

MEMORANDUM

TO: Michelle Small, Secretary

FROM: Denise Hosack, Records Management Technician

DATE: October 23, 2013

SUBJECT: Interlocal Cooperation Agreement with the City of Carrollton Related to Funding, Design and Construction of Roadway Improvements for Corporate Drive Segment 5 (Carrollton Parkway) From Holfords Prairie Road to FM 2281 (Old Denton Road)

Attached are two executed copies of the above mentioned agreement that was approved by City Council on October 21, 2013, Item #D2. The City Secretary's Office is the department of record for this agreement and it will be scanned into the City's records management software after signatures are received from the other parties. Please **return** the original stamped "Official File Copy" to my attention at the City Secretary's Office after the final signatures from the other party are obtained. If you have any questions, please feel free to call.

**INTERLOCAL AGREEMENT BETWEEN THE
CITY OF CARROLLTON, TEXAS AND THE CITY OF LEWISVILLE, TEXAS
REGARDING DESIGN & CONSTRUCTION FOR CARROLLTON PARKWAY
(CORPORATE DRIVE SEGMENT #5)**

THIS AGREEMENT is made, entered into and executed by and between the City of Carrollton, Texas, a duly incorporated municipality, hereinafter “Carrollton” and the City of Lewisville, Texas, a duly incorporated municipality, hereinafter “Lewisville.” Carrollton and Lewisville are collectively referred to herein as “the Parties.”

WHEREAS, the Interlocal Cooperation Act, Texas Government Code Chapter 791, hereinafter “the Act,” provides authorization for a local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act and Carrollton and Lewisville mutually agree to be subject to the provisions of the Act; and

WHEREAS, the City of Lewisville has received a grant to design and construct Corporate Drive from Waters Ridge Drive to Trinity Drive (the “Regional Project”) as depicted in exhibit “B”; and

WHEREAS, Lewisville and Denton County has entered into Interlocal Cooperative Agreements to cost share the local match required by the grant; and

WHEREAS, a portion of the Regional Project requires the City to design and construct the alignment of Carrollton Parkway between Holfords Prairie Road and FM 2281 (Corporate Drive Segment #5) as depicted in Exhibit “A” and hereinafter referred to as “the Road” or “the Project”; and

WHEREAS, the road is partially located within Carrollton city limits; and

WHEREAS, the construction of the road will provide greater regional connectivity and will benefit the public and citizens of both Carrollton and Lewisville; and

WHEREAS, Carrollton desires and gives full consent for Lewisville to build the road within Carrollton city limits under the terms and conditions provided herein.

NOW, THEREFORE, this Agreement is hereby made and entered into by Carrollton and Lewisville upon and for the mutual consideration stated herein:

I. Findings Incorporated. All of the findings set forth above are incorporated into the body of this Agreement as if fully set forth herein.

II. Interlocal Contracting Authority. Pursuant to Texas Government Code §791.011, Carrollton and Lewisville hereby enter into this Agreement in order to perform certain governmental functions and services in the area of streets, and roads. The purpose of this Agreement is to provide a governmental function or service that each party is authorized to perform individually. Each party paying for the performance of services shall make those payments from current revenues available to the paying party.

III. Hiring Consultant and Preparation and Approval of Construction Plans and Project Specifications. Lewisville shall contract with a qualified consultant acceptable to both Parties to design, prepare construction plans and prepare bid specifications for the Project. Lewisville will select a consultant through a Request for Qualifications process and will notify Carrollton of the results of such selection process. Carrollton shall be provided opportunity to review and comment on the selected consultant's qualifications prior to Lewisville City Council approving a Professional Services Agreement. Carrollton shall immediately notify Lewisville in writing, laying out any of Carrollton's concerns. Lewisville will take into consideration Carrollton's timely comments/concerns, to the extent allowed by law, and without relinquishing Lewisville's exclusive authority to select a design consultant for the project. Lewisville shall review and have the exclusive authority to approve the construction plans and specifications. Lewisville will provide an opportunity for Carrollton to review construction plans at the 30%, 60% and 100% design stages and to review technical specifications prior to bidding the construction. Carrollton shall provide timely review comments in writing regarding road improvements within Carrollton. Lewisville shall have such comments incorporated into the plans and specifications by the design consultant. Lewisville shall have the sole authority to approve and release all payments to the Consultant.

IV. Road Design. The road shall include the paved surface as well as associated drainage for a 4-lane divided concrete road and shall be designed to meet normal City of Carrollton standards with regard to pavement, drainage and right of way for the type and classification of the road.

Lewisville agrees to incorporate upgrades in the design and construction of the Project including utility installations as requested in writing by Carrollton. Such request for upgrades, however, must be made to Lewisville in writing at least 14 days prior to Consultant providing 100% complete design plans. Any additional actual costs relating to the design and construction of such upgrades shall be paid solely by Carrollton and shall be reimbursed to Lewisville in accordance with Sections VII and VIII of this Agreement.

V. Hiring Contractor. Upon receiving completed designs and specifications from the Consultant, Lewisville shall bid the construction of the Project in accordance with Texas law. Carrollton shall be furnished with a copy of the approved construction plans and Project specifications prior to Lewisville accepting bids for such work. City of Carrollton will be notified at least 48 hours in advance of the pre-bid and pre-construction meetings. Lewisville shall have the sole authority to review and accept the competitive bids for the Project. Carrollton will be provided a copy of the bid tabulations and shall be provided opportunity to review and comment on such bid tabulations prior to Lewisville City Council accepting such bid. Carrollton shall immediately notify Lewisville in writing, laying out any of Carrollton's concerns. Lewisville will take into consideration Carrollton's timely comments/concerns, to the extent allowed by law, and without relinquishing Lewisville's exclusive authority to award the bid to the successful contractor (the "Contractor").

VI. Inspections of Contractor's Work. Lewisville shall perform all Project inspections for the Project, however, the City of Carrollton may provide oversight of the construction as needed and shall immediately notify Lewisville if it determines that any portion of the work within Carrollton city limits performed by the Contractor is not consistent with the approved construction plans and/or Project specifications. Lewisville will take into consideration Carrollton's timely comments/concerns, to the extent allowed by law, and without relinquishing Lewisville's exclusive authority to administer the contract and accept the road improvements. Lewisville shall notify Carrollton of any scheduled meetings with the Contractor at least 48 hours in advance or with as much advance notice as reasonably possible for unscheduled or more impromptu meetings.

Lewisville shall have the sole authority to approve payments to the Contractor hired to complete the Project. Lewisville agrees not to make final acceptance of the Project until Carrollton provides their consent in writing. If Lewisville considers Carrollton to be unreasonable, negligent or reckless with regard to their oversight and subsequent requests, Lewisville will make all reasonable attempts to resolve such differences prior to final acceptance of the Project. Notwithstanding anything to the contrary, Carrollton shall in no way impede Lewisville from meeting its legal obligations to the Contractor.

VII. Estimated Cost and General Reimbursement Obligation. The estimated cost of the Road is THREE MILLION SIX HUNDRED AND NINE THOUSAND TWO HUNDRED AND FIFTY SIX and 00/100 DOLLARS (\$3,609,256.00) (excluding cost of any requested upgrades to the road by Carrollton and agreed to by Lewisville). The actual cost shall be the total expense as paid by Lewisville to its Consultant and Contractor for the completion of the Project, including but not limited to any over-run costs. Actual costs may exceed the estimated cost, and under no circumstance shall Lewisville fund any portion of the actual costs allocated to Carrollton without receiving subsequent reimbursement from Carrollton. Carrollton shall reimburse Lewisville for:

- One hundred percent (100%) of the actual costs for any upgrades to the road including utility installation requested by Carrollton in writing and agreed to in writing by Lewisville including additional design costs for such upgrades.

VIII. Invoicing and Reimbursement. Lewisville shall pay its Consultant and Contractor as it is invoiced throughout the Project. Upon completion of the Project, Lewisville shall submit an invoice for reimbursement based on the reimbursement requirement set forth above to Carrollton, Cesar Molina, Director of Engineering, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011-0535. Carrollton shall remit full payment of the invoiced amounts within thirty (30) calendar days of receipt of the invoice, provided that all expenditures were made in a manner which is consistent with the terms of this Agreement.

VIV. Maintenance of Improvements.

Upon completion of the Project, Carrollton shall be financially responsible for any and all required maintenance, replacement, and repair of all those portions of the road and any related appurtenances thereto that are located within Carrollton's city limits with the exception of workmanship and warranty items covered by the Contractor's maintenance bond for the duration of the bond's maintenance period. In the event that a Contractor and/or subcontractor refuses to pay for maintenance, replacement, and/or repair, under no circumstance shall Lewisville be held liable for such maintenance, replacement, and/or repair. **Carrollton releases Lewisville of any such liability relating to the maintenance, replacement, and/or repair of all portions of the road and any related appurtenances thereto that are located within Carrollton's city limits.**

Nothing contained in this Section shall prevent either party from filing a claim against the Contractor and/or subcontractor or the Contractor's and/or subcontractor's insurance companies. Nor shall it prevent Lewisville from filing a claim against any applicable bond.

X. Authority to Enter and Work in Carrollton Street ROW. Lewisville shall notify Carrollton when the Contractor will begin construction of the Project and will provide Carrollton with an estimated time of completion (as provided by the Contractor). Carrollton hereby grants Lewisville

and its Contractor authority to enter Carrollton street right-of-way to complete the Project per the approved construction plans and Project specifications.

XI. Adequate Consideration. The consideration set forth herein is deemed adequate consideration for the obligations exchanged by the Parties herein.

XII. Audit. Upon satisfactory completion of the Project and request by either of the Parties, Carrollton and Lewisville shall prepare and complete a full audit of the Project.

XIII. Termination. This Agreement may only be terminated prior to Lewisville hiring the Consultant or Contractor for the Project. Prior to such hiring, this Agreement may only be terminated upon either party providing thirty (30) days written notice of termination to the other party.

XIV. Notices. This Agreement represents the entire integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, either oral or written. This Agreement may be amended only in writing, signed by both of the Parties. Notices shall be directed as follows:

For Lewisville: Claude King, City Manager
City of Lewisville, Texas
151 W. Church Street
Lewisville, Texas 75057

Copy To: Ms. Julie Heinze, City Secretary
City of Lewisville, Texas
151 W. Church Street
Lewisville, Texas 75057

For Carrollton: Leonard Martin, City Manager
City of Carrollton, Texas
P.O. Box 110535
Carrollton, Texas, 75011-0535

Copy To: Cesar Molina
Director of Engineer
City of Carrollton
P.O. Box 110535
Carrollton, TX 75011-0535

XV. Venue and Jurisdiction. The covenants, terms and conditions herein are to be construed under the laws of the State of Texas and are performable by the Parties in Denton County, Texas. The Parties mutually agree that venue for any obligation arising under this Agreement shall lie in Denton County, Texas.

XVI. Carrollton Representations. Carrollton agrees and understands that Carrollton, its employees, servants, agents or representatives shall at no time represent themselves to be employees, servants, agents or representatives of Lewisville.

XVII. Lewisville Representations. Lewisville agrees and understands that Lewisville, its employees, servants, agents or representatives shall at no time represent themselves to be employees, servants, agents or representatives of Carrollton.

XVIII. Authority, Responsibility, and Hold Harmless. The Parties agree to retain full responsibility for the acts, negligence, and/or omissions of their own employees. Carrollton, however, agrees to release and hold Lewisville harmless to the extent allowable by state law for the performance and/or work of the Consultant, Contractor, and any subcontractors related to the Project. Carrollton further agrees to release and hold Lewisville harmless to the extent allowable by state law for any current or future flaws, failures, errors, and/or omissions relating to the design, construction, geometry and/or effectiveness of the Project. Any future claim by Carrollton shall be made against the Consultant, Contractor, and/or any subcontractors, rather than against the City of Lewisville. Although Lewisville shall not be financially responsible for repairing, replacing, or mitigating any portion of the Project whose maintenance is allocated to Carrollton in Section VIV of this Agreement, Lewisville shall work with Carrollton to bring any necessary and reasonable claims against the relevant maintenance bonds.

Lewisville shall require its Consultant, Contractor, and any subcontractors that work on the Project to indemnify both Parties against any third party claims, damages, losses, causes of action, suits, judgments, expenses including but not limited to attorney fees arising out of or resulting from the work performed on the Project. Lewisville shall also require its Consultant, Contractor, and any subcontractors to list both Parties as additional insured on any required insurance policies. Further, it is understood and agreed that a Texas city cannot validly indemnify pursuant to the Texas constitution.

XIX. Sovereign Immunity. This Agreement is not intended to extend the liability of the Parties beyond that provided for by law. Neither Carrollton nor Lewisville waive, nor shall be deemed to have hereby waived, any immunity or defense that would otherwise be available to it against claims made by third parties.

XX. Severability. In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the Parties hereto that the remaining portions shall remain valid and in full force and effect to the fullest extent possible.

XXI. Authority. The undersigned officers or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto, and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

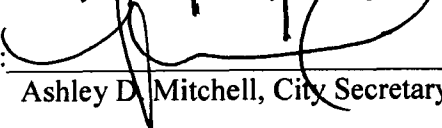
XXII. Effective Date. This Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed and the term of this Agreement is for the life of the Project beginning on the date of execution of this Agreement and continuing until the Project is completed.

[SIGNATURES ON FOLLOWING PAGE]

Executed this 21st day of October, 2013.

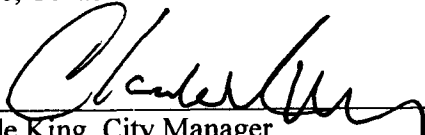
CITY OF CARROLLTON, TEXAS,
P.O. Box 110535
Carrollton, Texas 75011-0535

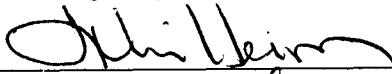
By: 
Marc Guy, Assistant City Manager

Attest: 
By: Ashley D. Mitchell, City Secretary



CITY OF LEWISVILLE, TEXAS
151 W. Church Street
Lewisville, Texas 75057

By: 
Claude King, City Manager

Attest: 
By: Julie Heinze, City Secretary

Approved as to form: 
Liz Plaster, City Attorney

Exhibit A
Description/Depiction of the Road



Corporate Drive

 Segment 5

Exhibit A - Segment 5

Carrollton Parkway
From Holford's Prairie Road
to Old Denton Rd. (F. M. 2281)

