

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF ADDISON, THE CITY OF FARMERS BRANCH, TEXAS AND THE DALLAS COUNTY COMMUNITY COLLEGE DISTRICT N/K/A DALLAS COLLEGE FOR THE ALPHA ROAD CONNECTOR PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 791 of the Texas Government Code provides authorization for local governments to contract with one another to provide governmental functions and services; and

WHEREAS, the Town of Addison, Texas desires to participate with the City of Farmers Branch, Texas and the Dallas County Community College District n/k/a Dallas College in the construction of the Alpha Road Connector and a Detention Pond and their future maintenance, operation and public safety oversight; and

WHEREAS, these services are governmental functions pursuant to § 791.011 of the Texas Government Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Interlocal Agreement between the City of Farmers Branch, Texas and the Dallas County Community College District n/k/a Dallas College for the Alpha Road Connector Project, attached as **Exhibit A** and incorporated herein, is hereby approved and the City Manager is authorized to execute the agreement.

SECTION 3. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 22nd day of **SEPTEMBER** 2020.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Interlocal Cooperation Agreement for Alpha Road Connector Project

This Interlocal Cooperation Agreement for Alpha Road Connector Project (“Agreement”) is made and entered as of the Effective Date by and among the City of Farmers Branch, Texas (“Farmers Branch”), the Town of Addison, Texas (“Addison”), and the Dallas County Community College District n/k/a Dallas College (the “College”). Farmers Branch, Addison, and College are sometimes referred to in this Agreement together as the “Parties” and individually as a “Party.”

Recitals:

1. Farmers Branch and Addison (together, the “Cities”) are each Texas home rule municipalities having the power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution and their respective Home Rule Charters. The Cities are adjacent and contiguous to one another. College is a junior college district created and operating pursuant to Texas law, including Chapter 130, Tex. Educ. Code, whose service area includes the Cities.

2. College is comprised of seven community colleges, including Brookhaven Community College (“Brookhaven College”) located in Farmers Branch. Brookhaven College comprises approximately 195 acres of land, has an eastern boundary line that abuts Alpha Road, and its most northerly property line is also a Farmers Branch boundary line. Immediately north of and abutting that line is a development within Addison known as Vitruvian Park. Vitruvian Park is a mixed use development with urban residential, commercial, and retail uses, containing public streets and trails, parks and open space for recreation opportunities.

3. Farmers Branch, Addison, College, and representatives from VPDEV 2 LLC, a Delaware limited liability company (“VPDEV”)(the developer of Vitruvian Park) have been engaged in discussions about interconnecting the Brookhaven College and Vitruvian Park communities in order to, among other things, allow the personnel, students, and other users of Brookhaven College, the residents of Vitruvian Park, and members of the public to enjoy and benefit from the trails and open space within those communities. Through those discussions, a plan was developed that provides for (i) the design and construction of a public road extending from the Vitruvian Park area south into and connecting with Brookhaven College and Alpha Road (referred to herein as the “Alpha Road Connector”), to be provided and paid for by Addison, (ii) the conveyance of an easement to the Cities by College across a portion of Brookhaven College for the construction, maintenance, and operation of the Alpha Road Connector, (iii) the conveyance of a drainage easement to Farmers Branch by College (“the Drainage Easement”) encumbering a portion of the Brookhaven College property, generally depicted on Exhibit “B” attached hereto and incorporated herein by reference, for the purpose of accepting and surface waters generated on and flowing from adjacent properties within a detention basin to be constructed on the Brookhaven College property (“the Detention Pond”); (iv) granting to Addison a temporary construction easement or other right to enter the Brookhaven College property to construct the Detention Pond; and (v) following the initial construction of the Alpha Road Connector, the future maintenance and operation and the enforcement of laws thereon by Farmers Branch.

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4. The Parties desire by this Agreement to set forth and outline the processes for the construction of the Alpha Road Connector, its future maintenance, and public safety oversight and control and construction of the Detention Pond and its future use, maintenance, and operation. The Parties are authorized to enter into this Agreement pursuant to the Texas Interlocal Cooperation Act, that authorizes the Parties to contract with one another to perform governmental functions and services, including all or part of a function or service in recreation, public health and welfare, and streets, roads, and drainage, engineering, and other governmental functions in which the Parties are mutually interested (Section 791.011, Gov. Code). Each Party that is to perform a governmental function and/or service as described in this Agreement is authorized to perform that function and/or service.

5. Pertaining to and in support of this Agreement, College is authorized to convey easements over and across portions of Brookhaven College for public right-of-way and public drainage purposes (Sections 130.002, 61.060, 130.084, 11.154(a) Tex. Educ. Code), and the Cities are each authorized to:

- (a) open and improve a public street or alley of the City (Section 311.001(b), Tex. Transp. Code);
- (b) improve a street within its boundaries (Section 313.021, Tex. Transp. Code);
- (c) purchase or condemn property to lay out, construct, improve, or extend any highway within its boundaries (Section 314.011(a), Tex. Transp. Code);
- (d) exercise the right of eminent domain for a public use to acquire property, whether located inside or outside the City, for alleys, streets, or other roadways and any other municipal public use the governing body of the City considers advisable (Section 251.001, Tex. Loc. Gov. Code);
- (e) acquire property separately or jointly with another municipality by gift, dedication, or purchase, with or without condemnation, inside or outside the corporate limits of the municipality, for streets, boulevards, alleys, or other public ways (Section 273.001, Tex. Loc. Gov. Code);
- (f) enter into an interlocal agreement with a local government (including another city) to construct and improve streets in the municipality that are not an integral part of or a connecting link to other roads or highways (Section 791.032, Tex. Gov. Code); and
- (g) jointly contract with another local government, including a municipality, to pay jointly all or part of the costs of the acquisition, design, construction, improvement, or beautification of a local road project (Section 791.028(b), Tex. Gov. Code).

6. The functions and services of the Cities set forth in this Agreement are governmental functions and services which each City is authorized to perform and provide, and the terms, conditions and provisions of this Agreement are in support of and further the public health, safety welfare, and convenience of the citizens of each of the Cities and are in the public interest.

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7. Addison's commitments in this Agreement are intended to satisfy Addison's and VPDEV's drainage impact on the Farmers Branch drainage area from the development of Vitruvian Park.

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 Parties agree as follows:

Section 1. Road Extension. The Parties agree that a roadway, extending from Ponte Avenue in Addison (and on and across land owned by VPDEV 2 LLC, a Delaware limited liability company ("VPDEV")) south into Farmers Branch and across and connecting into Brookhaven College and Alpha Road shall be constructed (such roadway being referred to herein as the "Alpha Road Connector"). The general location of the Alpha Road Connector, the tracts of land owned by each of VPDEV and College where the Alpha Road Connector will be located, and the boundary line between the Cities in that area are shown on Exhibit A attached hereto and incorporated herein. As reflected on Exhibit A, the Alpha Road Connector is located partly in Farmers Branch (the "Farmers Branch Alpha Road Connector") and partly in Addison (the "Addison Alpha Road Connector").

Section 2. Detention Pond. The Parties agree that the Detention Pond shall be constructed at Addison's cost on College's property generally within the area depicted on Exhibit "B" attached hereto.

Section 3. Development Tasks. The Parties understand, acknowledge, and agree that design, construction, and acceptance by the Alpha Road Connector and the Detention Pond (sometimes referred to collectively herein as "the Improvements") requires certain steps for completion, including surveying, execution of right-of-way and easement instruments, design, and construction, and the same shall be in accordance with the following:

A. Site Plan Amendment.

- (1) The Parties understand and acknowledge that (i) the location of buildings, streets, parking, and other improvements and features of Brookhaven College is subject to an existing Planned Development site plan which has been amended from time to time (the original and all subsequent amendments of such site plan collectively called herein the "College Site Plan") approved by Farmers Branch pursuant to the Farmers Branch Comprehensive Zoning Ordinance, as amended ("the CZO"). The Parties further understand, acknowledge, and agree that prior to preparation of the Farmers Branch Easements, College must obtain approval from Farmers Branch for an amendment to the College Site Plan showing the proposed location of the Farmers Branch Alpha Road Connector, the Detention Pond, and other matters which are required pursuant to the Farmers Branch Comprehensive Zoning Ordinance, as amended. The costs for preparation, submission, and prosecution of the application for the amendment to the College Site Plan required by this Agreement and the CZO shall be borne by College.
- (2) The Parties understand, acknowledge, and agree that Farmers Branch, by virtue of its status as a Party to this Agreement, does not waive its legislative authority and discretion to approve or disapprove an application for an amendment to the

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College Site Plan relating to the location and construction of the Farmers Branch Alpha Road Connector and the Detention Pond. In the event the City Council of the City of Farmers Branch denies an amendment to the College Site Plan that provides for the development of the Farmers Branch Alpha Road Connector and/or the Detention Pond, this Agreement shall terminate with no further liability or obligation on any Party to perform under the provisions of this Agreement save and except such obligations of the Parties that survive termination of this Agreement.

B. *Surveys.*

- (1) Concurrent with the design of the Alpha Road Connector, Addison will, at its cost, obtain a survey of the Alpha Road Connector ("Road Survey") prepared by a Texas registered professional land surveyor ("Surveyor"). The Road Survey will locate the right-of-way for the Alpha Road Connector substantially in the location shown on the attached Exhibit A, and such right-of-way shall be at least 105 feet wide at all locations located within Farmers Branch. The Road Survey will include, as a separate instrument, a survey of a temporary construction easement applicable to and for use during construction of the Alpha Road Connector. The Parties acknowledge the Road Survey will require obtaining the consent of VPDEV and College (the "Property Owners") to conduct the Road Survey, and the Cities agree to jointly seek such consent. If such consent cannot be obtained within 90 days after the Effective Date, any Party may terminate this Agreement by giving written notice of such termination to the other Parties.
- (2) Concurrent with the design of the Detention Pond, Addison will, at its cost, obtain a survey of the Detention Pond ("Pond Survey") prepared by a Texas registered professional land surveyor ("Surveyor"). The Pond Survey will locate the Detention Pond, substantially in the location shown on the attached Exhibit B. The Pond Survey will include, as a separate instrument, a survey of a temporary construction easement or licensed area applicable to and for use during construction of the Detention Pond.
- (3) Upon completion, the Road Survey and the Pond Survey (collectively "the Surveys"), including the related temporary construction easement surveys, shall be submitted for review and comment to the Cities and to College. Farmers Branch and College will provide comments, if any, to Addison, and Addison will provide such comments, together with Addison's comments, if any, to the Surveyor. Addison will provide a copy of Addison's comments to Farmers Branch and College. The Surveys will be revised by the Surveyor as needed based upon the Parties' comments. The revised Surveys shall be submitted to the Parties for review and comment. This process shall continue until all of the Parties have approved the Surveys (such approval not to be unreasonably withheld, conditioned, or delayed). Each Party will promptly notify the other Parties of their respective approval.
- (4) Upon the approval of the Road Survey by the Parties, Addison will submit the Road Survey to VPDEV for its review and comment. Addison will provide to

Farmers Branch and to College any comments it receives from VPDEV, and as needed submit the comments to the Surveyor. If the Road Survey requires revision as a result of comments made by VPDEV, the revised Road Survey will be submitted to the Parties for review and comment, and the process for review, comment and Road Survey changes set forth in Section 3.B(3) shall be followed (applicable in this instance to the Cities, College, and VPDEV) until such time as the Road Survey has been approved by the Cities, College, and VPDEV (the “Approved Road Survey”). If an Approved Road Survey is not obtained within 120 days after the Effective Date, any Party may terminate this Agreement by giving written notice of such termination to the other Parties.

- (5) Notwithstanding anything to the contrary herein, if Farmers Branch approves an amendment to the College Site Plan which shows the Farmers Branch Alpha Road Connector and/or the Detention Pond in a location different than shown in Exhibit A, the Road Survey and/or Pond Survey (as applicable) shall be adjusted to conform to the approved amendment to the College Site Plan without the necessity of amending Exhibit A and/or Exhibit B, hereto, it being the intent that the College Site Plan, as amended, shall control the location of the Farmers Branch Alpha Road Connector and the Detention Pond to the extent of any conflict with this Agreement. In the event either or both of the Surveys are prepared prior to obtaining the amendment to the College Site Plan as contemplated by this Agreement, and said amendment shows the location of the Farmers Branch Alpha Road Connector and the Detention Pond in a different location than in Exhibit A and/or Exhibit B, as applicable, the Road Survey and/or Pond Survey, as applicable, shall be revised to conform to the amended College Site Plan at Addison’s cost.

C. *Right-of-Way Easement.*

- (1) Upon the completion of the Road Survey and approval of the amendment to the College Site Plan by Farmers Branch, Addison will prepare, at its cost, a form of easement and of temporary construction easement for the Addison Alpha Road Connector (the “Addison Easement” and the “Addison Temporary Construction Easement”, respectively, and together being the “Addison Easements”) and for the Farmers Branch Alpha Road Connector (the “Farmers Branch Easement” and the “Farmers Branch Temporary Construction Easement”, respectively, and together being the “Farmers Branch Easements”). The form of the Farmers Branch Easements will, after preparation, be submitted to College and to Farmers Branch for their respective review, comment, and approval.
- (2) Addison will submit the Addison Easements to VPDEV for its review and consideration of approval. Any changes proposed by VPDEV to the Addison Easements will be subject to the review and consent of Addison.
- (3) The Addison Easement and the Farmers Branch Easement (collectively, the “Connector Easements”), shall in substance contain the following provisions:
 - (a) each of the Connector Easements shall:

(i) be for public street right-of-way purposes, including the passage of vehicular and pedestrian traffic, and the use, construction, reconstruction, installation, inspection, repair, maintenance, opening, closing, and removal of a public street, public utilities (including water, sanitary sewer, natural gas, and telecommunications), drainage facilities, landscaping, signs, and other uses of a public street as the City who is the grantee of the easement may find necessary or appropriate or which are customary or incidental thereto,

(ii) be perpetual and irrevocable, provided, however, that each of the Connector Easements shall terminate and be revoked upon termination of this Agreement, and, further (1) the Addison Easement shall provide that it shall terminate upon abandonment of the Addison Alpha Road Connector or cessation of use of the Addison Alpha Road Connector as a public roadway by Addison and (2) the Farmers Branch Easement shall provide that it shall terminate upon abandonment of the Farmers Branch Alpha Road Connector, or the cessation of use of the Farmers Branch Alpha Road Connector as a public roadway by Farmers Branch (and abandonment or cessation shall be deemed to occur only upon, respectively, the adoption by Addison, as to the Addison Alpha Road Connector, or by Farmers Branch, as to the Farmers Branch Alpha Road Connector, of an ordinance abandoning or ceasing use of the same as a public roadway), and

(iii) contain such other terms, conditions, and provisions as the parties to the Connector Easements may agree;

(b) the Farmers Branch Easement shall include as the easement area the Farmers Branch Alpha Road Connector as shown by the Approved Road Survey applicable thereto, and the Addison Easement shall include as the easement area the Addison Alpha Road Connector as shown by the Approved Road Survey applicable thereto; and

(c) the Farmers Branch Easement shall name Farmers Branch as the grantee thereof but authorize Addison to install and construct the initial street and related improvements for the Alpha Road Connector, and the Addison Easement shall name Addison as the grantee thereof.

(4) The Farmers Branch Temporary Construction Easement shall name Farmers Branch and Addison as the grantees thereof, and the Addison Temporary Construction Easement shall name Addison as the grantee thereof.

(5) Upon full execution of the Connector Easements and the Farmers Branch Temporary Construction Easement and the Addison Temporary Construction Easement, Addison will cause the same to be recorded in the Official Public Records of Dallas County, Texas.

- (6) If the Connector Easements (or either of the respective temporary construction easements), in form and content satisfactory to the City to which the same is applicable, are not fully executed within 120 days following the Effective Date, any Party may terminate this Agreement by giving written notice of such termination to the other Parties.

D. *Drainage and Detention Easement.*

- (1) Upon the completion of the Pond Survey and approval of the amendment to the College Site Plan by Farmers Branch, College agrees to execute a drainage and detention pond easement substantially in the form attached hereto as Exhibit “C” and incorporated herein by reference (the “Detention Pond Easement”) conveying a public drainage easement on and over the portion of the College property shown on the Pond Survey and an agreement in a form approved by College and Addison authorizing Addison, its officers, employees, agents, and contractors the right to enter onto the College property described in the Pond Survey and such adjacent College property as may be necessary to allow Addison and its contractors to construct the Detention Pond.
- (2) Addison’s design and construction of the Detention Pond as provided herein will fully and completely satisfy any past, present and future obligations for Addison’s and VPDEV’s drainage impact on the Farmers Branch drainage area relating to development of Vitruvian Park. The Parties agree that the Detention Pond has been independently planned and designed to ensure that there are no increases in water surface elevation or increases in flow to Farmers Branch Creek that occur as a result of the ultimate development of the Vitruvian Park. Addison agrees not to approve changes to the stormwater detention requirements for Vitruvian Park in a manner that would increase the volume or velocity of developed stormwater runoff draining into Farmers Branch Creek that was established at the time of designing the Detention Pond. The stormwater detention requirements relating to development of Vitruvian Park in effect as of the Effective Date mandate a detention solution to control 100% of stormwater offset by new development. The provisions of this Section 3(D)(2) shall survive termination.
- (3) The general design parameters for the Detention Pond are as follows:
 - (a) Depth: 6.0 ± feet (bottom elevation 561 ft± above mean sea level);
 - (b) Storage capacity: Approximately 14 acre-feet;
 - (c) Pond intake structure: Lateral Weir of 200 ft ±); and
 - (d) Pond outlet: 12-inch pipe.

Such general design parameters are based on the maximum development of Vitruvian Park as set forth in Ordinance O16-17 as approved by the Addison City Council on May 24, 2016.

E. Design.

- (1) Addison will, at its cost, retain the services of and enter into one or more contracts (the "Engineering Contract(s)") with one or more professional engineers registered in the State of Texas ("Engineer(s)") to perform and provide the design and engineering work and services of the Improvements ("Engineering Design"). The Engineering Contract(s) may include work and services to be provided by the Engineer(s) following the completion of the Engineering Design (e.g., assistance with competitive bidding, construction observation) during the construction phase of the Improvement. The Engineering Design for the Farmers Branch Alpha Road Connector and the Detention Pond shall be subject to the review, comment, and approval, which shall not be unreasonably withheld, of Farmers Branch and College and shall comply with Farmers Branch's standard design specifications for the type of public improvements to be constructed pursuant to this Agreement. VPDEV will be given the opportunity to review and provide comments on the Engineering Design prior to approval by Farmers Branch and College.
- (2) Upon completion of the Construction Work (as defined in subsection F.1. of this Section 3, below) for the Farmers Branch Alpha Road Connector and Detention Pond, Farmers Branch will be given as-built plans, drawings, materials, and other documents applicable to the Farmer Branch Alpha Road Connector and the Detention Pond in a TIFF, JPEG or PDF format, and a DXF format in current version of AutoCAD with NAD-83 coordinate format.
- (3) If the Engineering Design, or portion thereof, is not approved, to the extent such approval is required, by Addison, Farmers Branch, and College, within 180 days following the Effective Date, any Party may terminate this Agreement by giving written notice of such termination to the other Parties.

F. Bidding and Construction.

- (1) Following the completion of the Engineering Design (including the approval of the same by the Parties), Addison will, in accordance with law, solicit bids (or pursue other authorized procurement methods) to construct the Improvements based on and in accordance with the Engineering Design. Addison may use alternative bid processes, if available, to achieve cost savings on the Construction Work. After the opening of the bids (or other submissions in accordance with other authorized procurement methods) received, Addison will thereafter either reject all bids (or take other action that may be available if another procurement method is used) or select one or more contractors ("Contractor(s)") to construct the Improvements based on and in accordance with the Engineering Design ("Construction Work") and enter into one or more contracts with the Contractor(s) ("Construction Contract(s)") to perform the Construction Work. Prior to execution of the Construction Contract(s), Farmers Branch and College will each have an opportunity to review the Construction Contract(s) and recommend modifications as it deems appropriate regarding the Construction Contract(s).

- (2) The Construction Contract(s) shall require and provide, among other things, that:
- (a) the Contractor(s) obtain from each City all permits required by each City to perform the Construction Work and comply with all applicable ordinances, codes, rules and regulations of the City in which the Construction Work is being performed;
 - (b) the Construction Work on the Farmers Branch Alpha Road Connector and the Detention Pond is subject to the review and approval of Farmers Branch and College (in addition to Addison);
 - (c) all insurance policies name Addison, Farmers Branch, and College as additional insureds;
 - (d) indemnity obligations of the Contractor(s) be made in favor of Addison Farmers Branch, College, and their respective officials, officers, employees, and agents;
 - (e) the Contractor(s) provide a performance bond and a payment bond in accordance with law, and name each of the Parties as co-owners on such bonds;
 - (f) the Contractor(s) provide a two-year maintenance bond for the Construction Work for each of the Farmers Branch Alpha Road Connector (the "Farmers Branch Maintenance Bond") the Addison Alpha Road Connector (the "Addison Maintenance Bond"), and the Detention Pond ("the Pond Maintenance Bond") with Farmers Branch being the beneficiary of the Farmers Branch Maintenance Bond, Addison being the beneficiary of the Addison Maintenance Bond, and College being the beneficiary of the Pond Maintenance Bond;
 - (g) the Contractor's warranty under the Construction Contract(s) is, as to the Farmers Branch Alpha Road Connector, issued to and in favor of and is enforceable by Farmers Branch, as to the Addison Alpha Road Connector is issued to and in favor of and is enforceable by Addison, and as to the Detention Pond is issued to and in favor of and is enforceable by College;
 - (h) upon the completion of the Construction Work for the Farmers Branch Alpha Road Connector, Farmers Branch will be given such plans, drawings, materials, and other documents applicable to the Farmer Branch Alpha Road Connector as Addison may be entitled to receive under the Construction Contract; and
 - (i) upon the completion of the Construction Work for the Detention Pond, Farmers Branch and College will be given such plans, drawings, materials, and other documents applicable to the Detention Pond as Addison may be entitled to receive under the Construction Contract.
- (3) If, because of the differences in the nature of the Construction Work related to constructing the Alpha Road Connector and the Construction Work related to

constructing the Detention Pond, Addison reasonably believes better and less costly proposals could be obtained by seeking separate bids or proposals for constructing the Alpha Road Connector and the Detention Pond, Addison may seek separate bids or proposals and alternative bid processes, if available, and enter separate contracts for the construction of the Alpha Road Connector and the Detention Pond with the consent of Farmers Branch and College, which consent shall not be unreasonably withheld or delayed; provided, however, each contracts and Contractors shall comply with the provisions of Section 3.F.(2).

G. *Post-Construction.*

- (1) Following the completion of construction of the Alpha Road Connector and the acceptance thereof (to the extent acceptance is required as set forth herein or in the Construction Contract(s)) by the Parties, the Farmers Branch Alpha Road Connector shall be a public street of Farmers Branch, and the Addison Alpha Road Connector shall be a public street of Addison. Accordingly, Farmers Branch shall be solely responsible for all maintenance, repair, replacement, signalization (specifically including the signalization of the intersection of Alpha Road and the Alpha Road Connector) and reconstruction of and related to, and for law enforcement (e.g., traffic enforcement, including traffic signs) on the Farmers Branch Alpha Road Connector, including the cost thereof, in the same way and to the same extent that Farmers Branch is responsible for a public street and right-of-way (and appurtenances thereto) owned or controlled by Farmers Branch located within Farmers Branch; and Addison shall be solely responsible for all maintenance, repair, replacement, signalization and reconstruction of and related to, and for law enforcement (e.g., traffic enforcement, including traffic signs) on the Addison Alpha Road Connector, including the cost thereof, in the same way and to the same extent that Addison responsible for a public street and right-of-way (and appurtenances thereto) owned or controlled by Addison located within Addison.
- (2) Notwithstanding the foregoing provisions of Section 3.G(1), those provisions do not and shall not affect any interlocal (including any mutual aid) agreement between the Cities regarding public safety, including law enforcement, fire, or emergency medical services, that may be in effect whether now or in the future, except as the Cities may otherwise agree in writing.
- (3) Subject to the respective governmental authority and powers of the Parties, the Parties agree that the Alpha Road Connector shall remain open and available for public travel subject to such reasonable periods of time as the same may need to be closed for repair, maintenance or reconstruction, and during any periods of time when an emergency may exist. Addison shall have the right to temporary closure of the Alpha Road Connector in Farmers Branch, in connection with special events subject to approval of Farmers Branch, which approval will not be unreasonably withheld.
- (4) The Parties agree that notwithstanding anything to the contrary herein, the portion of the roadway intersecting with the roundabout from the south as shown on

Exhibit A, hereto, shall be owned and maintained by College as part of the Brookhaven College internal road system.

- (5) The Parties agree that after completion of construction and acceptance of the Alpha Road Connector:
- (i) College shall be responsible for installation and maintenance of any landscaping and related irrigation systems within the Farmers Branch Easement south of the most southern curb line of the east-west portion of the Farmers Branch Alpha Road Connector and within the central area of the roundabout as shown on Exhibit "A"; and
 - (ii) Farmers Branch shall be responsible for installation and maintenance of any landscaping and related irrigation systems within the Farmers Branch Easement north of the most southern curb line of the east-west portion of the Farmers Branch Alpha Road Connector as shown on Exhibit "A".
- (6) Following completion of construction of the Detention Pond and the acceptance thereof (to the extent acceptance is required as set forth herein or in the Construction Contract(s)) by Farmers Branch and College, Farmers Branch shall be solely responsible for all maintenance, repair, replacement, and reconstruction of the Detention Pond at Farmers Branch's cost.

H. *Fee Waivers.*

Farmers Branch agrees neither Addison nor the Contractor(s) shall be required to pay to Farmers Branch any permit, review, or inspection fees that would normally be charged by Farmers Branch in association with prosecution of the amendment to the College Site Plan or the construction of the Improvements.

Section 4. Authorization of Addison to Perform in Farmers Branch. In the performance of Addison's obligations pursuant to this Agreement, Addison is authorized to conduct such activities within the corporate limits of Farmers Branch as necessary to perform and complete those obligations, including construction of public works that, upon completion and acceptance, will be owned and maintained by Farmers Branch.

Section 5. Cities' Processes.

- A. *Representative.* Each Party will designate in writing to the other Parties a representative to represent the respective Party in connection with and regarding this Agreement. As of the Effective Date, for Farmers Branch that person is City Manager, for College that person is Scott Wright, and for Addison that person is the Director of Public Works and Engineering Services or their designee. These designations may be changed at any time by the respective Parties by providing notice to the other Parties.
- B. *Timing.* When this Agreement provides for a Party to perform some act or task, such as review, consideration, and approval of plans, each Party will act in

accordance with their normal processes unless a Party requests one or both of the others to provide expedited consideration or action, and in that instance each Party to whom the request is made will use reasonable efforts to provide expedited consideration or action. If approval by one Party of some item or matter is required hereunder or is requested by another Party, the Party to whom the request is made will not unreasonably withhold, delay, or condition its response to such request.

Section 6. Additional Consideration. As additional consideration for Farmers Branch's agreement to participate in this Agreement, the Parties agree as follows:

- A. *Alpha Road Mini-Park Easement.* College agrees to grant to Farmers Branch an easement in a form to be mutually agreed by College and Farmers Branch for use of approximately three (3) acres of land for public park and recreational purposes (the "Mini-Park") within the area located north of the east-west road section of the Alpha Road Connector as generally depicted on Exhibit "A", which easement shall provide that Farmers Branch shall operate and maintain said easement for the authorized purposes and shall terminate upon abandonment by Farmers Branch following the same procedures set forth for abandonment of the Farmers Branch Easement.
- B. *Mini-Park Connector Sidewalk.* College agrees to grant to Farmers Branch an easement in a form to be mutually agreed by College and Farmers Branch for the future construction and use of College's property for a public sidewalk to allow pedestrian access from the Mini-Park to the Brookhaven College internal trail system generally as depicted on Exhibit "A".

Notwithstanding anything in this Agreement to the contrary, College and Addison understand, acknowledge, and agree that Farmers Branch shall be under no obligation to approve and accept the Farmers Branch Alpha Road Connector or authorize vehicle traffic to enter or exit the Alpha Road Connector until College has executed and conveyed in a form acceptable to Farmers Branch the above described easements.

7. **Cost Sharing.** Notwithstanding anything to the contrary in this Agreement, Farmers Branch agrees to participate in the costs to be incurred by Addison for the design and construction of the Improvements subject to the following:

- A. *Initial Project Costs.* Addison shall be required to pay the initial \$3,200,000 for costs relating to the design and construction of the Improvements, which shall include (i) costs incurred in the payment of the Surveyor to prepare the Surveys, (ii) costs incurred for preparation of the Connector Easements and the related temporary construction easements, and (iii) costs incurred in the payment of the Engineer(s) pursuant to the Engineering Contract(s), and (iv) costs incurred to construct the Improvements pursuant to Construction Contract(s)(collectively, the "Project Costs");
- B. *Project Costs Exceeding \$3.2M.* If the Project Costs exceed \$3,200,000, upon completion and final acceptance of the Improvements by Addison and Farmers Branch, as applicable, and presentation by Addison to Farmers Branch of such records and other

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information as may be reasonably requested by Farmers Branch to establish the final amount of Project Costs, Farmers Branch agrees to reimburse Addison the amount of the Project Costs incurred by Addison in excess of \$3,200,000, but in no case more than \$480,000;

C. *Value Engineering.* If, after opening bids or proposals for construction of the Improvements, Addison and Farmers Branch determine the lowest most responsible bid(s)/proposal(s) will result in Project Costs exceeding \$3,200,000, then, to the extent allowed by law, Addison and Farmers Branch agree to work with the Engineer(s) and contractor(s) submitting such bid(s)/proposal(s) to value engineer the design of the Improvements in an effort to reduce the Project Costs to as close to \$3,200,000 as reasonably possible while still complying with the minimum design and construction standards required by Addison and Farmers Branch, respectively with respect to the design and function of the Improvements;

D. *Project Costs Exceeding \$3.68M.* If (i) after opening bids or proposals for construction of the Improvements, Addison and Farmers Branch determine the lowest most responsible bid(s)/proposal(s) will result in Project Costs exceeding \$3,680,000, and (ii) after performing the value engineering described in Section 7.C., above, the amount of Project Costs will continue to exceed \$3,680,000, Addison shall, at Addison's sole option:

- (1) agree to pay the Project Costs exceeding \$3,680,000;
- (2) proceed to reject all bids/proposals and seek new bids/proposals; or
- (3) terminate this Agreement;

E. *Application to New Bids/Proposals.* If pursuant to Section 7.D., above, Addison elects to reject all bids/proposals and seek new bids/proposals, this Section 7 shall apply to the responses to such bids/proposals; and

F. *Exclusions from Project Costs.* For purposes of this Section 7, "Project Costs" shall not include:

- (1) amounts spent by Addison or Farmers Branch on the design or construction of the Improvements prior to the Effective Date of this Agreement;
- (2) costs incurred by Addison or Farmers Branch relating to work performed by employees of Addison or Farmers Branch;
- (3) attorney's fees paid by Addison or Farmers Branch for any purpose;
- (4) costs incurred by Addison in the prosecution the amendment to the College Site Plan, whether incurred before or after the Effective Date of this Agreement; and

(5) the amount of any permit, review, and inspection fees waived by Farmers Branch pursuant to Section 3.H.

Section 8. 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 (i) when received if delivered personally; (ii) 72 hours after deposit in the United States mail if sent by mail; and (iii) 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 Farmers Branch:

City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234
Attn: City Manager

To Addison:

Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
Attn: City Manager

With Copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

To College:

Dallas College
1601 South Lamar Street, Suite 308
Dallas, Texas 75215-1816
Attn: Chancellor

With a copy to:

General Counsel
Dallas County Community College District
1601 South Lamar Street, Suite 208
Dallas, Texas 75215-1816

Interlocal Cooperation Agreement for Alpha Road Connector Project

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Brookhaven Campus of Dallas College
Attn: President
3939 Valley View Lane
Farmers Branch, Texas 75244

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 relating to this Agreement shall be maintained in the state courts of Dallas 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 otherwise tortious 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 or among 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 among 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 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, 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 it bears the signatures of the authorized representatives of all of the Parties (the "Effective Date") whether on the same document or in identical but separately signed counterparts.

(Signatures on Following Pages)

Town of Addison Signature Page

SIGNED AND AGREED this _____ day of _____, 2020.

TOWN OF ADDISON

By: _____
Wesley S. Pierson, City Manager

ATTEST:

Irma Parker, City Secretary

APPROVED AS TO FORM:

City Attorney

City of Farmers Branch Signature Page

SIGNED AND AGREED this ____ day of _____, 2020.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles S. Cox, City Manager

ATTEST

Amy Piukana, City Secretary


APPROVED AS TO FORM

Peter G. Smith, City Attorney

College Signature Page

SIGNED AND AGREED this ____ day of _____, 2020.

DALLAS COLLEGE

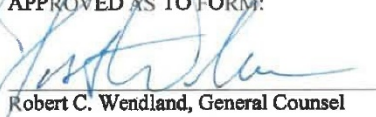
By: 
Joe D. May, Chancellor

ATTEST



Secretary, Board of Trustees

APPROVED AS TO FORM:



Robert C. Wendland, General Counsel

EXHIBIT A

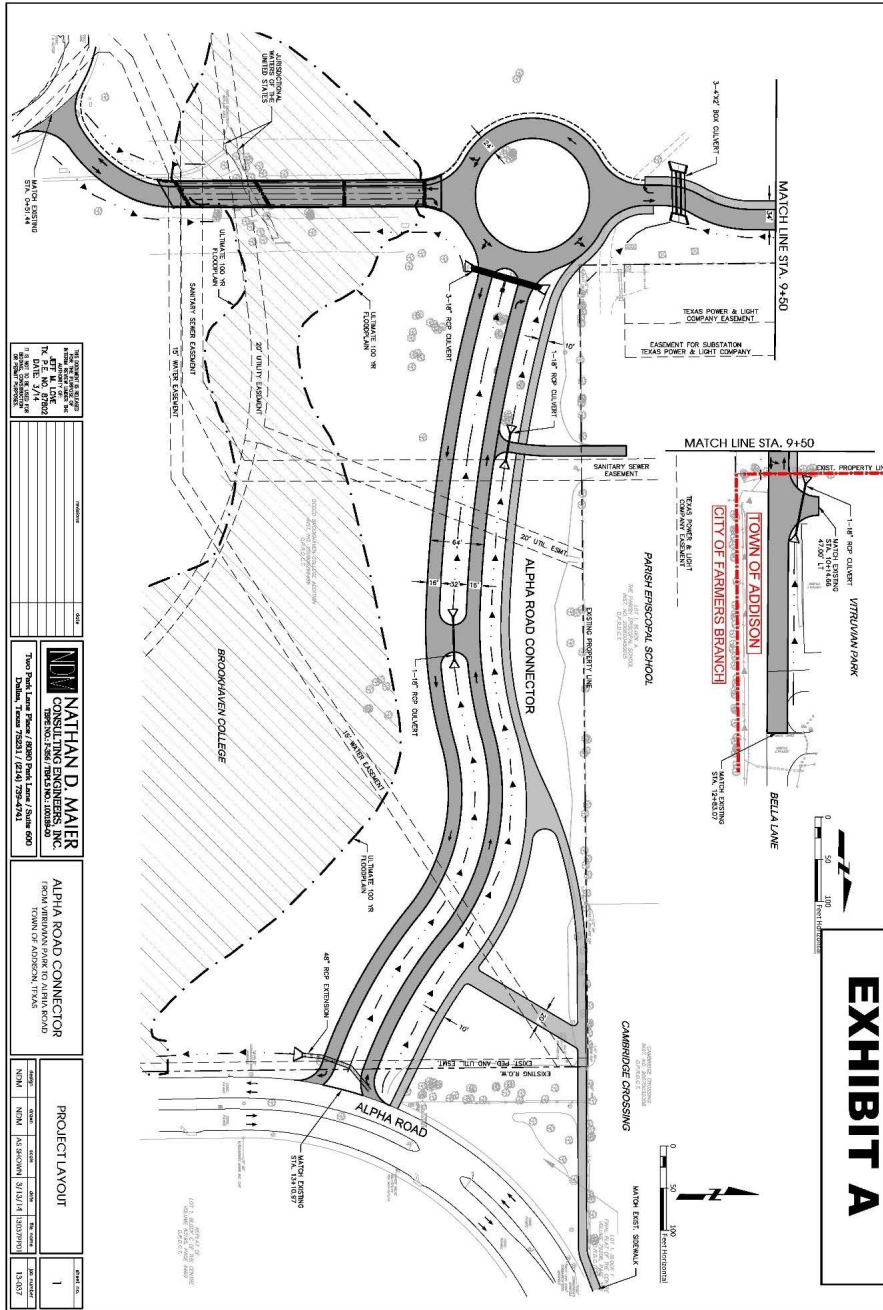


Exhibit "A" to Interlocal Cooperation Agreement for Alpha Road Connector Project

EXHIBIT C
FORM OF DETENTION POND EASEMENT

After Recording, Return to:
City of Farmers Branch
Attn: City Secretary
13000 William Dodson Parkway
Farmers Branch, Texas 75234

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

DETENTION POND EASEMENT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

That DALLAS COUNTY COMMUNITY COLLEGE DISTRICT k/n/a Dallas College, (“College” or “Grantor”), a junior college district and political subdivision of the State of Texas, whose mailing address is 1601 South Lamar Street, Suite 308, Dallas, Dallas County, Texas 75215-1816, for and in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) and other good and valuable consideration in hand paid by the CITY OF FARMERS BRANCH, TEXAS, (“Grantee”), a Texas home rule municipality, whose mailing address is 13000 William Dodson Parkway, Farmers Branch, Dallas County, Texas 75234, the receipt and sufficiency of which is hereby acknowledged, has DEDICATED, GRANTED, SOLD AND CONVEYED, and by these presents does DEDICATE, GRANT, SELL AND CONVEY unto Grantee, on behalf of the public, a non-exclusive perpetual Detention Pond Easement (“Easement”) over, along, across and under the following described property, to wit:

Being a _____ acre tract of land, more or less, situated in the Noah Good Survey, Abstract No. 520, Dallas County, Texas, and being a portion of DCCCD Brookhaven College Addition, an Addition to the City of Farmers Branch, Dallas County, Texas, according to the plat thereof recorded in Instrument 200900266486, Plat Records, Dallas County, Texas, and being more particularly described by metes and bounds in Exhibit “A,” and depicted on Exhibit “B,” attached hereto and incorporated herein by reference.

(“the Easement Property”) including the right of ingress, egress, and regress therein, to erect, construct, reconstruct, install, replace, repair, operate, use, inspect, modify, remove and maintain certain above and underground drainage improvements and collect, direct, and detain surface water over, under, and/or within the Easement Property from the adjacent tracts, together with all lines, pipes, conduits and other equipment, improvements, and appurtenances, if any, (collectively the “Detention Facilities”), used in the collection, direction, and detention of surface water, deemed necessary thereto by Grantee, over, along, across, under, into and through the Easement Property, subject to the following conditions:

1. After initial construction of the Detention Facilities, operation and maintenance of the Detention Facilities shall be the responsibility of Grantee, save and except the mowing of the Easement

Property as required by applicable City of Farmers Branch ordinances, which shall remain the responsibility of Grantor.

2. Grantee shall have the right of ingress and egress to the Easement Property from Grantor's adjacent lands for the purposes described above during the construction, maintenance or repair of the Detention Facilities.
3. Grantor shall retain all rights to the Easement Property, provided that Grantor's exercise of such rights does not interfere with Grantee's rights under this Easement. Grantor agrees not to interfere with Grantee's ability to use or maintain the Drainage Facilities. Interference includes, but is not limited to, physically modifying the Easement Property such as altering topography; installing fences, structures, rockeries, walls or other like improvements; planting of difficult to restore landscaping; piling or storing, or allowing the piling, storing, or placement of dirt, plant materials, trash, garbage, debris or other materials. Grantor shall, upon receipt of written notice from the Grantee, remove cited interference from the Easement Property which prevents proper use of the Easement Property for the purposes intended herein. Grantee may grant written permission to the Grantor to physically modify the Easement Property upon receipt of a written request.
4. Grantor grants Grantee the right to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to install and maintain the Drainage Facilities within the Easement Property that are reasonably suited for the Grantee's purpose.
5. Grantor shall be responsible for cutting and removing any vegetation or remove any physical interference which, in the reasonable judgment of Grantee, constitutes an interference with, or obstruction or hazard to, Grantee's use of the Easement Property. In the event Grantor fails to remove any such vegetation, obstruction, or hazard within the period of time granted by Grantee in a written notice to Grantor, which period shall not be less than five (5) days after receipt of such notice, Grantee may enter the Easement Property and remove such vegetation, obstruction, or hazard, at Grantor's cost, which amount shall become a debt owed by Grantor to Grantee and paid to Grantee on demand. Grantor holds Grantee, its officers, employees, and agents harmless from damage or loss caused by the removal of vegetation or physical interferences from the Easement Property.
6. Grantor covenants that, at the time of execution of this Easement, Grantor (i) is the owner of the Easement Property, (ii) has the right to convey the Easement interest in the Easement Property, and (iii) title to the Easement Property is free and clear of any encumbrances which would interfere with the ability to grant the Easement.

TO HAVE AND TO HOLD the above described Easement Property for the purposes herein described by Grantee, with the right of ingress, egress, and regress therein, together with all and singular the usual rights thereto in anywise belonging, unto Grantee, its successors and assigns, forever, and Grantor does hereby bind itself and its successors, and assigns, to warrant and forever defend, all and singular, the Easement Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by through or under Grantor, but not otherwise.

Dallas College
a Political Subdivision of the State of Texas

By: _____
Joe May, Chancellor

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me, the undersigned authority, this ____ day of _____, 202__, by Joe May, Chancellor of Dallas College, a junior college district and political subdivision of the State of Texas, for and on behalf of said district.

Notary Public, State of Texas
Commission Expires: _____

EXHIBIT "A"
DESCRIPTION – DETENTION POND EASEMENT

[INSERT BOUNDARY DESCRIPTION AND SURVEY OF DETENTION POND EASEMENT]

Exhibit "C" to Interlocal Cooperation Agreement for Alpha Road Connector Project
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