

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF MCKINNEY, TEXAS
CONCERNING THE CONSTRUCTION OF
LAKE FOREST DRIVE FROM BOYD HIGH SCHOOL TO US 380 IMPROVEMENTS
BOND PROJECT # 07-045
2012 FUNDING**

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 Lake Forest Drive from Boyd High School to US 380 (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 2008 Funding Interlocal Agreement was approved on January 12, 200, court order #2009-006-1-12 for \$1,075,000 of which this funding has been sent to the city; and

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 arranged to construct improvements to Lake Forest Drive from Boyd High School to US 380, hereinafter called the “Project”. The Project consisted of constructing a two lane arterial roadway, Wilson Creek Bridge, and a right turn lane, a distance of approximately 0.85 miles (or 4,500 linear feet). The improvements also included construction of underground storm sewers as part of the road improvements. All improvements are 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 prepared plans and specifications for the improvements, accepted bids and awarded a contract to construct the improvements and administered the construction contract. In all such activities, the City complied with all state statutory requirements. The City shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City also acquired 0.1 acres of real property in the vicinity of the improvements for use as right-of-way.

ARTICLE IV.

The City’s estimated cost of the project is \$3,471,771. The 2012 funding request is \$660,885. The County shall remit this funding to the City within thirty (30) days after the receipt of notice from the City that the construction project is complete or bond funds are available, whichever occurs later. At the completion of the 2007 Bond Project # 07-045 in its entirety, the City shall provide a final accounting of expenditures. If the actual cost of the Project is less than the estimated cost of \$3,471,771, and the County has participated up to fifty percent (50%) of the actual cost of Project, then the City shall reimburse the County fifty percent (50%) of the difference between the actual cost and the estimated cost. The

Commissioners Court may revise this payment schedule based on the progress of the Project. The "total cost of the Project" shall include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies

ARTICLE V.

The County's 2012 funding participation shall not exceed \$660,885.

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: Keith Self
Name: Keith Self
Title: County Judge
Date: 9/19/12
Executed on this the 17th day of September
2012, by the County of Collin,
pursuant to Commissioners' Court
Order No. 2012-646-09-17

ATTEST:

By: Sandy Hart
Name: Sandy Hart, TRMC, MM
Title: City Secretary
Date: 7/3/12



CITY OF MCKINNEY, TEXAS
By: Jason Gray
Name: Jason Gray
Title: City Manager By Joe Williams, Deputy City Manager
Date: _____ and authorized signatory
Executed on behalf of the City of
_____ pursuant to City Council
Resolution No. _____

APPROVED AS TO FORM:

By: Mark Houser
Name: Mark Houser
Title: City Attorney
Date: 7/3/12