

**INTERLOCAL AGREEMENT  
BETWEEN COLLIN COUNTY AND  
COMMUNITY INDEPENDENT SCHOOL DISTRICT  
TO PROVIDE EXPANSION OF FM 1138**

This Interlocal Agreement (the "Agreement") is entered into by and between Collin County (the "COUNTY"), a County of the State of Texas, and Community Independent School District (the "Community ISD"), a political subdivision of the State of Texas, to construct an expansion of FM 1138, and by and through their respective signature authorities; pursuant to and under authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, for the purpose of providing an expansion of FM 1138 for Community ISD. The undersigned districts may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

The services that are the subject of this Agreement are a governmental function and the Parties make the Agreement to, respectively, provide the services described in the Agreement.

The Parties have determined that services provided under this Agreement will result in improved services being provided more economically and efficiently for both Collin County and Community ISD by providing for expansion of FM 1138 for Community ISD.

**RECITALS**

**WHEREAS**, after a bond election held November 7, 2017, voters approved a \$115.8 million bond program to address enrollment growth through new construction, land purchases and additions and renovations to existing facilities. As a part of Phase 1 of its bond program, the Community ISD board of trustees approved the construction of an expansion of FM 1138 for the primary purpose of providing traffic flow to its newly constructed high school;

**WHEREAS**, Collin County (the "COUNTY") is a County of the State of Texas and Community Independent School District (the "Community ISD") is a political subdivision of the State of Texas; and

**WHEREAS**, COUNTY has agreed to contract with the Texas Department of Transportation (TxDOT) to construct an expansion of FM 1138 for the purpose of traffic flow.

**NOW THEREFORE**, COUNTY and Community ISD enter into this Interlocal Agreement for the purpose of constructing an expansion of FM 1138 (the "Agreement") pursuant to the authority of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, as amended, for provision of road expansion services by COUNTY, through an agreement between

COUNTY and TxDOT, for Community ISD for the mutual consideration as stated herein:

**1. TERM.**

This Agreement is effective, October 7, 2019. It is the intent of this agreement that construction of the road expansion shall be completed and commissioned for use no later than April 1, 2020. However, COUNTY has no control over the work or schedule of the TxDOT contractor. This Agreement shall terminate upon completion of construction of the road expansion, unless Parties mutually agree otherwise or unless terminated sooner in accordance with Section 5 of this Agreement.

**2. FUNDING.**

Community ISD shall pay seven hundred thirty eight thousand eight hundred thirty four dollars and 00/100 (\$738,834) (the "Construction Fee") for the construction of the expansion of FM 1138 on or before October 17, 2019

Payment in full shall be made to COUNTY via check within ten (10) days after this agreement has been fully executed.

If after completion of the construction of the expansion of FM 1138, TxDOT determines that the construction costs for the expansion are greater than \$738,834, then Community ISD shall immediately pay the County the additional costs charged by TxDOT for expansion over the \$738,834 initially paid.

**3. RELATIONSHIP OF THE PARTIES.**

Each party is acting independently; neither is an agent, servant, or employee of the other; and the parties are not engaged in a joint enterprise. COUNTY represents that it has, or will secure at its own expense, all personnel and consultants required to perform the Services under this Agreement, subject to the provisions in Section 5. No officer and/or member of the governing body of Community ISD and/or COUNTY shall participate in any decision relating to this Agreement which affects their personal interest or have any pecuniary interest in this Agreement or process thereof.

  
10 OCTOBER 2019

**4. SCOPE OF WORK/RESPONSIBILITIES OF THE PARTIES.**

**A. RESPONSIBILITIES OF COUNTY.**

1. Completion Date. COUNTY shall communicate to the Texas Department of Transportation that it is critical to Community ISD that the expansion of FM 1138 be completed by April 1, 2020.
2. Compliance. In providing services required by this Agreement, COUNTY commits to communicate to TxDOT that TxDOT and its contractor must observe and comply

with all applicable federal, state and local statutes, ordinances, rules, and regulations and must also obtain, observe and comply with all permits, licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials necessary to provide services under this Agreement. Such compliance includes but is not limited to complying with the following:

- a. State and Local Building Codes;
- b. Environmental Protection Agency (EPA) regulations and related federal statutes;
- c. Texas Commission on Environmental Quality (TCEQ) regulations and related state statutes;
- d. Safe Drinking Water Act SDWA under Title XIV of the Public Health Service Act (PHSA); and
- e. National Primary Drinking Water Regulations (NPDWRs).

3. Utilities. The City of Nevada shall be responsible for supplying and maintaining all utilities related to the water line at no cost to Community ISD.

**B. RESPONSIBILITIES OF Community ISD.**

1. Community ISD shall tender payment to COUNTY in accordance with Section 2 above.

**5. TERMINATION.**

This Agreement shall terminate upon completion of construction and commissioning for use of the road expansion unless the extension of this Agreement is expressly consented to in writing and signed by all parties hereto. Notwithstanding the foregoing, and prior to COUNTY commencing work under this agreement, either party may terminate this Agreement, with or without cause, by sending ninety (90) days prior written notice to the other party. Subject to Section 20 below, COUNTY shall have the right to terminate this Agreement for cause should Community ISD fail to make payment of any undisputed amount required under this Agreement, if COUNTY has sent written notice of any such failure to make payment to Community ISD and given Community ISD thirty (30) days from the date Community ISD receives such notice to cure the failure to make payment of any undisputed amount.

**6. NOTICE.**

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or certified mail, postage pre-paid, to the



party who is to receive such notice, demand or request at the addresses set forth below (or at such other address as may be provided in writing to the party giving notice). Such notice, demand, or request shall be deemed to have been given when received.

**Collin County**

Attention: Clarence Daugherty  
4690 Community Ave., Ste 200  
McKinney, Texas 75071  
972-548-3728  
[cdaugherty@collincountytx.gov](mailto:cdaugherty@collincountytx.gov)

**Community Independent School District**

Attention: Greg Buchanan  
611 FM 1138 North  
Nevada, Texas 75173  
972-843-6015  
[greg.buchanan@communityisd.org](mailto:greg.buchanan@communityisd.org)

**7. LIABILITY.**

It is understood and agreed between the parties that each party hereto shall be responsible for its own acts of negligence, to the extent allowable by law. Where injury or property damage results from the joint or concurrent negligence of both parties, liability, if any, shall be shared by each party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses available to them, including governmental immunity. Neither party shall be responsible to the other for any negligent act or omission. These provisions are solely for the benefit of the parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defense available by law or of any immunity to which the party is entitled.

**8. CHOICE OF LAW.**

This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of law provisions and exclusive venue shall be in a court of competent jurisdiction in Collin County, Texas. All statutes and law stated herein shall be updated as amended.

**9. DISPUTE RESOLUTION**

Each party agrees to follow the rules and regulations of its own organization. In the event of a conflict between these rules and regulations, administrative representatives of both entities shall, in good faith, discuss the issue and seek a solution that is mutually beneficial, if determined feasible by the parties.

**10. AMENDMENTS AND CHANGES IN THE LAW.**

No modification, amendment, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing, duly authorized and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Agreement that are required by

changes in federal or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

**11. SEVERABILITY.**

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions herein. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

**12. ENTIRE AGREEMENT.**

This Agreement, including all Attachments, constitutes the entire Agreement between the parties hereto and supersedes any other prior or contemporaneous Agreement concerning the subject matter of this transaction, whether oral or written.

**13. BINDING EFFECT.**

This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

**14. NO ASSIGNMENT**

No assignment of the Agreement, or of any duty or obligation of performance hereunder, shall be made in whole or in part by either party without the prior written consent of the other party.

**15. DEFAULT/CUMULATIVE RIGHTS/MITIGATION.**

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Both parties have a duty to mitigate damages.

**16. COUNTERPARTS, NUMBER/GENDER AND HEADINGS.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used

in this Agreement shall be held and construed to include any other gender, any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

**17. GOVERNMENTAL IMMUNITY.**

This Agreement is expressly made subject to COUNTY's and Community ISD's governmental immunity, including but not limited to the Texas Civil Practice and Remedies Code and all applicable state and federal law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the parties have by operation of law. Nothing herein is intended to benefit any third-party beneficiaries to this Agreement.

**18. PREVENTION OF FRAUD AND ABUSE.**

The parties shall establish, maintain, and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or abuse involving COUNTY's or Community ISD's employees or agents that involve funds or activities under this Agreement shall be reported immediately by the party that becomes aware of the incident to the Collin County's Commissioner's Court or Community ISD's Board of Trustees for appropriate action.

**19. FISCAL FUNDING CLAUSE.**

Notwithstanding any provision contained herein to the contrary, the obligations of the parties under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein. The parties shall make any payments required under this Agreement from current revenue available to the parties. Prior to the COUNTY commencing work under this agreement, neither COUNTY nor Community ISD shall have a right of action against the other party in the event one party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding to pay for its obligations hereunder from any source utilized to fund this Agreement or from failure of a party to budget or authorize for this Agreement during the current or any future fiscal year. In the event a party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, that party, at its sole discretion, may provide funds from a separate source or may otherwise terminate this Agreement by written notice to the other party at the earliest possible time prior to the commencement of work under this agreement.

**20. PROMPT PAYMENT ACT.**



COUNTY agrees that a temporary delay in making payments due by Community ISD accounting disbursement procedures shall not place Community ISD in default of this Agreement and shall not render Community ISD liable for interest or penalties, provided such delay shall not exceed thirty (30) days after receipt of the invoice. Any payment not made within thirty (30) days after receipt of the invoice shall bear interest in accordance with Chapter 2251, Texas Government Code, as amended.

**21. FORCE MAJEURE.**

Neither Community ISD nor COUNTY shall be deemed in violation of this Agreement if either is prevented from performing any of the obligations hereunder by reason of, for or through strikes, stoppage of labor, riot, fire, flood, storm, invasion, insurrection, accident, order of court, judge or civil authority, government regulation, an act of God, or any cause reasonably beyond the party's control and not attributable to its neglect. In the event of such an occurrence the time for performance of such obligations or duty shall be suspended until such time that such disability to perform, for which the party is not responsible, or which arises from a circumstance beyond its control, shall be removed. The party claiming the suspension shall give notice of such impediment or delay in performance to the other party within ten (10) days of the knowledge of such occurrence. Each party shall make all reasonable efforts to mitigate the effects of any suspension.

**22. SIGNATORY WARRANTY.**

The persons signing and executing this Agreement on behalf of COUNTY and Community ISD, or representing themselves as signing and executing this Agreement on behalf of COUNTY and Community ISD, do hereby warrant and guarantee that they have been duly authorized by the party on behalf of which they sign to execute this Agreement on behalf of such party and to validly and legally bind such party to all terms, performances and provisions herein set forth.

**IN WITNESS WHEREOF**, the undersigned parties have entered into this Interlocal Agreement to provide for an expansion of FM 1138 between Collin County and Community Independent School District effective as of October 7, 2019.

**COLLIN COUNTY**

**COMMUNITY INDEPENDENT  
SCHOOL DISTRICT**

By: 

Chris Hill, County Judge

By: 

Roosevelt Nivens, Superintendent of Schools

**INTERLOCAL AGREEMENT TO PROVIDE  
EXPANSION OF FM 1138 BETWEEN COLLIN COUNTY AND Community ISD**

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Date: \_\_\_\_\_

Date: September 24, 2019

**RECOMMENDED:**

**ATTEST:**

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Collin County Attorney

By: \_\_\_\_\_  
Community ISD Attorney

By: Gregory Buchanan  
Greg Buchanan, Chief Financial Officer