreement and bind The Colony to the same. Lewisville warrants and represents that the individual executing this Agreement on Lewisville's behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (h) **Immunity and Defenses; Hold Harmless.** It is expressly understood and agreed that, in the execution of this Agreement, no 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. Each party shall be responsible for its sole negligence or its percentage of concurrent negligence, for any actual damages or losses suffered by the other or a third party, arising from any breakdown, malfunction, failure, use or loss of use of the Traffic Signal, however caused. This shall apply to all cases of negligence of either Party, their respective officers, employees, agents, contractors or otherwise. Notwithstanding the foregoing to the contrary, nothing herein shall be construed as a waiver by either party of any defense or immunity available to said Party with respect to any damage or injury relating to the Party's performance pursuant to this Agreement.
- (i) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow)

or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to The Colony: The City of The Colony, Texas
6800 Main Street
The Colony, Texas 75056

Attn: Ron Hartline
Telephone: 972-624-3109

if to Lewisville: The City of Lewisville, Texas
151 W. Church Street
Lewisville, Texas 75057

Attn: _____
Telephone: 972-219-3400

- (j) **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 have 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.
- (k) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

[The Remainder of this Page Intentionally Left Blank]

APPROVED by The City Council of The City of The Colony, Texas, in its meeting held on the ____ day of _____, 2021, and executed by its authorized representative.

CITY OF THE COLONY, TEXAS,
A Texas home-rule municipality

By: Joe McCourry
Joe McCourry, Mayor

ATTEST:

Tina Stewart
Tina Stewart, City Secretary

APPROVED AS TO FORM:

Jeff Moore
Jeff Moore, City Attorney



APPROVED by The City Council of The City of Lewisville, Texas, in its meeting held on the ____ day of _____, 2021, and executed by its authorized representative.

CITY OF LEWISVILLE, TEXAS,
A Texas home-rule municipality

By: _____
TJ Gilmore , Mayor

ATTEST:

Julie Worster, City Secretary

APPROVED AS TO FORM:

Liz Plaster, City Attorney