

RESOLUTION NO. 2023-01R

RESOLUTION OF THE BOARD OF DIRECTORS OF WYLIE NORTHEAST SPECIAL UTILITY DISTRICT OF COLLIN COUNTY, TEXAS, APPROVING AN INTERLOCAL AGREEMENT BETWEEN COLLIN COUNTY AND THE WYLIE NORTHEAST SPECIAL UTILITY DISTRICT CONCERNING THE REIMBURSEMENT OF THE COST OF ADJUSTMENT, REMOVAL AND/OR RELOCATION OF CERTAIN FACILITIES IN CONNECTION WITH THE PARK BLVD EXTENSION FROM PARKER RD. TO SPRING CREEK PKWY.

WHEREAS, Wylie Northeast Special Utility District (the "District") is a political subdivision of the State of Texas created under authority of Section 59, Article XVI, Texas Constitution, and operating pursuant to Chapters 49 and 65 of the Texas Water Code; and

WHEREAS, the Collin County has deemed it necessary to make certain roadway improvements to Park Boulevard from Parker Road to Spring Creek Parkway (the "Project") in Collin County, Texas; and

WHEREAS, the Project will necessitate the relocation certain waterlines, fire hydrants, appurtenances and other facilities owned by the District as part of its public water system; and

WHEREAS, Collin County has agreed to reimburse the District for its actual out-of-pocket costs and expenses incurred directly in connection with the relocated facilities in the total amount of \$117,176.43; and

WHEREAS, the Board of Directors of the District finds it is in the best interest of the District to approve and execute the attached Interlocal Agreement Between Collin County and the Wylie Northeast Special Utility District Concerning the Reimbursement of the Cost of Adjustment, Removal and/or Relocation of Certain Facilities in Connection with the Park Blvd Extension from Parker Rd. to Spring Creek Pkwy.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF WYLIE NORTHEAST SPECIAL UTILITY DISTRICT THAT:

SECTION 1. The District's Board of Directors hereby approves the attached Interlocal Agreement Between Collin County and the Wylie Northeast Special Utility District Concerning the Reimbursement of the Cost of Adjustment, Removal and/or Relocation of Certain Facilities in Connection with the Park Blvd Extension from Parker Rd. to Spring Creek Pkwy.

SECTION 2. Board President Jimmy C. Beach is hereby authorized to execute the attached Interlocal Agreement for and on behalf of the District.

PASSED and APPROVED on this the 13th day of February, 2023, by the Board of Directors of Wylie Northeast Special Utility District.



Jimmy C. Beach, President

ATTEST:



Lance Ainsworth, Secretary,
or Amanda Horst, Assistant Secretary

Attachment: Interlocal Agreement w/ Collin County

APPROVED AS TO FORM:


James W. Wilson, Attorney

**INTERLOCAL AGREEMENT
BETWEEN
COLLIN COUNTY AND THE
WYLIE NORTHEAST SPECIAL UTILITY DISTRICT
CONCERNING THE REIMBURSEMENT OF THE COST OF ADJUSTMENT,
REMOVAL AND/OR RELOCATION OF CERTAIN FACILITIES IN CONNECTION
WITH THE PARK BLVD EXTENSION FROM PARKER RD. TO SPRING CREEK
PKWY**

THIS INTERLOCAL AGREEMENT (this “Agreement”) is made and entered into by and between COLLIN COUNTY, TEXAS (the “County”), a political subdivision of the State of Texas, and the WYLIE NORTHEAST SPECIAL UTILITY DISTRICT (the “District”) (the County and the District are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

RECITALS:

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

WHEREAS, the County has deemed it necessary to make certain roadway improvements to Park Blvd from Parker Rd. to Spring Creek Pkwy (the “Project”) in Collin County, Texas; and

WHEREAS, the Project will necessitate the adjustment, removal and/or relocation (collectively, the “Rearrangement”) of certain facilities of the District (the facilities subject to Rearrangement are referred to hereinafter as the “Conflicting Facilities”); and

WHEREAS, the County has agreed to reimburse the District for its actual out-of-pocket costs and expenses incurred directly in connection with the Rearrangement of the Conflicting Facilities, excluding Betterments (as hereinafter defined), but only to the extent eligible for participation by the County (such costs and expenses are referred to hereinafter as the “Eligible Costs,” and the facilities related thereto as the “Eligible Facilities”);

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

WITNESSETH:

ARTICLE I.

As used in this Agreement, the following terms shall have the following meanings:

“Adjusted Facilities” shall mean District facilities that (a) are required to be adjusted, removed and/or relocated in order to accommodate the Project as designed and constructed by the

County, and (b) are currently located within a public utility easement within the bounds of the Project.

“Betterment” shall mean any increase in the service capacity, or any upgrading of the Adjusted Facilities above the standard practices, devices or materials, specified in this Agreement or customarily used by the District on projects solely financed by the District.

ARTICLE II.

The County and the District have determined and agree that the Eligible Costs for Rearrangement of the Eligible Facilities is \$117,176.43, as more particularly set forth on Exhibit “A” attached hereto and incorporated herein. The Parties further agree that the costs incurred by the District in acquiring easement rights for Rearrangement of the Conflicting Facilities shall in no event be considered Eligible Costs.

ARTICLE III.

Immediately after tabulating all of the bids received for the District’s Rearrangement of the Conflicting Facilities, the District will notify the County in writing of the name of the contractor selected by the District and bid amount for the Eligible Costs and Rearrangement of Eligible Facilities. If said contractor’s bid for the District’s work exceeds the amount stated in Article II, the District will notify the County of the overrun and will facilitate a meeting among the District’s contractor, District staff and the County, to discuss the reason for the overrun. The County will pay the amount of such overrun, if any, in the manner otherwise set forth in this Agreement, unless further time is required by the County Commissioner’s Court to approve said payment and/or appropriate the necessary funds. The District shall be responsible for all other costs which exceed the total estimated Eligible Costs and/or are incurred in connection with Rearrangement of Conflicting Facilities that are not Eligible Facilities.

ARTICLE IV.

Upon completion of the Rearrangement, the District shall invoice the County for actual Eligible Costs incurred up to the amount set forth in Article II above (subject to adjustment as otherwise provided in this Agreement), and shall include with its invoice reasonably sufficient documentation to substantiate such costs. All payments due to the District from the County will be paid by the County within forty-five (45) days after receipt of said invoice and documentation from the District.

ARTICLE V.

If change orders are requested by the District or required for the District’s work under this Agreement, the District will prepare and make a change order request to the County. If a change order results in total costs that exceed the Eligible Costs stated in Article II for Rearrangement of the Eligible Facilities, the District will send copies of invoices covering the additional amounts authorized by a change order approved by the District. The County will pay the additional amount resulting from said change owner, if any, in the manner otherwise set forth in this Agreement,

unless further time is required by the County Commissioner's Court to approve said payment and/or appropriate the necessary funds. The District shall be responsible for all other costs, which exceed the total estimated Eligible Costs and/or are not Eligible Facilities.

ARTICLE VI.

If the actual amount of Eligible Costs is less than the amount stated in Article II (subject to adjustment as otherwise provided in this Agreement), the District agrees to refund to the County the amount of any overpayment within 45 days of final closeout.

ARTICLE VII.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (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, JUDGEMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' 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.

ARTICLE VIII.

MISCELLANEOUS

Section 8.1: Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, delivery or advice ("Notice") provided or permitted to be given, made or accepted by a Party, must be in writing and shall be given (i) by email at the email address of the Party to be notified as set forth below, or (ii) by the mailing of same by United States certified mail (return receipt requested), with proper postage affixed thereto and addressed to the Party to be notified at the address set forth below. Notice by email shall be effective upon actual receipt by the Party to be notified. Notice by certified mail shall be effective when actually received, as reflected on the corresponding return receipt. For the purpose of Notice, the email and mailing addresses of the Parties shall, until changed as hereinafter provided, be as follows:

To the County: Collin County Special Projects
4690 Community Avenue, Ste. 200
McKinney, Texas 75071
Attn: Tracy Homfeld, PE, CFM
Email: thomfeld@co.collin.tx.us

To the District: Wylie Northeast SUD
Attn: General Manager

745 Parker Road
Wylie, Texas 75098
Email: chester@wylie-northeastwater.com

Section 8.2. Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Collin County, Texas and that exclusive venue shall lie in Collin County, Texas.

Section 8.3. Severability. The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

Section 8.4. Entire Agreement. This Agreement embodies the entire Agreement between the parties and may only be modified in writing executed by both parties.

Section 8.5. Successors and Assigns. This Agreement shall be binding upon the Parties hereto, their successors, heirs, personal representatives and assigns. Neither Party will assign or transfer an interest in this Agreement without the written consent of the other Party.

Section 8.6. Immunity. It is expressly understood and agreed that, in the execution of this Agreement, neither Party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

Section 8.7. Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A Party whose performance is affected by a Force Majeure Event shall give notice to the other Party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

Section 8.8. Term. This Agreement shall be effective upon execution by both Parties and shall terminate when the Rearrangement of the Conflicting Facilities have been completed and all reimbursement payments due to the District under this Agreement have been paid to the District.

Section 8.9. Recitals; Attachments, Exhibits. The Parties agree to the truth of the recitals set forth above in this Agreement. The recitals and all attachments or exhibits to this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

Section 8.10. Interpretations. This Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement. The Parties agree that this Agreement shall not be construed in favor of or against any of the Parties on the basis that the Party did or did not author this Agreement.

[Remainder of Page Blank
Signatures Follow]

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

COUNTY OF COLLIN, TEXAS

By: _____
Name: Chris Hill
Title: County Judge
Date: _____
Executed on this ____ day of _____,
2023, by the County of Collin,
pursuant to Commissioners' Court
Order No. _____.

ATTEST:

By: _____
Name: Lance Ainsworth
Title: Secretary
Date: _____

**WYLIE NORTHEAST SPECIAL
UTILITY DISTRICT**

By: _____
Name: Jimmy C. Beach
Title: President
Date: _____
Executed on behalf of the Wylie
Northeast Special Utility District

Resolution No. 2023-01R

APPROVED AS TO FORM:

By: _____
Name: James W. Wilson
Title: Attorney
Date: _____

EXHIBIT "A"

The County will provide reimbursement for the following:

- The 2" waterline and service connection to be relocated on Moses Drive.
- The 8" waterline to be relocated on Paul Wilson Drive.
- The cut and cap of the 8" waterline in proposed road right-of-way and the installation of a flush valve assembly.
- The casing to be extended to the limits of proposed right-of-way on the 12" waterline crossing of the proposed Park Boulevard.
- The relocation of the 4" waterline facilities on the Perez Irma Olivia & Gonzalez Juan and the Davis Clinton Lee properties.

Total funding **\$117,176.43**

Contact Information

Request for reimbursement submitted to:

Collin County
Attn: Bridell Miers
4690 Community Avenue, Suite 200
McKinney, Texas 75071
972-548-3723

Wylie NE SUD Project Manager Contact: (must be able to answer specific questions regarding project)

Name: Chester Adams
Address: 745 Parker Road
Wylie, Texas 75098
Phone: Work: (972) 442-2075
Cell: (214) 532-1771 Email: chester@wyliehenortheastwater.com