

**First Amendment to
Interlocal Participation Agreement for the Construction of
Trinity Falls Parkway from Laud Howell Parkway to FM 543**

This First Amendment to Interlocal Participation Agreement for the Construction of Trinity Falls Parkway from Laud Howell Parkway to FM 543 (this “First Amendment”) is made and entered into as of the ____ day of _____, 2020 (the “Effective Date”) by and between MCKINNEY MUNICIPAL UTILITY DISTRICT NO. 1 OF COLLIN COUNTY, a municipal utility district created pursuant to Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54, Texas Water Code, as amended, and Chapter 8223, Texas Special District Local Laws Code, whose address is c/o Sanford Kuhl Hagan Kugle Parker Kahn LLP, 1980 Post Oak Boulevard, Suite 1380, Houston, Texas 77056 (“District”) and the CITY OF MCKINNEY, TEXAS, a municipal corporation and home-rule city of the State of Texas (“McKinney” or the “City”) on the terms and conditions hereinafter set forth. The City and the District are each referred to herein as a “party” or collectively as the “parties.”

RECITALS:

WHEREAS, the City and the District previously entered into that certain Interlocal Participation Agreement (the “Agreement”) for the Construction of Trinity Falls Parkway from Laud Howell Parkway to FM 543 (the “Project”), dated November 21, 2018, which is incorporated herein for all purposes; and

WHEREAS, in connection therewith, the District entered into a contract with Mario Sinacola & Sons (the “Construction Contract”) to construct the Project; and

WHEREAS, under the terms of the Agreement, the City is solely responsible for the full cost of the Bid Alternate Component, as defined therein, in the maximum amount of One Million Two Hundred Ninety-Seven Thousand Nine Hundred Eighty-Three Dollars (\$1,297,983.00), plus and/or minus any additive and/or deductive change orders that are approved in advance and executed by the City; and

WHEREAS, the City approved an additive change order (dated December 9, 2019) to the Construction Contract (the “Change Order”), a copy of which is attached hereto as Exhibit “A,” to construct additional median and driveway improvements adjacent to the Arch Resorts property in the amount of Ninety Thousand Seven Hundred Fourteen Dollars (\$ 90,714.00), which cost is attributable to the Bid Alternate Component; and

WHEREAS, the City and the District now desire to amend the Agreement to increase the maximum amount of the Bid Alternate Component to accommodate the Change Order; and

WHEREAS, the City and the District are authorized to enter into this First Amendment under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, governing interlocal agreements between political subdivisions of the State of Texas, and other applicable laws.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this First Amendment, the City and the District agree as follows:

1. Recitals Incorporated. All of the foregoing recitals are hereby found to be true and correct and they are hereby approved and incorporated into the body of this First Amendment as if fully set forth herein.

2. Amendment to Section 5(b) of the Agreement. Section 5(b) of the Agreement is hereby deleted in its entirety and replaced with a new Section 5(b) to read as follows:

“(b) Trinity Falls Parkway Link Bid Alternate Component.

The Contractor has also agreed to construct the Bid Alternate Component of the Project for a contract price of One Million Two Hundred Ninety-Seven Thousand Nine Hundred Eighty-Three Dollars (\$ 1,297,983.00) (the “Bid Alternate Price”). Again, a copy of the Construction Contract between the District and the Contractor is on file in the office of the City Engineer. McKinney has previously agreed to participate in the full amount of the cost of constructing the Bid Alternate Component at the Bid Alternate Price plus and/or minus any additive and/or deductive change orders that are approved in advance and executed by the City for the Bid Alternate Component (the “Maximum McKinney Bid Alternate Payment”). The City and the Contractor have agreed upon a change order for the performance of certain additional work as set out in the Change Order dated December 9, 2019, attached hereto as Exhibit “A,” that increases the Maximum McKinney Bid Alternate Payment to the amount of One Million Three Hundred Eighty-Eight Thousand Six Hundred Ninety-Seven Dollars (\$ 1,388,697.00) (“Revised Maximum McKinney Bid Alternate Payment”) calculated as follows:

Bid Alternate Price:	\$ 1,297,983.00
Change Order Dated 12/09/2019:	\$ <u>90,714.00</u>
Revised Maximum McKinney Bid Alternate Payment:	<u>\$ 1,388,697.00</u>

District and McKinney specifically agree that the Revised Maximum McKinney Bid Alternate Payment fairly compensates the District for the services or functions performed under this Agreement specifically including that Change Order dated December 9, 2019, and any other change orders thereto regarding the Trinity Falls Parkway Bid Alternate Component.”

3. Capitalized Terms. Capitalized terms used in this First Amendment shall have the meanings assigned to them in the Agreement, unless otherwise defined herein or the context clearly requires otherwise.

4. Effect of Amendment/Ratification. The City and the District hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Agreement; and acknowledge that, except as amended by the provisions of this First Amendment, the Agreement shall remain in full force and effect.

5. Controlling Agreement. To the extent that any provision contained in this First Amendment conflicts with the Agreement, the provision contained in this First Amendment shall supersede and control over the conflicting provision contained in the Agreement.

6. Entire Agreement/First Amendment. This First Amendment and the Agreement contain the entire agreement of the parties with respect to the matters contained herein. This First Amendment may not be modified or terminated except upon the provisions hereof or by the written agreement of the parties.

7. Authority to Execute. The individuals executing this First Amendment on behalf of their respective parties represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this First Amendment to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this First Amendment in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this First Amendment and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date of such execution.

8. Counterparts. This First Amendment may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one First Amendment. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

EXECUTED to be effective as of the Effective Date first set forth above.

CITY OF MCKINNEY, TEXAS

By: _____
Paul G. Grimes
City Manager

ATTEST:

Empress Drane, City Secretary
Lisa Sewell, Deputy City Secretary

APPROVED AS TO FORM:

Mark Houser, City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this ____ day of _____, 2020, by Paul G. Grimes, City Manager and duly authorized representative of the CITY OF MCKINNEY, TEXAS, on its behalf.

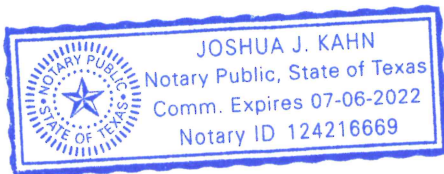
Notary Public, State of Texas

**MCKINNEY MUNICIPAL UTILITY
DISTRICT NO. 1 OF COLLIN
COUNTY**

By: 
Ryan Rosa
President, Board of Directors

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

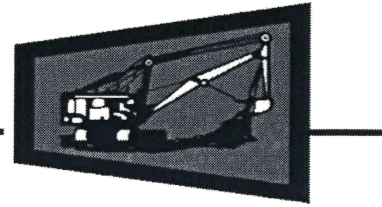
This instrument was acknowledged before me on this 4th day of March, 2020, by Ryan Rosa, President of the Board of Directors, and duly authorized representative of the MCKINNEY MUNICIPAL UTILITY DISTRICT NO. 1 OF COLLIN COUNTY, on its behalf.




Notary Public, State of Texas

EXHIBIT "A"
CHANGE ORDER DATED DECEMBER 9, 2019

(Consisting of two following pages.)



December 9, 2019

McKinney MUD No. 1
c/o Kimley-Horn & Associates, Inc.
400 North Oklahoma Drive, Suite 105
Celina, Texas 75009

ATTENTION: District Engineer

GENTLEMEN: We propose to furnish all labor, materials and equipment necessary to construct the following described work:

PROJECT: Trinity Falls Parkway - RFP 025A Median Driveway Arch Resorts
LOCATION: McKinney, Texas

ARCH RESORTS PAVING

Item	Description	Quantity	Unit	Unit Bid	Total Bid
1	Credit 8.5" Concrete Pavement	(169.00)	SY	51.00 \$	(8,619.00)
2	Credit 8" Lime Stabilized Subgrade	(183.00)	SY	4.05 \$	(741.15)
3	Credit Lime Material (48 lbs/sy)	(4.00)	TN	155.00 \$	(620.00)
4	8.5" Concrete Pavement	984.00	SY	51.00 \$	50,184.00
5	8" Lime Stabilized Subgrade	1,063.00	SY	4.05 \$	4,305.15
6	Lime Material (48 lbs/sy)	25.00	TN	155.00 \$	3,875.00
7	Stamped Concrete Median Nose	10.00	SY	400.00 \$	4,000.00
8	Concrete Header	100.00	LF	25.00 \$	2,500.00
9	Sawcut and Connect to Existing	336.00	LF	25.00 \$	8,400.00
10	2-4" Conduit	100.00	LF	21.00 \$	2,100.00
11	Striping and Signage (Allowance)	1.00	LS	3,900.00 \$	3,900.00
12	Hand Pour Scale Factor Price	815.00	SY	22.00 \$	17,930.00
13	Traffic Control	1.00	LS	3,500.00 \$	3,500.00
ARCH RESORTS PAVING TOTAL				\$	90,714.00

QUALIFICATIONS:

- ~ This proposal is based off of Kimley-Horn plan sheets C-23 and C-24 dated 10/25/19 and received on 10/30/19;
- ~ This proposal is the cost to add a median turn lane and three west approaches to the Trinity Falls Pkwy project adjacent the Crumps Garden building

Should you have any questions, or need clarification regarding this proposal, please feel free to contact this office.

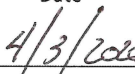
Sincerely,
MARIO SINACOLA & SONS EXCAVATING, INC.

Harlan Jones
Vice President

Approved: _____
Engineer

Date

Approved:  _____
Owner



Date