

COURT ORDER

Original

ORDER NO. 2012 1932

DATE: November 13, 2012

STATE OF TEXAS ¶

COUNTY OF DALLAS ¶

BE IT REMEMBERED, at a regular meeting of the Commissioners Court of Dallas County, Texas, held on the 13th day of November, 2012, on motion made by Dr. Elba Garcia, Commissioner of District #4, and seconded by Maurine Dickey, Commissioner of District #1, the following order was adopted:

- WHEREAS, the matter set forth below was briefed before Commissioners Court on November 6, 2012; and
- WHEREAS, Dallas County and the Town of Addison desire to enter into a **MASTER AGREEMENT governing the MAJOR CAPITAL IMPROVEMENT PROGRAM** which authorizes improvements, and
- WHEREAS, the attached agreement is consistent with the Dallas County Strategic Plan in that the project will result in street improvements which can be credited to **Vision 1**-Dallas County is a model interagency Partner, **Vision 3**-Dallas County is safe, secure and prepared, **Vision 4**-Dallas County proactively addresses critical regional issues, and **Vision 5**-Dallas County is the destination of choice for residents and businesses, and
- WHEREAS, the City has agreed to fulfill the responsibilities as defined in the **MASTER AGREEMENT** and participate with the **COUNTY** on at least a fifty/fifty basis for funding of the improvements submitted to the current and future "Call For Projects", and
- WHEREAS, the Director of Public Works recommends execution of the attached **MASTER AGREEMENT governing the MAJOR CAPITAL IMPROVEMENT PROGRAM** as described above.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Dallas County Commissioners Court that the Dallas County Judge is hereby authorized and directed to execute attached **MASTER AGREEMENT governing the MAJOR CAPITAL IMPROVEMENT PROGRAM** with the Town of Addison.

DONE IN OPEN COURT, this the 13th day of November, 2012.

[Signature]
Clay Lewis Jenkins, County Judge

[Signature]
Maurine Dickey, District #1

[Signature]
Mike Cantrell, District #2

[Signature]
John Wiley Price, District #3

[Signature]
Dr. Elba Garcia, District #4

Recommended For Approval:
[Signature]
Alberta Blair, P.E.,
Director of Public Works

**MASTER AGREEMENT GOVERNING
MAJOR CAPITAL IMPROVEMENT PROGRAM**

THIS MASTER AGREEMENT is made by and between the Town of Addison, Texas, hereinafter called "City" or "Town", and Dallas County, Texas, hereinafter called "County", acting by and through its duly authorized officials, which desire to enter into an Interlocal Agreement, hereinafter called "Master Agreement," for the purpose of Transportation Improvements on roads inside Dallas County that are on the North Central Texas Council of Government's Regional Thoroughfare Plan (the County and the Town are sometimes referred to herein together as the "parties" and individually as a "party").

WITNESSETH

WHEREAS, pursuant to Court Order 2002-1375, dated July 30, 2002, County Commissioners Court ("Commissioners Court") approved participation in Transportation Major Capital Improvement Program within the cities inside Dallas County; and

WHEREAS, the approved project lists may be modified, updated or approved by the Commissioners Court on a periodic, as-needed basis; and

WHEREAS, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into interlocal agreements to perform governmental functions and services, including, without limitation, functions and services for streets, roads, and drainage; and

NOW THEREFORE, THIS AGREEMENT is hereby made and entered into by City/Town and County for the mutual consideration stated herein and the said parties agree as follows:

ARTICLE I. DEFINITIONS

The following definitions are incorporated into this agreement for all purposes.

- A. **AMENDMENT** shall mean a written document executed by all parties detailing changes, additions or deletions in the Master Agreement.
- B. **AMENITY** shall mean Project features not included in the Standard Basic Project Design including but not limited to street pavers, colored concrete, planters, irrigation, decorative lighting, special signage, or any other feature above and beyond the Standard Basic Project Design or any increase in capacity in excess of County determined requirements based on anticipated future traffic flow.
- C. **CITY/TOWN** shall mean the City/Town of Addison, Dallas County, Texas.
- D. **CONTEXT SENSITIVE SOLUTIONS (CSS)** is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and

mobility. CSS is an approach that considers the total context within which a transportation improvement project will exist. CSS principles include the employment of early, continuous and meaningful involvement of the public and all stakeholders throughout the Project development process. It is the intent of Dallas County, through its Public Works Department, to use the essential elements of CSS in all approaches to deliver the Project. Some Projects will dictate very intense use of CSS, while others will only use a few of the elements, but the County will always consider CSS.

- E. **COUNTY** shall mean County of Dallas, State of Texas.
- F. **DIRECT PROJECT and PROGRAM COSTS** shall mean those costs that can be identified specifically with a particular Project or program cost objective. These costs generally include compensation of employees for the time devoted and identified specifically to the performance of the Project or program, cost of materials acquired, consumed or expended specifically for the purpose of the Project or program; equipment changes; damage claims and other approved capital expenditures; change orders; travel expenses incurred specifically to carry out the Project including, but not limited to, design, right-of-way, road or street drainage, utility relocation and adjustment and construction. Direct Project and Program Costs do not include either City/Town or County general overhead.
- G. **EFFECTIVE DATE** shall mean the date of the signature of the last person necessary for this **Master Agreement** to become effective (as set forth in Article II, below).
- H. **EXTRA TERRITORIAL JURISDICTION- (ETJ)** shall mean the unincorporated area outside the incorporated boundaries of the municipality as determined in Chapter 42 of the Texas Local Government Code, as amended.
- I. **FIVE PHASE PROJECT DELIVERY SYSTEM** shall mean the process for delivering a Project from conception to completion as detailed in Exhibit A, attached hereto and incorporated herein, and as well as any additions or supplements thereto. The five phases of the Five Phase Project Delivery System are planning, design, right of way, utility clearance, and construction.
- J. **FUNDING AGREEMENT** shall mean the agreement between the County and the City/Town to establish a preliminary proposed budget for a Project. As design is completed and the engineering estimate is refined, the Funding Agreement shall be incorporated into the Project Specific Agreement.
- K. **INDIRECT COSTS** shall mean those costs that benefit more than one Project and cannot be readily identified with a particular final Project or program cost objective. Their precise benefits to a specific Project are often difficult or impossible to trace.
- L. **IN-HOUSE PROJECT DELIVERY COSTS** shall mean all costs associated with the development of the Major Capital Improvement Program (MCIP) "Call for Projects", selection of Projects, scoping of Projects, Project design, property acquisition and construction of Projects. In-House Project Delivery Costs accounting shall include but are not limited to employee time reimbursement, materials, equipment and other expenditures necessary for the management and continuation of the MCIP.
- M. **INTERLOCAL AGREEMENTS** shall mean contracts or agreements entered into between City/Town and County in accordance with Texas Government Code Chapter 791.

- N. **LEAD AGENCY** shall mean that entity responsible for Project management, including, but not limited to planning, design, right-of-way acquisition, approved utility relocation or adjustment and construction, unless otherwise designated.
- O. **MASTER AGREEMENT** shall mean this document (entitled "Master Agreement Governing Major Capital Improvement Program") including all incorporated documents, attachments, and exhibits.
- P. **MEMORANDUM OF AGREEMENT (MOA)** shall mean a written document agreed to by each party which incorporates the results of the Preliminary Design Charrette.
- Q. **MULTI-MODAL CONNECTIVITY IMPROVEMENTS** shall mean Projects which comply with the concepts in the 2005 SAFETEA-LU Act, any amendments, or any future federal transportation acts which increase safety, accessibility, flexibility, efficiency, and enhance the integration and connectivity of the transportation system, across and between modes throughout the County for motorized and non-motorized users.
- R. **ORPHAN ROADS** shall mean all or part of a street or road right of way which are outside the incorporated limits of a municipality (or municipalities) and the incorporated area of the municipality (or municipalities) abuts or extends into the right of way. These roadway segments have, in effect, been "orphaned" by the abutting city/town (or cities) that they serve in that they have been left unincorporated. Thus the County has primary responsibility for maintenance, operation, enforcement, police and/or emergency services within these unincorporated rights of way.
- S. **PARCEL OR PARCELS** shall mean those portions or parts of land and improvements located either wholly or partially thereon, identified by County, City/Town or other stakeholder as required for right-of-way requirements of the Project. Such right-of-way shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- T. **PRELIMINARY CONCEPT CHARRETTE (PCC)** shall have the same meanings and purposes as the Preliminary Design Charrette, but be conducted very early in the design start, before substantial design is underway. The conditions for which a PCC is appropriate will be determined by the Lead Agency, but will usually be a greater uncertainty of what the road improvement will involve, the purposes, varying contexts (e.g. transit oriented development, recreational oriented development, industrial oriented development, etc.). Use of CSS will usually mean that a PCC will be conducted, since its use fits perfectly into CSS concepts. Other conditions encountered may dictate the use of a PCC, such as poor soils, presence of unconsolidated solid waste dumps, innovative integration of master planning with project delivery, unusual ROW challenges, budgetary constraints (thus calling for significant value engineering efforts), etc. The results of properly using a PCC will be that early consensus will be achieved on a basic approach to the Project design and construction, thus avoiding wasted design funding and loss of momentum for Project delivery.
- U. **PRELIMINARY DESIGN CHARRETTE (PDC)** shall mean a meeting of decision making stakeholders and other members of the Project team for the purpose of discussing feasible design alternatives, forging strong consensus among all stakeholders for the selected alternative, and entering into an MOA for the overall estimate, alignment and scope of the Project. The PDC will be scheduled when the Project preliminary design is complete or near completion. This means horizontal and vertical alignment alternatives have been designed, ROW requirements are at least approximately known for each alternative, and the design is 40% to 60% complete. The result of a PDC that is conducted with all the stakeholders present

is that the strong consensus achieved will help assure the Project is able to overcome any challenges with design completion, ROW acquisition, utility design and relocation, and finally, road construction.

- V. **PROJECT MANAGER** shall mean the person appointed by the Lead Agency who is assigned the primary duty for assuring Project Team coordination and timely Project delivery. There will be only one Project Manager assigned to a Project.
- W. **PROJECT TEAM** shall mean representatives from County, City/Town, and other stakeholders as may be mutually agreed upon by County, City/Town and stakeholders or otherwise with responsibility for delivering the completed Project.
- X. **PROJECT(S)** shall mean the proposed thoroughfare and Multi-Modal Connectivity Improvements approved by the Commissioners Court for inclusion in the transportation MCIP and approved by the City/Town.
- Y. **PROJECT DURATION** shall mean the active life of the Project. Project shall commence with the application for a Project by the City/Town and acceptance by the Dallas County Commissioners Court. Project shall be considered complete when construction has been fully completed and the one year maintenance period has expired or the Project has been terminated in accordance with Article IV of this Agreement.
- Z. **PROJECT SPECIFIC AGREEMENT or PROJECT SUPPLEMENTAL AGREEMENT (PSA)** shall mean an agreement subsequent to this Master Agreement which is entered into to establish the contractual rights and responsibilities of the City/Town and County as it relates to a particular Project. A PSA supersedes the MOA or Funding Agreements unless otherwise stated in the PSA.
- AA. **RIGHT OF WAY (ROW)** is a strip of land that is granted, through a ROW deed, an easement or other mechanism, for the Project. ROW shall mean that real property or property interest identified by County or City/Town as necessary for the construction of the Project, which shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- BB. **SCOPING SHEETS** shall be attached to each PSA. These sheets will set forth the design criteria to be used for the Project that is the subject of the Scoping Sheets, including the alignment, appropriate specifications, typical section and other parameters of the Project. As project goals and needs are more clearly defined the Scoping Sheets shall be updated and revised by the project manager to reflect current construction goals.
- CC. **STAKEHOLDERS** shall mean any entity that has an interest in the Project.
- DD. **STANDARD BASIC PROJECT DESIGN** shall mean the standard County-approved City/Town criteria for paving, bridges, drainage and appurtenances, traffic control items including pavement markings, warranted uniform signals, street light foundations, pull boxes, conduits, sidewalks, medians, storage/turn lanes, access, required structural retaining walls and standard driveways excluding road or street amenities, or such design criteria as may be mutually agreed upon in a Project Scoping Sheets.
- EE. **TxDOT** shall mean the Texas Department of Transportation.
- FF. **UTILITIES** shall mean each City/Town utility, public utility, common carrier, governmental or quasi-governmental facility, fiber optic facility, or other facility located within the limits of the Project by virtue of Texas or Federal law or agreement between an entity and the City/Town, County, or State of Texas.

- GG. **CITY/TOWN UTILITY** shall mean those Utilities owned or operated by City/Town which requires relocation or adjustment for the purpose of the construction of the Project as identified by Project plans.
- HH. **UTILITY IN PUBLIC RIGHT-OF-WAY** shall mean all Utilities located within the public ROW and within the limits of any governmental entity.
- II. **UTILITY IN PRIVATELY OWNED RIGHT-OF-WAY** shall mean all Utilities, excluding City/Town Utilities, whose facilities are located within a private easement.
- JJ. **UTILITY BETTERMENT** shall mean any increase in the capacity of any Utility's facility adjusted or relocated as a part of the Project as compared to the existing facility, or any upgrading of a Utility's facility above the standard practices, devices or materials, specified by the Utility and customarily used by City/Town or Utility on projects solely financed by City/Town or Utility. Provided, however, that any adjustments necessary to successfully accomplish the Project shall not be considered a Utility Betterment, and further, that any increase in the capacity of a Utility facility resulting solely from the replacement of devices or materials no longer regularly manufactured, processed or installed shall not be considered a Utility Betterment, provided that such replacement shall be only to the standard devices or materials currently used on other projects financed solely by City/Town or Utility. This meaning shall apply to utilities that are part of the Project as well as the standard basic street components (See "Standard Basic Project Design").

ARTICLE II. PERIOD OF THE AGREEMENT

This Master Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed (the date of such signing being the "Effective Date"). This Master Agreement shall expire ten years from the Effective Date unless terminated in accordance with Article IV.

ARTICLE III. AMENDMENTS

This Master Agreement may be amended with the mutual consent of the City/Town and County. Any amendment must be in writing and approved by the parties' respective governing bodies through either a Court Order from Commissioners Court or a City/Town Council Resolution.

ARTICLE IV. TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE MAJEURE

A. TERMINATION

- a. This Master Agreement may be terminated by any of the following:
 1. By expiration of the term of this Master Agreement.
 2. By either party, by notice in writing establishing the effective date of termination to the other party (the "defaulting party") as consequence of the defaulting party being in default of the provisions of this Master Agreement or any Project Supplemental Agreement or failure to timely provide funding, with proper

allowances being made for circumstances beyond the control of the defaulting party.

3. By either party with at least ninety days written notice to the other party.
 4. By mutual written consent and agreement of the County and the Town/City.
- b. Should either party terminate this Master Agreement as herein provided, all existing, fully executed Project Supplemental Agreements made under this Master Agreement shall not be terminated (except as may be authorized or allowed by the terms of any Project Supplemental Agreements) and shall automatically incorporate all the provisions of this Master Agreement.
 - c. In the event that any Project Supplemental Agreement is terminated prior to completion of the Project, no additional Direct Project and Program Costs shall be incurred other than Direct Project and Program Costs due and payable at the time of termination for services actually performed or that shall become due and payable due to such termination. The Lead Agency, to the extent permitted, may terminate all Project contracts, unless written notice is given by either party to the other of its intent to complete the Project, and prepare a final accounting for the Project.
 - d. If the Project is terminated by the City/Town prior to the award of any construction contract and the Project is located within the City/Town limits, City/Town shall pay to County the full amount of Direct Project and Program Costs expended by County on the Project and County shall transfer to City/Town its rights and all deliverables that it may be entitled to receive under the existing professional services or other Project contracts or agreements. Such amount shall be included in the final accounting for the Project. Such amount shall be due and payable in full ninety (90) days subsequent to the termination, or thirty days subsequent to delivery of final accounting.
 - e. Once the construction contract for a Project has been awarded by the governing body of the Lead Agency, except upon the written agreement of the parties or as otherwise set forth herein or in a PSA, the PSA for that Project cannot be terminated until completion of the construction.
 - f. In the event that a Project is terminated prior to the award of the construction contract, either party may, upon written notice to the other party, take over the anticipated work for the terminated Project and prosecute the work to completion by contract or otherwise at its sole cost and expense. In the event that the party so completing the work (the "Completing Party") is not the Lead Agency, it is agreed that the Project Manager will furnish to the Completing Party a listing of current records pertaining to any outstanding obligations or other records or information required by any Project contract, including any work order, or requested in writing by Completing Party in either printed or electronic format or both. If the Completing Party is not the Lead Agency, the Lead Agency agrees to reasonably cooperate with the Completing Party (but such cooperation shall not require the Lead Agency to expend any funds). If the Completing Party is not the Lead Agency, the Lead Agency will use its best efforts to transfer to the Completing Party all contracts regarding the Project. Obligations under such contracts shall become the sole obligation of the Completing Party upon transfer. The Completing Party agrees to timely pay all future obligations under such contract as they become due and payable. The Completing Party hereby releases the Lead Agency from any and all liability under such assigned contracts subsequent to date of transfer, effective upon the transfer date. If the Completing Party is not the Lead Agency, the Lead Agency shall exercise its best efforts to insure a transition of services without interruption.

Either party shall have the right to retain copies of all data, information, engineering, studies, or other items produced to the date of termination.

- g. Provisions b. through g. of this section A. of Article IV. shall survive the termination of this Master Agreement and any PSA and shall be a continuing obligation until the transition of services, all payments made and the Projects are complete. All items listed or required in this provision shall be furnished by Lead Agency to Completing Party without additional cost or expense to Completing Party.

B. FORCE MAJEURE:

Neither County nor City/Town shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reason of, for or through strikes, stoppage or shortage of labor, failure of transportation, riot, fire, flood, invasion, insurrection, accident, order of court, judge or civil authority, an act of God, or any other cause reasonably beyond the party's control and not attributable to its neglect. In the event of such an occurrence, the time for performance of such obligations or duty shall be suspended until such time that such inability to perform shall be removed. The party claiming the suspension shall give written notice of such impediment or delay in performance to the other party within ten (10) days of the notifying party's actual knowledge of such occurrence (but a failure to give such notice within the said time period shall not affect the suspension of the period of time to perform). Each party shall make reasonable efforts to mitigate the effects of any suspension. The provisions of this Article IV section B shall survive the termination of this Master Agreement.

ARTICLE V. LIABILITY FOR ACTS AND OMISSIONS

County and City/Town agree that both County and City/Town shall each be responsible for their own negligent acts or omissions or other tortious or non-tortious conduct in the course of performance of this Master Agreement without waiving any sovereign or governmental immunity available to either County or City/Town under Texas or other law (including, without limitation, the Texas Constitution) and without waiving any available defenses or tort limitation under Texas or other law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. The provisions of this Article V shall survive the termination of this Master Agreement.

ARTICLE VI. LEAD AGENCY

- A. Lead Agency shall be that entity which is responsible for the Project from conception through to completion of construction. City/Town and County may choose for County to manage a Project through design and construction and for City/Town to acquire ROW.
- B. In the event that the City/Town is the Lead Agency, the City/Town shall:
 - a. Provide Project management and leadership from Project selection to construction completion following the Five Phase Project Delivery System as detailed in Exhibit A, attached hereto, and as well as any additions or supplements thereto;
 - b. Lead Agency shall be responsible for hosting the Preliminary Concept Charrettes and or Preliminary Design Charrettes and neighborhood public workshops;

- c. Acquire ROW necessary for the Project;
 - d. Enter into or obtain whatever agreements or permits are necessary for Project completion;
 - e. Provide County with opportunity for significant input in plan development and periodic progress reviews; and
 - f. Provide records for periodic auditing for either financial accounting or engineering accounting or both.
- C. For City/Town-led Projects in which the City/Town is considering to specify transportation infrastructure elements exceeding the Standard Basic Project Design criteria, County funding will only be eligible to the Standard Basic Project Design criteria unless the City/Town and County have arrived at mutual agreement through involvement of the County during the initial design phases including the design partnering kick-off meeting and as necessary the Preliminary Concept Charrette and Preliminary Design Charrette meetings.

ARTICLE VII. CITY/TOWN COVENANTS

The City/Town covenants and agrees as follows:

- A. To execute with reasonable promptness the necessary agreements for the implementation of design and construction of the Projects mutually agreed upon and incorporated herein by a PSA.
- B. To provide a City/Town Council resolution adopting approved preferred alignment, proposed estimated budget, and commitment to meet Project funding for each milestone as specified herein or in the Funding Agreement and/or PSA.
- C. To provide a City/Town Council resolution adopting the subdivision regulation in the ETJ as defined in Article XVII below.
- D. City/Town agrees to share the funding of each Project with County on an equal share basis of 50%/50% (or an otherwise agreed cost sharing arrangement as may be specified in a Funding Agreement and/or PSA) with the following exclusions:
 - a. City/Town shall bear the entire cost of:
 - 1. City/Town owned utilities relocation or adjustment such as water and sanitary sewer facilities, except utility adjustments directly attributable to storm sewer improvement conflicts;
 - 2. Amenities including but not limited to street pavers, colored concrete, planters, decorative lighting, special signage, or any other feature over the Standard Basic Project Design;
 - 3. Utility Betterments
 - 4. Direct Project and Program Costs of City/Town when it is fulfilling the role of Lead Agency unless Direct Project and Program Costs are supported by a detailed hourly accounting system equal to County's accounting system.
 - 5. City/Town Indirect Costs.
- E. When mutual written agreement has been reached as to a Project's concepts, design elements and limits by County and City/Town at (or within a reasonable period of time following) a PDC, City/Town agrees, subject to applicable law, to seek to acquire ROW required for the designated Project by voluntary dedication, the subdivision platting process, or other legal means, and to seek

to ensure through the building permitting process that setback requirements are imposed to limit encroachment upon the required ROW. City/Town agrees to fund ROW not acquired, but reasonably expected to be acquired. City/Town also agrees to fund the removal of improvements that are encroachments within existing or proposed ROW areas.

- F. In the event any proposed use of the Project ROW will conflict with the proposed Project and City/Town is unable to obtain such ROW (the “conflicting parcel”) as described above, City/Town shall notify County of such conflict. County and City/Town shall determine if the acquisition of the conflicting parcel is needed because it is impacted by the Project. In the event that agreement is reached that the conflicting parcel should be acquired and the parcel is acquired, the parcel acquisition cost shall be included in the pro rated cost of the Project in the agreed upon proportions.
- G. City/Town hereby grants the County authority to enter into eminent domain proceedings within the City/Town limits on specific ROW alignments and/or Projects as approved by the both the City/Town and County where County is the Lead Agency or where County by mutual agreement of the parties has the responsibility to acquire ROW for a Project.
- H. To require all utility companies located within or using the present public ROW on all designated transportation Projects within City’s/Town’s municipal limits to adjust and/or relocate Utilities owned by such utility companies as required by the proposed improvement of the designated transportation Project. City/Town Utilities shall be relocated or adjusted at no cost to County except as may be specifically set forth in this Master Agreement or any Project Supplemental Agreement.
- I. City/Town agrees to timely schedule and fairly consider issues relating to billboards, advertising signs, non-conforming uses, zoning and similar restrictions that require action by the governing or administrative body of City/Town to minimize cost and delay of a Project. Additional Project cost caused or contributed to by City/Town failure to timely schedule and consider such matters shall be paid in full by City/Town. Additional Project costs caused or contributed to by adoption of or changes to ordinances, orders, or laws made by either party subsequent to execution of any Project Supplemental Agreement for a Project shall be borne in full by the party making such adoption or change.
- J. To the extent allowed by law, City/Town shall require the adjustment and/or relocation of Utilities to be accomplished and finalized, as expeditiously as possible after approval of Project final plans to prevent Project schedule delays. Notwithstanding anything contained herein to the contrary, all Utilities shall be adjusted or relocated and the ROW clear for construction not later than thirty (30) days prior to the award of the Project construction contract. City/Town will notify the County and other stakeholders when utility conflicts would impact progress of Project completion. County and City/Town agree to work cooperatively and with all Stakeholders to solve any problems with relocation or adjustment of Utilities, to include helping to engage elected officials in the problem resolution with the goal to prevent delays in the commencement or prosecution of construction of the Project.
- K. Where planned roadway improvements (including, but not limited to storm drainage) are in conflict with City/Town owned water and sanitary sewer systems, that could otherwise remain in place, the actual costs of the necessary adjustment of City/Town water and sewer utilities shall be pro rated at the overall percentage agreed to by City/Town and County for cost sharing. City/Town shall be responsible for funding one hundred percent (100%) of any Utility Betterment as well as 100% of any relocation that is caused by City/Town installation during the Project Duration. Except as provided herein, all costs for adjustment and/or relocation of utilities in the public ROW shall be the responsibility of the Utility Owner or of the City/Town Utility. Any Project delay damages, to

the extent caused by City/Town Utility failure to timely relocate or adjust the City/Town Utility facility, shall be at the entire cost of City/Town.

- L. To provide for continuing surveillance and control of ROW to prevent the construction, placement, storage or encroachment of any signs or personal property that is not authorized to be constructed, placed, stored, or encroaching in the existing or proposed ROW. In the event that such signs or personal property are authorized by City/Town to encroach on necessary ROW during the duration of the Project, City/Town shall bear the entire cost of removal or relocation of said encroachment.
- M. To provide to County for County's or County's designee's use, at no cost, adequate copies of all construction standards, codes, (specifically including zoning and development codes), plats, specifications, guidelines, standards or any other pertinent information as determined by County to be required for the completion of the Project. Additionally, City/Town shall furnish County, at no cost, such documents as necessary to keep all items previously furnished to County current.
- N. Actively participate and provide authorized representation with decision making power at PCC and/or PDC, preconstruction meeting, partnering meetings and Project Team meetings which are necessary to Project development/completion and fiduciary relationships.
- O. City/Town agrees to provide timely review of interim submittals. What constitutes "timely" review will be negotiated by the parties during the PCC and/or PDC as a part of the Project schedule. City/Town further agrees that if no review notes are submitted by City/Town in writing to County on a timely basis, plans are approved as submitted.
- P. When City/Town is the Lead Agency, City/Town agrees to allow forty-five days for County review of submittals and any comments agreed upon by City/Town shall be incorporated into final document.
- Q. City/Town agrees that it will pay all additional Project costs for any City/Town requested discretionary change subsequent to the City/Town opportunity to review the sixty five percent (65%) design plans, including, but not limited to Amenities and Utility Betterments, to the extent a requested discretionary change increases the cost of the design or construction of the Project.
- R. Provide at City's/Town's cost for the continuing maintenance of all Project ROW, such as mowing, drainage, trash removal, etc., during the period between acquisition and construction.
- S. During the construction of the Project and after completion of the Project, City/Town will be responsible, to the extent the Project is located within the corporate limits of the City/Town, for the control, operation, police enforcement and/or emergency services, without cost or contribution from the County.
- T. After the completion of a Project and the period of any maintenance bond period for the Project, the City/Town will be responsible for all future maintenance without cost or contribution from the County.
- U. Bear the entire cost of design, construction and administration for landscaping, streetscaping, streetlighting, as such items are not included in the Standard Basic Project Design, and other Amenities specified or requested by City in excess of Standard Basic Project Design.
- V. It is the intent of this Master Agreement that the County will be the Lead Agency. In the event that the City/Town and County agree in writing that City/Town will manage and administer one or more Projects, City/Town and County will enter into a PSA as to that Project(s). In such instance, City/Town agrees to assume all Lead Agency responsibilities except as may be set forth in the PSA as determined by mutual consent.

ARTICLE VIII. UTILITY IMPACTS.

- A. In cases of a Utility In Privately Owned ROW, where it is necessary to relocate the Utility facility or make adjustments to the Utility facility by reason of the widening or improvement of the designated Project, the County (or City/Town if acting as the Lead Agency) will, after submission of ROW documentation and cost estimates by the Utility company that owns the said facilities that are acceptable to the City/Town, County and other stakeholders, assign the actual costs for the relocation and/or adjustment of said Utility facility to the Project.
- B. In cases where a Utility in Public ROW, excluding City/Town Utilities, occupies any portion of the Project ROW by Texas or Federal law or by agreement with the City/Town that allows or permits the City/Town to cause the relocation or adjustment of the Utility facilities for the construction of the Project, the City/Town shall timely require and enforce the relocation or adjustment requirement at no cost to the Project. In the event that the City/Town has no legal or contractual right to cause the relocation or adjustment, the said Utility facilities shall be relocated or adjusted and all costs thereof shall be Project costs.

ARTICLE IX. COUNTY COVENANTS

The County covenants and agrees as follows:

- A. To provide, as a Project cost, preliminary engineering for each Project which will define Project details, e.g., location, scope of work and specific right of way alignment for each improvement. Such preliminary engineering shall be submitted to the City/Town for approval, prior to proceeding with the final design and any Right Of Way acquisition.
- B. To provide, as a Project cost, for the construction of transportation improvements based upon design criteria conforming to Standard Basic Project Design in conformity with applicable City/Town ordinances and standards, to the extent of Commissioners Court approved program funding. The scope of work for the Project shall include the agreed upon design standards as the basis for improvement criteria. Deviations from mutually agreed upon application of City/Town standards and/or design criteria shall require prior approval of City/Town. Where City/Town standards do not exist, TxDOT standards as of the Effective Date of this Master Agreement shall be utilized unless otherwise mutually agreed by a PSA.
- C. To actively participate and provide authorized representation with decision making power at PCC and/or PDC, preconstruction meeting, partnering meetings and Project Team meetings which are necessary to Project development and completion and fiduciary relationships.
- D. To provide Project management of each Project where County is Lead Agency from commencement to completion of construction. City and County may further agree by mutual consent to redefine Project management roles as beneficial to the Project as defined in an MOA and/or Project Supplemental Agreements.-
- E. Upon receipt of written request detailing the information requested, to provide information related to the Project to City/Town or City's/Town's designee at no cost to the City/Town.
- F. County agrees to provide review of interim submittals regarding each Project within forty-five days and hereby agrees that if no review notes are submitted with such time period by County (if

City/Town is filling the role as Lead Agency) in writing to City/Town, plans are approved as submitted.

- G. To submit final engineering plans for review and written approval by City/Town at least thirty (30) days prior to advertising for bids to construct the Project.
- H. To provide for the acquisition, including, without limitation, acquisition by eminent domain, of the necessary additional ROW, on designated Projects, in accordance with minimum standard requirements and utilizing existing public ROW to the maximum extent possible as a Project cost.
- I. To require all contractors to secure all necessary permits required by City/Town on said construction Projects.
- J. To furnish record drawings of construction plans for the permanent records of City/Town within twelve (12) months upon completion and acceptance of the transportation improvement Project.
- K. To transfer the real property or property interest acquired by County and used for the Project to City/Town.
- L. In the event County and City agree in writing that City will be the Lead Agency for the agreed upon Project, County will reimburse City for agreed costs as detailed in Article XIII. (Funding) in an amount not to exceed the Project cost as approved by Dallas County Commissioners Court and incorporated in the PSA. All County payments shall be in accordance with County policies and procedures or as may be mutually agreed between the parties and incorporated in a PSA.
- M. When County is the Lead Agency, County agrees to allow forty-five days for City/Town review of submittals and any comments agreed upon by County shall be incorporated into final document.

ARTICLE X. PRELIMINARY DESIGN CHARRETTE (PDC), PRELIMINARY CONCEPT CHARRETTE (PCC)

- A. City/Town and County, as specified in Articles VII and X, respectively, will designate officials or representatives to participate in a PCC and/or PDC to be conducted on a mutually agreeable date and location. At least part of this meeting will be conducted on the Project site.
- B. Results from PCC will identify the general Project scope, the basic approach and concepts to be taken with the Project, the elements of CSS that will be included, and some ideas for alignment alternatives. Lead Agency will already have been determined, and as well as Project administration and management roles, to include the Project Manager. Key Project Team participants shall be introduced to stakeholders at the PCC and or PDC. Results from the PDC will identify the preferred alignment of the Project which all stakeholders can support and build momentum behind, and provide all stakeholders a commitment for Project delivery schedules and Project budgets.

ARTICLE XI. FISCAL FUNDING

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of County funding for each item and obligation contained herein. City/Town shall have no right of action against the County as regards this Master Agreement, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient

funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of City/Town funding for each item and obligation contained herein. County shall have no right of action against the City/Town as regards this Master Agreement, specifically including any funding by City/Town of the Project in the event that the City/Town is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City/Town, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

ARTICLE XII. FUNDING

A. City/Town and County mutually agree to proportionately fund the Direct Project and Program Costs as agreed by the parties in a PSA. Unless otherwise specified in the PSA, County shall bear and pay for fifty percent (50%) of the total Direct Project and Program Costs excluding the Amenities, relocation or adjustment of City/Town Utilities, Utility Betterments, Indirect Costs, Direct Project and Program Costs not supported by detailed hourly accounting system and other items as specified in this Master Agreement, any Funding Agreement, or any PSA. County shall not be responsible for any amount of funding in excess of the Project not-to-exceed amount as shown in the PSA.

Unless otherwise specified in the PSA, City/Town shall bear fifty percent (50%) of the total Direct Project and Program Costs. In addition, City/Town agrees to fund all other City cost as provided herein, including, but not limited to, Amenities, relocation or adjustment of City/Town Utilities, Utility Betterments, Indirect Cost, Direct Project and Program Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, any Funding Agreement, or any PSA.

B. Unless otherwise stated in a PSA, the milestones for each Project shall be (1) preliminary and primary design, (2) ROW acquisition and utility relocation or adjustment, and (3) construction. The Lead Agency shall prepare an estimated cost for each milestone. Upon approval of the cost by the other party, each party shall fund its share of the respective milestones by placing that amount of money in an escrow account or otherwise encumber the funds to insure that the Lead Agency will have sufficient funding available from current revenue for the timely payment of Project milestone costs. The Lead Agency may bill the other party for periodic payments for the actual amount of work completed toward the completion of the milestone. Upon completion of the milestone, the non-management party will be furnished a notice that such work has been completed and the amount of funding that may be utilized to pay subsequent milestone Project costs. Notwithstanding any other term or condition contained herein or in any PSA, neither party will be required to award any contract until written certification has been received that funding has been placed in escrow or encumbered for the payment of the non-awarding party's portion of the Project cost.

C. In the event that the cost of the Project shall exceed the not-to-exceed amount, City/Town and County agree to either reduce the scope of construction or seek additional funding to complete the

Project at the agreed upon cost share percentages. At the termination of the Project, the Lead Agency will do a final cost accounting of the Project. In the event that the amount paid by either party exceeds its portion of the actual cost, the difference will be remitted to such party. In the event that additional funds are due, the Lead Agency will bill the other party who agrees to pay such funds within thirty (30) days of receipt of such billing (provided the payment of such funds is not in dispute).

D. If City/Town elects to manage a Project, County will reimburse City/Town based on invoices for actual costs expended as supported by documentation approved by County Auditor. Any and all supporting documentation required by County Auditor shall be included with an invoice from City/Town.

E. Upon execution of a PSA, City/Town shall escrow an amount adequate for initial Project costs which County may use to pay for initial professional services required for scoping, preliminary, and primary design.

F. City/Town and County shall enter into a Funding Agreement and/or PSA to establish commitments as required for each Project. Suggested timeframes for Funding Agreements, PSAs and/or any amendments are:

- a. As soon as a Project is accepted by Commissioners Court and as a result of the kick off partnering meeting, a Funding Agreement to establish Lead Agency for preliminary engineering and general funding responsibilities and procedures for reimbursement by Participating Agency; or
- b. When the preliminary engineering plans are at 60% complete; or
- c. After construction bids are opened amend the PSA as needed.

ARTICLE XIII. NO THIRD-PARTY BENEFICIARY ENFORCEMENT.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all right of action relating to such enforcement shall be strictly reserved to City/Town and County and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other person. This Master Agreement and of its terms and provisions are solely for the benefit of the parties hereto and are not intended to, and do not, create or grant any rights, contractual or otherwise, to any third person or entity. It is the express intention of City/Town and the County that any entity other than City/Town or the County receiving services or benefits under this Master Agreement shall be deemed an incidental beneficiary only. This Agreement is intended only to set forth the contractual right and responsibilities of the parties hereto.

ARTICLE XIV. RIGHT OF ENTRY

The City/Town agrees that County shall have the right to enter upon the Project area for the time period necessary for the completion of the Project. Subject to the City/Town's determination that City/Town police or other City/Town personnel are available and provided the City/Town does not have to pay overtime to any such police or other City/Town personnel (unless the City/Town elects to do so), City/Town agrees to furnish such police or other City/Town personnel as requested by County for traffic control or other public safety matters at no cost to the Project or County.

ARTICLE XV. LIST OF PROJECTS

City/Town agrees that it has been furnished with a list of the potential Projects as approved by the Dallas County Commissioners Courts, subject to the agreement between the parties of a PSA. City/Town stipulates and agrees that the Commissioners Court Order approving the Projects identifies the potential Project location and describes the type of Project in sufficient detail, and that the City/Town is fully aware of the location and type of Projects being considered.

ARTICLE XVI. ORPHAN ROAD POLICY;

The County encourages all cities adjacent to Orphan Roads in the County to develop, commit to and submit a plan to the County for completing the annexation of the Orphan Road segments and assuming full responsibility for these roadways. In instances where two cities abut the same Orphan Road segment, the County encourages the two cities to jointly develop a plan of the annexation of that segment. The County offers its assistance to the cities in developing such plans.

- A. The County, at the discretion of the Commissioners Court, may give additional selection value to Projects in cities that have submitted a specific plan for the annexation of Orphan Roads when the County selects, approves and schedules Projects for funding in the County’s major MCIP. Such preference may also be given in approving Projects for road and bridge district participation (Type “B” work).
- B. The County, at the discretion of the Commissioners Court, may also refuse to participate in discretionary Projects, such as road and bridge district Projects or MCIP Projects, in a City/Town that elects not to pursue the annexation of Orphan Road segments that abut its boundaries. Failure to notify the County of the City’s/Town’s intent to annex and/or failure to submit a plan for annexation in a timely manner shall be construed by the County as the City’s/Town’s election not to pursue annexation.
- C. The County, at the discretion of the Commissioners Court, may select specific Orphan Road segments for improvement when a City commits to annexation of the segment upon completion of the Project. However, the specific plan for annexation of Orphan Roads submitted by the City/Town will not be limited to annexation upon completion of improvements by the County. The County improvements may be made as road and bridge Projects or as MCIP Projects (subject to other MCIP criteria including regional thoroughfare plan designation and City/Town cost participation).
- D. This policy application is prospective and Projects selected by the County and approved by the Commissioners Court prior to the date of the adoption of this policy shall not be impacted by this policy.
- E. The County shall provide written notification of the adoption of, and future revisions of, this policy to the cities abutting orphan road segments.
- F. The provisions of this Article XVI shall survive the termination of this Master Agreement.

**ARTICLE XVII. SUBDIVISION REGULATIONS IN THE
EXTRA TERRITORIAL JURISDICTION**

County and City/Town agree that City/Town is the office that is authorized to: (1) accept plat applications for tracts of land located in the extraterritorial jurisdiction; (2) collect all applicable plat application fees; (3) provide applicants one response indicating approval or denial of the plat

application; and (4) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land. The provisions of this Article XVII shall survive the termination of this Master Agreement.

ARTICLE XVIII. MISCELLANEOUS GENERAL PROVISIONS

- A. **Applicable Law.** This Agreement and all matters pertinent thereto shall be construed under, governed by, and enforced in accordance with the laws of the State of Texas and exclusive venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Agreement is expressly made subject to County's and City/Town's sovereign immunity, Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and Federal laws.
- B. **Entire Agreement.** This Agreement, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.
- C. **Severability.** If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.
- D. **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.
- E. **Federal or State of Texas Funding.** In the event that any Project work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, City/Town agrees to timely comply therewith without additional cost or expense to County.
- F. **Headings.** The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this Agreement and shall not be deemed to affect the interpretation or construction of such provision.
- G. **Number and Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.
- H. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- I. **Notice.** Any notice provided for in this Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or three (3) business days after being deposited in the United States Mail, postage prepaid, certified, returned receipt requested, or registered addressed as follows:

To County: County of Dallas
Director of Public Works
Dallas County
Administration Building
411 Elm Street, Fourth Floor
Dallas, Texas 75202-3389

To City/Town: Town of Addison, Texas
Director of Public Works
PO Box 9010
Addison, Texas 75001-9010

Either party may change its address for notice by giving the other party notice thereof.

J. **No Assignment.** Neither party hereto shall, nor has the authority to, assign, transfer, or otherwise convey, in whole or in part, this Master Agreement or any portion hereof, without the prior written consent of the other party.

K. **Authorized Persons.** County and City/Town represent one to the other that, as to the undersigned officers and/or agents signing this Master Agreement on their behalf, the said officers and/or agents are the properly authorized persons for them and have the necessary authority to execute this Agreement on their behalf.

The City/Town of Addison, State of Texas, has executed the Agreement pursuant to duly authorized City/Town Council Resolution _____, Minutes _____ Dated the ____ day of _____, 20____.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number 2012-1932 and passed on the 13th day of November, 2012.

TOWN OF ADDISON

BY R. Whitehead
TITLE City Manager

DATE 10-25-12

ATTEST [Signature]
CITY SECRETARY \ ATTORNEY

COUNTY OF DALLAS

BY [Signature]
Clay Lewis Jenkins, County Judge

DATE November 13, 2012

APPROVED AS TO FORM:
Craig Watkins
District Attorney
*By: [Signature]
Sherril Turner
Assistant District Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).