

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF MCKINNEY, TEXAS
CONCERNING THE DESIGN AND CONSTRUCTION OF
ALMA ROAD FROM STACY ROAD TO FIRE STATION #8 AND
SILVERADO TRAIL FROM ALMA ROAD TO COMSTOCK ELEMENTARY SCHOOL
BOND PROJECT # 07-00-13**

WHEREAS, the County of Collin, Texas (“County”) and the City of McKinney, Texas (“City”) desire to enter into an agreement concerning the design and construction of improvements to Alma Road from Stacy Road to Fire Station #8 and Silverado Trail from Alma Road to Comstock Elementary School (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 546 Replacement Preliminary Engineering from SH 5 to Airport Drive, 2007 Bond Project # 07-037, 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 the Custer Road (FM 2478) Design and Right-of-Way from US 380 to FM 1461, 2007 Bond Project # 07-038, which the City proposes to reallocate a portion of the funding in the amount of \$900,000 to the Project; and

WHEREAS, the 2007 Collin County Bond Program includes funding for Airport Drive from US 380 to Industrial Blvd, 2007 Bond Project # 07-040, which the City proposes to reallocate a portion of the funding already received in the amount of \$123,676 to the Project; and

WHEREAS, the County agrees with the City’s proposal to reallocate funding of \$500,000 from the FM 546 Replacement, \$900,000 from Custer Road (FM 2478), and \$123,676 from Airport Drive for a total County participation of \$1,523,676;

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 shall arrange to design and construct improvements to Alma Road from Stacy Road to Fire Station #8 and Silverado Trail from Alma Road to Comstock Elementary School, hereinafter called the “Project”. The Project shall consist of designing and constructing two lanes of new roadway on Alma Road between Stacy Road and Fire Station #8 (approximately 3,500 linear feet) and four lanes of new roadway on Silverado Trail between Alma Road and Comstock Elementary School (approximately 1,000 linear feet). The improvements shall also include design and construction of underground storm sewers, street lighting, and traffic signals as part of the road improvements. All improvements shall 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.

ARTICLE III.

The City shall also acquire approximately 5.5 acres of real property in the vicinity of the improvements for use as right-of-way and approximately 1.4 acres of real property in the vicinity of the improvements for use as easements.

ARTICLE IV.

The City estimates the total cost of the design and construction of for this project to be \$3,047,354. The County agrees with the City's proposal to reallocate funding of \$500,000 from the FM 546 Replacement, \$900,000 from Custer Road (FM 2478), and \$123,676 from Airport Drive, for a total County participation of \$1,523,676. The County shall remit 50 percent of this amount (\$761,838) 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. Following completion of the project in its entirety, the City shall provide a final accounting of expenditures for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the City shall remit to the County 50 percent of the difference between the estimated cost and the actual cost. The Commissioners Court may revise this payment schedule based on the progress of the Project.

ARTICLE V.

The County's participation in the Project shall not exceed \$1,523,676.

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 _____,
2011, by the County of Collin,
pursuant to Commissioners' Court
Order No. _____.

ATTEST:

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

CITY OF MCKINNEY, TEXAS

By: _____
Name: Jason Gray
Title: City Manager
Date: _____
Executed on behalf of the City of _____
pursuant to City Council
Resolution No. _____

APPROVED AS TO FORM:

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