

INTERLOCAL AGREEMENT BETWEEN

WALLER COUNTY AND

CITY OF PRAIRIE VIEW

This Interlocal Agreement (the “Agreement”) is made by and between Waller County, a political subdivision of the State of Texas (the “County”), and the City of Prairie View, a home rule municipality (the “City”). The County and City of Prairie View may be referred to individually as a “Party” or collectively as the “Parties.” This Agreement is made to be effective as of the date fully executed by both Parties.

RECITALS

WHEREAS, Section 791.028 authorizes a local government to contract with another local government to pay jointly all or part of the costs of a road project, including design, construction, utility adjustments, acquisition of interests in land required for or beneficial to the road project; and

WHEREAS, the Commissioners Court of the County and the City Council of Prairie View finds that the Project contemplated in this Agreement serves a public purpose; and

WHEREAS, Section 791.003(4)(A) of the Texas Government Code provides that a “municipality” such as City of Prairie View, is a “local government” for purposes of the Interlocal Cooperation Act, which Act has been codified as Chapter 791, as amended, Texas Government Code (“Chapter 791”); and

WHEREAS, Section 791.003(4)(A) of the Texas Government Code provides that a county, such as the County, is a “local government” for purposes of Chapter 791; and

WHEREAS, this Agreement shall constitute an interlocal cooperation agreement as authorized pursuant to the provisions of Chapter 791; and

WHEREAS, the Project, as defined in this Agreement, consists of roadway improvements and shared infrastructure designed to improve traffic flow, circulation, and drainage within the service area, with the specific scope and details to be determined and agreed upon by the County; and

WHEREAS, the Parties have determined and hereby represent that they are authorized and empowered to make, execute and deliver this Agreement; that the terms, conditions and provisions of this Agreement are mutually agreeable, fair and advantageous to the Parties; and that they desire to enter into this Agreement for the purpose of setting forth the specific terms and conditions upon which the Road Improvements and related shared infrastructure will be funded and constructed; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to both Parties, it is agreed as follows:

1) DEFINITIONS

- A) Project(s) means road improvements to the following roads: Cochran Road (approximately between Brumlow Road and Old Houston Highway), Flukinger Road (approximately between Owens Road and Cameron Road), Owens Road (approximately between University Road and 975 Linear Feet east of Briarmeadow Drive) and Richards Road (approximately between US 290 Bus to US 290). The Project(s) will reconstruct the existing two-lane roadway to meet current County standards for a two-lane roadway. This includes reconstruction of the road base and subgrade, placing a 3" asphalt overlay, adjust existing drainage features, relocate impacted utilities, and acquiring necessary right-of-way.
- B) Effective Date means the date on which this Agreement becomes valid and enforceable. The Effective Date of this Agreement is the date of the final signature.
- C) Road Improvements means the work and related activities to be performed by the County on the Projects, located within the County, as generally described in this Agreement and Exhibit A and as may be further detailed in future specifications or exhibits to be agreed upon by the Parties.

2) PURPOSE, RIGHTS, & DUTIES

- A) The purpose of this Agreement is to set forth the respective obligations of each Party regarding the Projects, including those portions located within the County and any associated shared infrastructure.
- B) County shall do the following:
 - i. Complete the Project design and construction in compliance with the applicable state and federal laws related to the Project. This responsibility shall include the entering into a contract for engineering design, inclusive of construction project phase services, construction inspection and testing services, managing the adjustment of utilities (Utilities is defined as gas, overhead power and telecommunications), and acquiring necessary right of way. Project shall be designed to County design standards. County will incorporate any reasonable comments by City. County will provide the City a copy of the final design plans used for bidding the Project.
 - ii. Bid and enter into a contract with the successful bidder. County will manage the construction of the Project. City will be allowed access to the construction site to review and provide comments to County. If the County Engineer determines that the deficiencies are actionable under the terms of the construction contract, County will work with the construction contractor to correct any City identified deficiencies. Upon completion of Projects and acceptance of Projects, City will maintain Projects per Section 2.F.

- C) City shall do the following:
- i. Allow the County and the Project contractors access to the Project site to construct the Project;
 - ii. Review an interim plan submittal within 30 days of receipt and provide comments. County will incorporate any reasonable comments into the final design plans.
 - iii. Pay County 15% of total project design cost plus the cost to construct the sidewalk along Richards Road, a total of \$381,000.00 as a contribution for the Projects. City will pay County within 90 days of construction completion for each Project as follows: (1) \$53,000.00 for Cochran Road, (2) \$75,000.00 for Flukinger Road, (3) \$125,000.00 for Owens Road, and (4) \$128,000.00 for Richards Road.
 - iv. In the event that a Utility is in the City right-of-way by permit, City shall transfer all City rights to the County for all utility relocations required for the Project. City will assist the County with any and all aspects of the Project that the City can legally provide.
 - v. City will maintain the Project upon completion.
- D) The Project has a total estimated cost of each roadway as follows: Cochran Road \$5,900,000.00, Flukinger Road \$5,000,000.00, Owens Road \$8,900,000.00, and Richards Road \$1,700,000.00, which includes design, construction, right-of-way acquisition, utility adjustments, and construction inspection and testing services. The Parties agree that Waller County shall be responsible for the costs of the Projects subject to the City payments in Art. 2(C)(iii). If City requests adjustments outside of County standard design, City will be responsible for the costs to implement request.
- E) The City will make available for the Project, all right-of-way, easements, and parcels in the vicinity of and necessary for the Project owned, acquired and/or controlled by the City.
- F) Upon completion of the Projects, the City will maintain the Projects, the exception for the Cochran Road project is the City will only maintain the portion within the City limits. This provision survives the termination of this Agreement.
- G) Ownership and use of work material
- i. All drawings, specifications, plans, computations, sketches, data, records, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by the County or any County subcontractors in connection with the services provided by the County under this Agreement (collectively, "Work Material"), are the sole property of the County. The County shall provide City all Work Material for the Project. The Work Material will not be used by any person or organization other than the Parties on other projects unless expressly authorized by the Parties in writing. To the extent permitted by law, the Work Material will not be used or published by either Party or any other party unless expressly authorized by both Parties in writing. To the extent permitted by law, the Parties will treat all Work Material

as confidential.

- H) Each Party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying Party.

3) **Miscellaneous**

- A) The County shall execute the Projects in a timely manner.
- B) The County shall allow the City to participate in the punch list process prior to issuing final acceptance or discharging the construction contractor. The County shall require the construction contractor to address punch list items, in accordance with the final plans, provided by the City.

4) **ASSIGNMENT**

Neither Party shall assign its rights or obligations under this Agreement.

5) **NOTICES**

All notices and communications permitted or required to be given under this Agreement will be in writing and will be deemed delivered in person or deposited in the United States mail, postage, prepaid, addressed as follows:

If formal notices to: **County**

Contact: Carbett "Trey" Duhon III

Title: Waller County Judge

Address: 836 Austin St., Hempstead, TX 77445

If routine notices to: **County**

Contact: J. Ross McCall, P.E.

Title: Waller County Engineer

Address: 775 Business US 290, Hempstead, TX 77445

If notices to: **City of Prairie View**

Contact: Nathan Alexander III

Title: Mayor

Address: 44500 business 290, Prairie View, Texas 77446

Any such notices will be either (a) sent by certified mail, return receipt requested, in which case such notice will be deemed delivered three (3) business days after the deposit thereof, postage prepaid, in the United States mail, or (b) sent by a nationally recognized overnight courier, in which case such notice will be deemed delivered upon actual receipt, or (c) delivered by hand delivery, in which case such notice will be deemed delivered upon receipt. The above address and email may be changed by written notice to the other Party; provided, however, that a notice of a

change of address will not be effective until actual receipt of such notice. Copies of notices are for informational purposes only; and a failure to give or receive copies of any notice will not be deemed a failure to give notice. If any notice, letter or information herein requires “actual receipt,” such notice, letter, or information will not be deemed received until the Party entitled to receive the same has physical possession of such notice, letter or information.

The term “business day” as used in this Agreement will mean a day that is not a Saturday, Sunday, or legal holiday in Waller County, Texas.

6) TERM

The term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of December 31, 2028, or completion of the work, unless renewed or earlier terminated as set forth herein. This Agreement is renewable upon written consent of both Parties.

7) TERMINATION

This Agreement may be terminated for cause by either Party upon ten (10) days’ prior written notice to the other Party. The defaulting Party shall have thirty (30) days to cure any default prior to the termination of the Agreement.

8) GOVERNING LAW

This Agreement and the rights and obligations arising hereunder will be governed by, construed and enforced in accordance with the laws of the State of Texas without regard to the conflicts or choice of law principles thereof.

9) NO WAIVER OF IMMUNITY

Nothing contained in this Agreement nor the execution of this Agreement, nor the performance of any obligation hereunder, will operate to or be deemed to waive any immunity or defense to which any County trustee, officer, employee, volunteer, representative, or agent may be entitled under law.

10) ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreement between the Parties.

By signing this Agreement, the authorities representing the Parties agree to the terms stated for their respective organizations.

11) MODIFICATION OF AGREEMENT

This Agreement may be modified or amended if the amendment is made in writing and is signed by both Parties.

12) SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable, provided that the terms, conditions, and underlying meaning of the Agreement may be carried out.

13) JURISDICTION; VENUE

The Parties irrevocably and unconditionally consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction located in Waller County, Texas, will be an appropriate and convenient place of venue and will be the sole and exclusive place of venue to resolve any dispute with respect to this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, County and City of Prairie View have caused their respective duly authorized representatives to execute, seal and deliver this Agreement, all as of the date of signature.

COUNTY:

CITY:

WALLER COUNTY

CITY OF PRAIRIE VIEW

Carbett "Trey" J. Duhon III, County Judge

Nathan Alexander III, Mayor

Date

Date

ATTEST:

Debbie Hollan, County Clerk

Approved:

J. Ross McCall, P.E., County Engineer