

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF MCKINNEY, TEXAS
CONCERNING THE DESIGN AND CONSTRUCTION OF
BLOOMDALE ROAD FROM COMMUNITY AVENUE TO COUNTY ROAD 164
BOND PROJECT # 07-00-68**

WHEREAS, the County of Collin, Texas (“County”) and the City of McKinney, Texas (“City”) desire to enter into an agreement concerning the construction of improvements to Bloomdale Road from Community Avenue to CR 164 (the “Project”) in McKinney, Collin County, Texas; and

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 2007 Collin County Bond Program includes funding for the FM 543 Connector, 2007 Bond Project # 07-036, which the City proposes to reallocate a portion of the funding in the amount of \$2,366,375; and

WHEREAS, the 2007 Collin County Bond Program includes funding for FM 1461 from Custer Road to CR 166 / FM 1461, 2007 Bond Project # 07-039, which the City proposes to reallocate a portion of the funding in the amount of \$350,000 to the Project; and

WHEREAS, the 2007 Collin County Bond Program includes funding for SH 5 from US 380 to FM 543, 2007 Bond Project # 07-041, which the City proposes to reallocate a portion of the funding in the amount of \$500,000 to the Project; and

WHEREAS, the 2007 Collin County Bond Program includes funding for Lake Forest Drive from Boyd High School to US 380, 2007 Bond Project # 07-045, which the City proposes to reallocate a portion of the funding in the amount of \$438,864 to the Project; and

WHEREAS, the 2007 Collin County Bond Program includes funding for Lake Forest Drive from Bloomdale Road to FM 1461, 2007 Bond Project # 07-048, which the City proposes to reallocate a portion of the funding in the amount of \$344,761 to the Project; for a total County participation of \$4,000,000.

WHEREAS, the City and County have determined that the improvements may be constructed most economically by implementing this agreement.

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

WITNESSETH:

ARTICLE I.

The City has arranged to design and construct improvements to Bloomdale Road from Community Avenue to CR 164 (City of McKinney Project ST4227), hereinafter called the “Project”. The Project consists of constructing Bloomdale Road from Community Avenue to CR 164 (approximately 4,600 linear feet). The Project will be designed to meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

The City shall prepare plans and specifications for the improvements, accept bids and award a contract to design and construct the improvements and administer the design and construction contract. In all such activities, the City shall comply with all state statutory requirements. The City shall provide the County with a copy of the executed design and construction contracts for the Project. The City shall install

a project sign identifying the project as being partially funded by the Collin County 2007 Bond Program. The City shall also provide before, during and after photos and quarterly progress reports in electronic format or via US mail to the Collin County Engineering Department. Following completion of the project, the City shall provide an itemized final accounting of expenditures including in-kind services or donations for the project.

ARTICLE III.

The City shall acquire approximately 9.2 acres of real property in the vicinity of the improvements for use as right-of-way, approximately 5.5 acres of real property in the vicinity of the improvements for use as permanent easements, and approximately 0.2 acres of real property in the vicinity of the improvements for use as temporary easements.

ARTICLE IV.

The City estimates the total actual cost of the Project to be approximately \$11,000,000. The County agrees to fund the cost to construct the improvements in an amount not to exceed \$4,000,000. The County shall remit 50 percent of this amount (\$2,000,000) to the City within thirty (30) days after issuing a notice to proceed for construction of the improvements, as authorized by the City Council, and the City requests payment. The County will remit the remaining 50 percent within thirty (30) days after receipt of notice from the City that the construction project is 50 percent complete. The "total cost of the project" shall include the acquisition of necessary land rights, engineering, construction, inspection, and testing.

ARTICLE V.

The County's participation in the Project shall not exceed \$4,000,000. If the actual cost to construct the Project ("Actual Project Cost") is less than the Estimated Project Cost, and the County has participated up to fifty percent (50%) of the Estimated Project Cost, then the City shall reimburse the County in an amount equal to fifty percent (50%) of the difference between the Estimated Project Cost and the Actual Project Cost. The County Commissioners Court may revise this payment schedule based on the progress of the Project. As used herein, the term "Actual Project Cost" shall include engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

ARTICLE VI.

The City shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit detailed Project cost and progress reports every thirty (30) days until Project completion.

ARTICLE VII.

The City and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE VIII.

INDEMNIFICATION. 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, JUDGMENTS 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 IX.

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.

ARTICLE X.

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.

ARTICLE XI.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in a writing executed by both parties.

ARTICLE XII.

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.

ARTICLE XIII.

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.

ARTICLE XIV.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

By: _____
Name: Keith Self
Title: County Judge
Date: _____
Executed on this the ____ day of _____,
2018, by the County of Collin,
pursuant to Commissioners' Court
Order No. _____.

ATTEST:

CITY OF MCKINNEY, TEXAS

By: _____
Name: Sandy Hart, TRMC, MMC
Title: City Secretary
Date: _____

By: _____
Name: Paul D. Grimes
Title: City Manager
Date: _____
Executed on behalf of the City of
McKinney pursuant to City Council
Resolution No. _____

APPROVED AS TO FORM:

By: _____
Name: Mark Houser
Title: City Attorney
Date: _____