

INTERLOCAL AGREEMENT BETWEEN THE CITY OF WYLIE AND THE EAST FORK SPECIAL UTILITY DISTRICT CONCERNING WATERLINE IMPROVEMENTS ALONG E FM 544 FROM NORTH OF ALFRED DRIVE TO COUNTY LINE ROAD

WHEREAS, the City of Wylie, a Texas home-rule municipality ("City"), and the East Fork Special Utility District, a political subdivision of the State of Texas ("District"), desire to enter into this agreement ("Agreement") concerning the E. FM 544 Capital Improvement Program (CIP) Roadway Improvement Project from north of Alfred Drive to County Line Road ("Project") in Wylie, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the City and District have determined that the improvements may be constructed most economically by implementing this Agreement; and

WHEREAS, the City is providing roadway, utility, and pedestrian improvements to E. FM 544, from north of Alfred Drive to County Line Road; and

WHEREAS, the District is a retail public utility special district that owns and operates a water utility system; and

WHEREAS, portions of the District's waterline infrastructure are within the City's right-of way within the Project limits and require relocation afforded by the District; and

WHEREAS, portions of the Project overlay existing easements held by the District within the Project limits and certain water mains require relocation afforded by the City; and

WHEREAS, the functions and services contemplated to be performed by the Parties under this Agreement are governmental functions or services contemplated by the terms of the Act and are functions or services that each of the Parties hereto has independent authority to pursue, notwithstanding this Agreement; and

NOW, THEREFORE, this Agreement is made and entered into by the City and the District upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

The City shall arrange to construct improvements to the Project. The Project shall consist of constructing a 4-lane divided concrete roadway, a distance of approximately 6,600 feet, including construction of underground utilities and storm sewer. All utility improvements shall be designed to meet or exceed both the City's and District's design standards and shall be constructed in accordance with applicable codes, and approved plans and specifications. East Fork SUD

Standard Details shall be followed for all District facilities and the installation of all District facilities shall be inspected by District personnel.

ARTICLE II.

The City shall prepare plans and specifications for the improvements, accept bids, award a contract to construct the improvements, and administer the construction contract. In all such activities, the City shall comply with all statutory requirements applicable to a municipal public works project. Changes to Project waterline utilities, other than what was submitted for initial project acceptance by the District, must be reviewed and approved by the City and the District.

ARTICLE III.

The extent of each party's responsibilities is outlined in EXHIBIT 1. The City estimates the total actual cost of the Project to be sixteen million and thirty thousand dollars (\$16,030,000) ("Estimated Project Cost"). The District agrees to participate in the Project by allocating six hundred sixty nine thousand two hundred twenty dollars and twenty seven cents (\$669,220.27) (the "District Participation Amount") for the performance of the Project. The District shall remit one hundred percent (100%) of the District Participation Amount to the City after the execution of this Agreement and within thirty (30) days of the City submitting a written request for payment to the District.

As used herein, the terms "Estimated Project Cost" and "Actual Project Cost" may include land acquisition, engineering, construction, inspection, testing, and construction administration costs including contingencies.

ARTICLE IV.

See EXHIBIT 2. The District's participation in the Project shall not exceed six hundred sixty nine thousand two hundred twenty dollars and twenty seven cents (\$669,220.27) plus sixty-one percent (61%) of any additional costs associated with relocation or replacement of the existing District utility waterline infrastructure, as outlined in EXHIBIT 1.

ARTICLE V.

The City and District agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE VI.

The District shall not be liable for the repair of sidewalks, fencing or landscaping associated with or caused by the repairs to District's waterlines located in the public right-of-way.

ARTICLE VII.

VENUE. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Collin County, Texas and that exclusive venue shall lie in Collin County, Texas.

ARTICLE VIII.

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 having 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.

ARTICLE IX.

ENTIRE AGREEMENT; MISCELLANEOUS. This Agreement embodies the entire agreement between the parties and may only be modified in a writing executed by both parties. Each party shall take all necessary and appropriate actions to effectuate the terms of this Agreement. Nothing in this Agreement creates, or shall be deemed or construed to create: (1) a partnership or joint venture, (2) the relationship of employee-employer or principal-agent, or (3) any liability for one party with respect to liabilities, obligations or acts of the other or its employees or contractors, and neither party nor its employees or contractors will represent that any of them is employed by or has authority to bind the other party. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third-party beneficiaries by entering into this Agreement.

ARTICLE X.

SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this Agreement without the written consent of the other party.

ARTICLE XI.

IMMUNITY. It is expressly understood and agreed that, in the execution of this Agreement, neither 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.

ARTICLE XII.

EXPENSES FOR ENFORCEMENT. In the event either party hereto is required to employ an attorney to enforce the provisions of this Agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing party shall be entitled to recover from

the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including collection.

ARTICLE XIII.

FORCE MAJEURE. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

ARTICLE XIV.

TERM. This Agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This Agreement shall automatically renew annually during this period.

ARTICLE XV.

NOTICE. Except as otherwise provided for herein, any notice required to be sent under this Agreement must be in writing and may be served (i) by depositing it in the United States Mail, addressed to the party to be notified, postage pre-paid and certified with return receipt requested, or (ii) by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery, or (iii) by electronic mail. Notice given in accordance herewith shall be effective upon receipt by the addressee. For purposes of notice, the addresses of the parties are as follows:

To the City: City of Wylie
 Attn: City Manager
 300 Country Club Road
 Wylie, TX 75098
 Email: citymgr@wylietexas.gov
 cc: tim.porter@wylietexas.gov

To the District: East Fork SUD
 Attn: General Manager
 1355 Troy Road
 Wylie, Texas 75098
 Email: dana@eastforksud.com
 cc: edaniel@dunaway.com

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement.

EAST FORK SPECIAL UTILITY DISTRICT,
a political subdivision of the State of Texas

By: _____
Wayne Chumley, President

Date: _____, 2024

CITY OF WYLIE,
a Texas home-rule municipality

By: _____
Brent Parker, City Manager

Date: _____, 2024

EXHIBIT 1

(Project Plan and Extents of Responsibility)

EXHIBIT 2

(Outline and Table of Financial Responsibilities)