

**INTERLOCAL AGREEMENT BETWEEN
TARRANT COUNTY AND THE CITY OF FORT WORTH**

For

Everman-Kennedale-Burleson Road Hazardous Roadway Overtopping Safety Improvements

This Interlocal Agreement (“Agreement”) is entered into by and between Tarrant County, a political subdivision of the State of Texas, acting by and through its duly authorized representative, (“Tarrant County”), and the City of Fort Worth, a Texas home rule municipality, acting by and through its duly authorized representative (“Fort Worth”), herein collectively known as the “Parties”.

I. RECITALS

WHEREAS, Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act, authorizes municipalities to enter into interlocal agreements for the provision of governmental functions and services; and

WHEREAS, each governing body, in performing governmental functions or in funding the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of both parties, that the undertaking will benefit the public and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, that segment of Everman Kennedale Burleson Road between South Dick Price Road and Anglin Drive traverses both the City of Fort Worth and Tarrant County; and

WHEREAS, there are existing high-water flood warning flashers in this section of Everman-Kennedale-Burleson Road installed in 2014 by the City of Fort Worth that are owned and maintained by the City of Fort Worth to be ratified under this Agreement; and

WHEREAS, Fort Worth desires to improve the section of Everman Kennedale Burleson Road between South Dick Price Road and Anglin Drive to improve road user safety during heavy rain events, specifically, within the City of Fort Worth at the crossing of Village Creek and to make and identify certain other roadway improvements within Tarrant County;

NOW THEREFORE, Tarrant County and Fort Worth agree as follows:

II. TERMS AND CONDITIONS

A. Project. Fort Worth and Tarrant County agree to cooperate in (1) the construction of Hazardous Roadway Overtopping Mitigation safety improvements near the

crossing of Everman Kennedale Burleson Road and Village Creek as shown in Exhibit A and referred to as the “Project”.

B. Design of the Project. Fort Worth will prepare and pay for 100% of the Project engineering and design costs estimated at an amount up to \$36,000.00. Tarrant County shall have the opportunity to review the design at all phases of the design process for the Project and Fort Worth will address Tarrant County’s comments to the extent they do not materially change the intent of the Project. Fort Worth will be responsible for incidental engineering costs which may arise during construction.

C. Construction of the Project. Fort Worth will pay 100% of construction costs of the Project, estimated at an amount up to \$129,000.00.

Tarrant County herewith grants Fort Worth the temporary right to access for design and to perform construction in that portion of the Everman Kennedale Burleson Road right-of-way which lies in the Tarrant County so that Fort Worth and its contractors may complete the Project.

D. Award, Construction, and Maintenance.

Tarrant County shall be responsible for:

1. Review of design documents for Project.

Fort Worth will be responsible for:

1. Full design of the project subject to Tarrant County’s review rights in Section B;
2. Inspection and materials testing for the Project;
3. Final approval of design documents for Project;
4. All construction costs of the Project;
5. Maintenance of the Project and the existing City of Fort Worth flood warning flashers in the area.

E. Current Revenue. No debt is created by this Agreement. Tarrant County and Fort Worth each hereby warrant that all payments, contributions, fees and disbursements, if any, required under this Agreement shall be made from current revenues.

F. No Waiver of Immunity or Defenses. Nothing in the performance of this Agreement shall impose any liability for claims against either Fort Worth or Tarrant County, other than claims for which the Texas Tort Claims Act may impose liability. Nothing contained herein shall be deemed to waive any immunity or defense or constitute a waiver of sovereign or governmental immunity by Fort Worth or Tarrant County.

G. No Third Party Beneficiaries. It is understood by the Parties that this Agreement is entered into for the mutual convenience and purposes of Tarrant County and Fort

Worth and it is the Parties' intent that no other person shall be construed as a beneficiary of this Agreement. Further, the Parties do not intend for any third party to obtain any right by virtue of this Agreement.

H. No Creation of Rights. By entering into this Agreement, the Parties do not intend to create any obligations express or implied other than those stated in the Agreement. Further, this Agreement shall not create any rights in any party not a signatory to the Agreement.

I. Force Majeure. If, by reasons of Force Majeure, any party will be rendered wholly or partially unable to carry out its obligations under this Agreement after its effective date, then such party will give written notice of the particulars of such Force Majeure to the other party or parties within a reasonable time after the occurrence of such event. The obligations of the party giving such notice, to the extent affected by such Force Majeure, will be suspended during the continuance of the inability claimed and for no longer period, and any such party will in good faith exercise its best efforts to remove and overcome such inability.

J. Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the balance of this Agreement shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In such event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

K. No Waiver. The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

L. Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by the parties to such amendment.

M. Termination. Fort Worth may terminate this agreement in the event funding for the project is not authorized by its respective governing body, or if after 95% design as specified in Section B, the cost estimates exceed the reasonably available funding, by providing minimum 30 days' written notice to the other Party.

N. Notice. Any notice provided for or permitted under this Agreement shall be made in writing and may be given or served by (i) delivering the same in person to the party to be notified, or (ii) depositing the same in the mail, postage prepaid, certified with return receipt requested, and addressed to the party to be notified, or (iii) sending by electronic means, with a copy thereof sent by registered mail on the same day. If notice is deposited in the mail pursuant to (ii) or (iii) of this Article, it will be effective upon receipt or refusal. For the purpose of notice, the addresses of the parties are, until changed as provided below, as follows:

City of Fort Worth

Transportation and Public Works Department – Capital Delivery Division

Justin Naylor

200 Texas Street

Fort Worth, Texas 76102

With copy to:

Douglas W. Black, Sr. Assistant City Attorney

200 Texas Street

Fort Worth, Texas 76102

With copy to:

Attn: Joseph Jackson, P.E., CFM

Tarrant County Transportation Services

100 E. Weatherford, Suite 401

Fort Worth, Texas 76196

The parties may from time to time change their respective addresses, and each shall have the right to specify as its address any other address upon at least ten days written notice to the other party.

O. Entire Agreement. This Agreement, including any exhibits attached and made a part hereof, is the entire Agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein.

P. Effective Date and Term. This Agreement shall become effective immediately upon its execution by the later of the Parties whose signature makes the Agreement fully executed, as indicated by the date subscribed by a signatory and shall be for a term of two years or until completion of the Project, whichever occurs first. This Agreement may be renewed upon approval by the parties.

Q. Non Discrimination. Neither Fort Worth nor Tarrant County, nor any of their officers, members, agents, employees, program participants, or subcontractors, while engaged in performing this contract, shall in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions or privileges of their employment, discriminate against persons because of their age, except on the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

Fort Worth and Tarrant County agree that in the execution, performance, or attempted performance of this Agreement, they will not discriminate against any person or persons because of gender, religion, color, sexual orientation, or national origin, nor will either party permit its respective agents, employees, subcontractors or program participants to engage in such discrimination.

ACCORDINGLY, the City of Fort Worth and Tarrant County, by and through each Party's designated official representative, hereby execute this Agreement to be effective as described above.

TARRANT COUNTY

CITY OF FORT WORTH

B. Glen Whitley
County Judge

Dana Burghdoff
Assistant City Manager

Date: _____

Date: _____

Recommended by:

Commissioner, Precinct 1
Roy Charles Brooks

William M. Johnson
Director, T/PW Department

Attest:

Attest:

Jannette S. Goodall
City Secretary

APPROVED AS TO FORM

APPROVED AS TO FORM AND LEGALITY

CRIMINAL DISTRICT ATTORNEY'S OFFICE

Douglas W. Black
Sr. Assistant City Attorney

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document for our client's legal perspective. Other parties may not rely on this approval. Instead, those parties should seek contract review from independent counsel.

M&C No. _____
Date _____

Contract Compliance Manager:

By: _____

Berton Guidry, P.E.
Project Manager

EXHIBITS

MAYOR AND COUNCIL COMMUNICATION MAP

CPN 103243 EVERMAN-KENNEDALE RD

HROM CONSTRUCTION

