

STATE OF TEXAS §
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COUNTY OF TARRANT §

**First Amended and Restated Interlocal Cooperation Agreement
for Wichita Street Widening Project**

This First Amended and Restated Interlocal Cooperation Agreement for the Wichita Street Widening Project (“Amended Agreement”) is made and entered as of the Effective Date by and between the City of Everman, Texas (“Everman”), a Texas home rule municipality, and the City of Forest Hill, Texas (“Forest Hill”), a Texas home rule municipality. Everman and Forest Hill are sometimes referred to in this Amended Agreement together as the “Parties” and each individually as a “Party.”

Recitals:

WHEREAS, a public road commonly referred to by the Parties as Wichita Street is located within the incorporated limits of the Parties; and

WHEREAS, Forest Hill has entered into that certain *Funding Interlocal Agreement for Wichita Street Widening* between Forest Hill and Tarrant County (“County”) dated and effective December 13, 2022, (“the County ILA”) setting forth the agreement between Forest Hill and County regarding the funding, right-of-way acquisition, utility relocations, and construction associated with the widening and reconstruction of Wichita Street from an existing 2-lane asphalt roadway, from IH-20 to Roy Brooks Boulevard, into a 5-lane undivided curb and gutter roadway with continuous median turn-lane and improvements that will also include drainage improvements to the north fork of South Creek and South Creek crossings with an enclosed stormwater system to minimize current flooding conditions and traffic signalization, illumination, and a 10-foot shared-use path (“the Project”); and

WHEREAS, pursuant to the provisions of the County ILA, County has agreed to provide funds up to the amount of \$11,100,000.00 for construction to be paid to Forest Hill on a reimbursement basis toward the cost of construction of the Project (this does not include up to \$700,000.00 which County will pay for right-of-way acquisitions to be conducted by County); and

WHEREAS, County is separately funding design of the Project; and

WHEREAS, the County ILA acknowledges that Forest Hill will pay \$2,390,000.00 toward the cost of the Project; and

WHEREAS, the Parties acknowledge that the cooperation of the Parties for the Project will serve the public safety and welfare of the citizens of both Forest Hill and Everman; and

WHEREAS, the Parties desired to set forth their agreement regarding their respective responsibilities relating to the Project as required by the County ILA; and

WHEREAS, the Texas Interlocal Cooperation Act (Chapter 791, Texas Govt. Code, as amended) authorizes Texas municipalities and other local governments to contract with one

another to perform governmental functions and services, including all or part of a function or service in public health and welfare, streets, roads, drainage, engineering, and other governmental functions in which such local governments are mutually interested; and

WHEREAS, on February 7, 2021, the City of Forest Hill and the City of Everman approved and entered into an Interlocal Agreement for Wichita Street Widening Project (the “Agreement”); and

WHEREAS, thereafter certain amendments to the language of the Agreement were deemed necessary by the County, the same being set forth in this First Amended and Restated Interlocal Agreement for Wichita Street Widening Project;

NOW, THEREFORE, for and in consideration of the above and foregoing recitals, the mutual benefits and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that this First Amended and Restated Interlocal Agreement for Wichita Street Widening Project is entered into by and between the City of Forest Hill and the City of Everman, to read in its entirety as follows:

Section 1. Project Construction. The Parties understand, acknowledge, and agree that construction and acceptance of the Project requires certain steps for completion, including, but not limited to, design, bidding, construction, and payment, and the same shall be in accordance with the following:

- A. The Parties understand, acknowledge, and agree that the County has contracted with DEC-North Texas, LLC, a professional engineering firm which employs professional engineers registered in the State of Texas (“Engineer”), to perform and provide the design and engineering work and other services relating to the Project, including the creation of the plans and specifications for the construction and/or installation of the Project (“the Project Plans”) and that Engineer will present Project Plans to Forest Hill for review and approval.
- B. Forest Hill shall not authorize approval of and/or changes to the Project Plans which either (i) change any portion of the Project located within Everman’s incorporated limits or (ii) which will result in a change order that increases the time for construction of the Project without the prior written consent of Everman.
- C. The Parties acknowledge that once the Project Plans are complete, Forest Hill will competitively procure and award the contract for the Project to the Contractor selected (the “Contractor”), all in accordance with state law. Forest Hill represents and warrants that the process for selecting the Contractor to construct the Project shall be in compliance with the requirements for obtaining competitive bids for public works projects. In reliance on the foregoing representation, Everman hereby consents to and approves the awarding of the contract for the Project.
- D. The Parties agree that the construction contract to be awarded for the Project and executed by Forest Hill and the Contractor shall at all times require and provide, among other things, that:

- (1) The Contractor shall obtain from each of the Parties all permits required by the respective Party to construct the Project and comply with all applicable ordinances, codes, rules and regulations of the Party in whose incorporated limits the applicable portion of the Project is being performed;
- (2) For any change order affecting a portion of the Project located within Everman's incorporated limits, such change order, to be effective, shall require the signature of both Everman and Forest Hill. If approval by one Party of some item or matter is required hereunder or is requested by the other Party, the Party to whom the request is made will not unreasonably withhold, delay, or condition its response to such request;
- (3) All insurance policies held by the Contractor that are endorsed to name Forest Hill as an additional insured shall also name Everman as an additional insured;
- (4) Indemnity obligations of the Contractor that are made in favor of Forest Hill (and its officials, officers, employees, and agents) shall also be made in favor of Everman (and its respective officials, officers, employees, and agents); and
- (5) The performance bond and payment bond provided by the Contractor in accordance with law, shall name Everman, in addition to Forest Hill, as a beneficiary on such bonds.

E. Everman hereby agrees that County may and by this Agreement provides authority to County to acquire rights-of-way located within Everman's incorporated limits for the Project and agrees that it will accept conveyance of the rights-of-way from County.

F. Everman hereby agrees that Forest Hill may and by this Agreement provides Forest Hill with authority to make the improvements to Wichita Street within Everman's incorporated limits.

G. Upon the completion of the Project, Everman will be given such plans, drawings, materials, and other documents as are applicable to the portion of the Project located with Everman's incorporated limits.

Section 2. Representatives. Each Party will designate in writing to the other Party a representative to represent the respective Party in connection with and regarding this Agreement. As of the Effective Date, for Forest Hill, that person is the Interim City Manager Venus Wehle, or her designee and for the City of Everman, that person is City Manager Craig Spencer or his designee. These designations may be changed at any time by the respective Party by providing notice to the other Party.

Section 3. Miscellaneous.

A. *Payment from Current Revenues.* Each Party paying for the performance of the governmental functions and services described in this Agreement shall make those payments from current revenues available to the paying Party.

B. *Notices.* Any notices or other communication required to be provided to a Party in this Agreement shall be in writing, addressed as provided hereinafter to the Party to whom the notice or other communication is given, and shall be either (i) delivered personally (hand-delivered), (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; 72 hours after deposit in the United States mail if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier to be delivered overnight. Addresses for notices and/or other communications are as follows:

To Forest Hill:

City of Forest Hill
3219 E. California Pkwy
Forest Hill, Texas 76119
Attn: City Manager

To Everman:

City of Everman
121 N. Race Street
Everman, Texas 76102
Attn: City Manager

The addresses and persons to whose attention a notice or communication is sent may be changed by giving notice of such change in the manner herein provided for giving notice.

C. *Governing Law, Venue.* This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings between the Parties relating to this Agreement shall be maintained in the state courts of Tarrant County, Texas, which courts shall have exclusive jurisdiction for such purpose.

D. *Responsibility.* To the extent allowed by law, and without waiving any immunity (governmental or otherwise) available to the Parties under Texas law, or any other defenses the Parties are able to assert under Texas law, each Party agrees to be responsible for its own negligent or intentional acts or omissions in the course of performance of this Agreement.

E. *No Waiver of Immunity.* Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Parties, their officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit. 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 any persons or entities who are not parties to this Agreement.

F. *Relationship.* It is understood and agreed that the relationship between the Parties described in this Agreement is contractual in nature between independent Parties and does not constitute, and shall not be construed, as creating a partnership or joint venture relationship between the Parties. 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 any individual or entity that is not a signatory hereto

G. *Entire Agreement.* This Agreement represents the entire agreement between the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

H. *Exhibits; Recitals.* All exhibits, if any, to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same. The above and foregoing recitals to this Agreement are incorporated into and made a part of this Agreement for all purposes.

I. *Amendment.* This Agreement may be only be amended by the mutual written agreement of the Parties.

J. *Headings; "Includes."* The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

K. *Severability.* The sections, subsection, and all provisions and portions of this Agreement are severable, and if any section, subsection, or other provision or portion hereof is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such section, subsection, or other provision or portion shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable sections, subsection, or other provision or portion is not a part hereof, and the remaining sections, subsections, and other provisions and portions hereof shall remain in full force and effect.

L. *Assignment.* No Party may assign, transfer, or otherwise convey this Agreement, or any of its rights, duties, or obligations hereunder, without the prior written consent of the other Parties.

M. *Force Majeure.* No Party shall be liable to the other Parties for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the Party's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a Party is not legally responsible or which is not reasonably within its power to control. The affected Party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the Party shall endeavor to remove or overcome the inability claimed with reasonable dispatch.

N. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

O. *Authorized Signatories.* The person signing this Agreement on behalf of each Party has been properly authorized to sign this Agreement for that Party.

P. *Effective Date.* This Agreement shall be effective on the date when it has been signed by the authorized representatives of all of the Parties (“the Effective Date”).

(Signatures on Following Pages)

City of Everman Signature Page

SIGNED AND AGREED this _____ day of _____, 2023.

CITY OF EVERMAN, TEXAS

By: _____
Craig Spencer, City Manager

ATTEST:

Mindi Parks, City Secretary

APPROVED AS TO FORM:

John D. Oliver, Asst. City Attorney

City of Forest Hill Signature Page

SIGNED AND AGREED this ____ day of _____, 2023.

CITY OF FOREST HILL

By: _____
Venus Wehle, Interim City Manager/

ATTEST

Amy Anderson, City Secretary

APPROVED AS TO FORM

Courtney Goodman-Morris, Asst. City Attorney