

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

**AMENDED AND RESTATED  
INTER-LOCAL COOPERATION AGREEMENT**

This Amended and Restated Inter-Local Cooperation Agreement (“Agreement”) is by and between the City of Allen, Texas (“Allen”) and the Town of Fairview, Texas (“Fairview”) (collectively the “Parties” or singularly the “Party”), acting by and through their authorized officers.

**RECITALS:**

**WHEREAS**, the Parties previously entered into that certain Inter-local Cooperation Agreement dated June 9, 2009 (the “Original Agreement”); and

**WHEREAS**, the Parties desire to amend and restate the Original Agreement as set forth herein; and

**WHEREAS**, the Parties previously entered into Inter-Local Cooperation Agreements for the funding of, and for the design and construction of Stacy Road from US 75 to Greenville Avenue/State Highway 5 (the “Roadway”) dated February 14, 2006 and December 31, 2005; and

**WHEREAS**, the Roadway adjoins the common boundaries of the Parties with the center line of the Roadway as the common boundary of the Parties; and

**WHEREAS**, the Parties desire to enter into an Inter-Local Cooperation Agreement to provide for the maintenance of the Roadway; and

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

**NOW THEREFORE**, in consideration of the foregoing and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I  
Purpose**

The purpose of this Agreement is to provide for the maintenance and allocation of the costs of maintenance of the Roadway including the maintenance and capital replacement of street lights and traffic signalization on the Roadway.

## **Article II Term**

2.1 The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and shall continue for a period of ten (10) years (the “Initial Term”). On the expiration of the Initial Term the term of this Agreement shall automatically renew for successive terms of ten (10) years each on the expiration date of the then current term, unless sooner terminated as provided herein.

2.2 This Agreement shall terminate upon any one or more of the following events:

- (a) by written agreement of the Parties; and
- (b) by either Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof to such breaching Party.

## **Article III Maintenance and Cost Responsibilities**

3.1 Median and Landscape Area Maintenance. Allen shall provide for, or contract for, the maintenance of the median of the Roadway and the area depicted in Exhibit “A” (the “Landscaped Area”), including mowing, irrigation system maintenance, bed maintenance, pruning, plant replacement and litter removal. Allen shall also provide irrigation water for the median improvements and the Landscaped Area at the normal Allen internal rate for irrigation water. The costs of the median maintenance and water irrigation shall be shared equally by the Parties. The costs of the maintenance of the Landscaped Area shall be paid by Fairview.

3.2 Street Lights. Allen shall provide, or contract for the maintenance of the 44 street light fixtures on the Roadway pursuant to the Allen annual contract for street light maintenance with the applicable utility company. Currently the annual contract provides for routine maintenance (Bulb replacement, photo cell replacement, ballast replacement and monthly audit) at a set monthly fee per fixture and “non routine maintenance” is provided on a time and material basis. The costs for street light maintenance shall be shared equally by both parties. The costs of electricity for the street lights shall be paid for by Allen at the Allen rate but shared equally by the Parties.

3.3 Traffic Signalization. Fairview shall pay the monthly electric costs for the traffic signalization on the Roadway. Allen shall pay all other maintenance costs including timing, adjustments, “trouble shooting”, any responses to weather incidents, LED replacements, and replacement of all other signal parts including “knockdowns”.

3.4 Monthly Invoices. Allen shall provide a monthly invoice to Fairview for Fairview’s share of the costs for the maintenance of the Roadway set forth in this Article III on or about the 5<sup>th</sup> day of each calendar month beginning with the 5<sup>th</sup> day of the calendar month following the

Effective Date which shall include the charges for the previous ending calendar month. (except that the first Monthly Invoice shall include the charges that have been incurred since January 1, 2009). Fairview shall pay the amount set forth in the Monthly Invoice within 10 business days after receipt thereof. In the event Fairview disputes or contests any of the charges set forth in a Monthly Invoice, Fairview shall nonetheless pay the invoiced amount and notify Allen in writing at the time of payment of the specific charges being contested. Allen will review any such contest of the Monthly Invoice and respond in writing to Fairview.

#### **Article IV Miscellaneous**

4.1 Assignment. This Agreement may not be assigned by either Party hereto without the prior written consent of all other Parties.

4.2 Notice. Except as may be provided otherwise herein, any notice, demand or request required or permitted to be delivered hereunder shall be deemed received when delivered in person or sent by United States Mail, postage prepaid, certified mail, or by hand-delivery or facsimile transmission addressed to the Party at the address set forth below:

If intended for City of Allen:

City of Allen  
Attn: Stephen Terrell, Mayor  
One Allen Civic Plaza  
305 Century Parkway  
Allen, Texas 75013  
214.509.4100 – telephone  
214.509.4118 - facsimile

With copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 N. Akard  
Dallas, Texas 75201  
214.965.9900 – telephone  
214.965.0010 – facsimile

If intended for City of Fairview:

Town of Fairview  
Attention: Darion Culbertson, Mayor  
372 Town Place  
Fairview, Texas 75069

972.562.0522 – telephone  
972.886.4203 - facsimile

Any Party may, at any time, by written notice to the other Party, designate different or additional persons or different addresses for the getting of notices hereunder.

4.3 Amendment. This Agreement may be amended by the mutual written agreement of both Parties hereto.

4.4 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

4.5 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

4.6 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.

4.7 Recitals. The recitals to this Agreement are incorporated herein.

4.8 Counterparts. This Agreement may be executed in any number of counterparts, each of whom shall be deemed an original and constitute one and the same instrument.

4.9 Indemnification. To the extent allowed by law, each Party agrees to release, defend, indemnify, and hold harmless the other Party (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from its performance under this Agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this Agreement. This Agreement and the indemnity provided herein is not intended to and shall not create any cause of action for the benefit of third Parties or any person not a party to this Agreement.

4.10 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

*(Signature Page to Follow)*

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

**Attest:**

By: \_\_\_\_\_  
Shelley B. George, City Secretary

**Approved As To Form:**

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

**TOWN OF FAIRVIEW, TEXAS**

By: \_\_\_\_\_  
Julie Couch  
Town Manager

**Attest:**

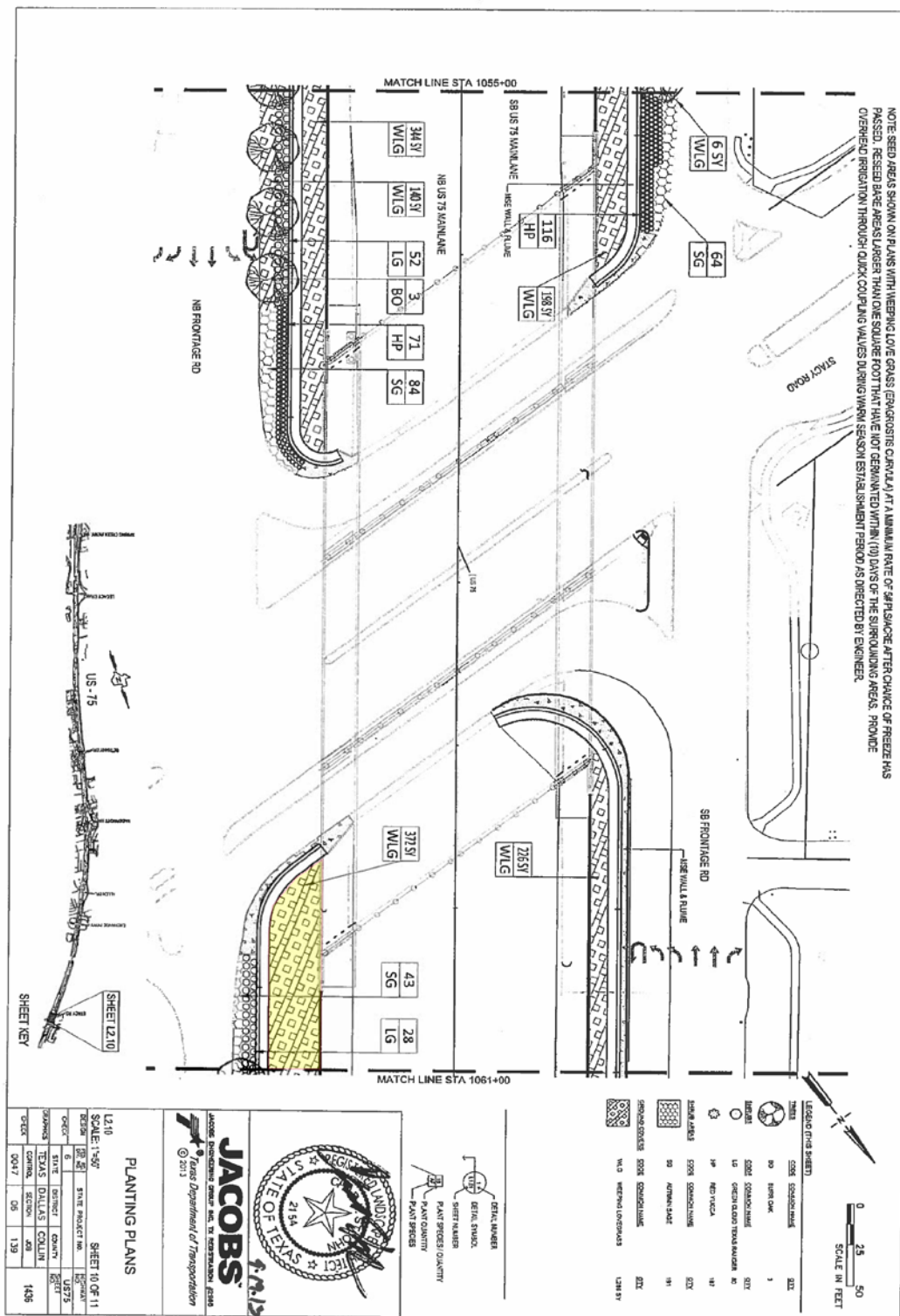
By: \_\_\_\_\_  
Elizabeth Cappon  
Town Secretary

**Approved As To Form:**

By: \_\_\_\_\_  
Name: Clark McCoy  
Title: Town Attorney

## Page 1

**Exhibit “A” to Amended and Restated Inter-local Cooperation Agreement  
City of Allen and Town of Fairview  
36.89734**



## Page 2

**Exhibit “A” to Amended and Restated Inter-local Cooperation Agreement  
City of Allen and Town of Fairview  
36.89734**