

Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Aaron Russell, P.E., Public Works Director

Date: January 20, 2009

Subject: Interlocal Agreement with the Burleson Independent School District for the Construction of Hurst Road between Renfro Street and the Northern Drive Approach for Burleson High School East Addition and authorize the Mayor to execute.

Council Action Requested:

Authorize the Mayor to execute an interlocal agreement with the Burleson Independent School District (BISD) for the construction of Hurst Road between Renfro Street and the northern drive approach that serves Burleson High School East Addition.

Background Information:

The BISD is currently constructing a new high school east of Hurst Road, north of Renfro Street and west of Fox Lane. The school will have two access points from Hurst Road, one access point from Renfro Street at the Cardinal Ridge Road intersection and one access point from Fox Lane that is proposed for buses only. A Traffic Impact Analysis was done for the high school development which recommended that Hurst Road be constructed to at least a 3-lane section. The ultimate section of Hurst Road will be a 6-lane divided boulevard based on the City's Master Thoroughfare Plan. Based on discussions and negotiations between the BISD and the City, BISD will pay for 2 lanes of Hurst Road and all appurtenances that would be associated with the construction of the roadway and the City will pay for the third lane. Based on the preliminary cost estimates prepared by the design engineer, the City will be responsible for 30% of the construction cost and the BISD will be responsible for 70% of the construction cost. The engineer's construction cost estimate is \$1,209,193. With the 30%/70% split, this gives an approximate City cost of \$368,683 and an approximate BISD cost of \$840,510.

The following are the major provisions included in the contract:

1. The City will pay for 30% of the construction contract including 30% of change orders and overruns.
2. The BISD will pay for 70% of the construction contract including 70% of change orders and overruns.
3. The BISD will award, execute and manage the construction contract.
4. The City will have the authority to review and approve all change orders before they are executed.
5. The BISD will pay for all design costs and survey associated with the project.
6. The City will acquire the right-of-way and pay for its acquisition.
7. The agreement will serve as the Community Facilities Contract for the Hurst Road Improvements.
8. The City will waive the Administration and Inspection Fee for the Hurst Road Improvements.
9. Due to state law that limits the ability of school districts to construct offsite improvements, the City will lease the Hurst Road right-of-way to the BISD during construction. The lease will expire upon the acceptance of the construction by the City.

Board/Citizen Input:

The BISD School Board will most likely consider the interlocal agreement at its January 26th meeting. The general terms of the agreement were presented to them at the January 12th meeting.

Financial Considerations:

Funds are available in 2005-2009 Certificate of Obligation Unallocated Accounts.

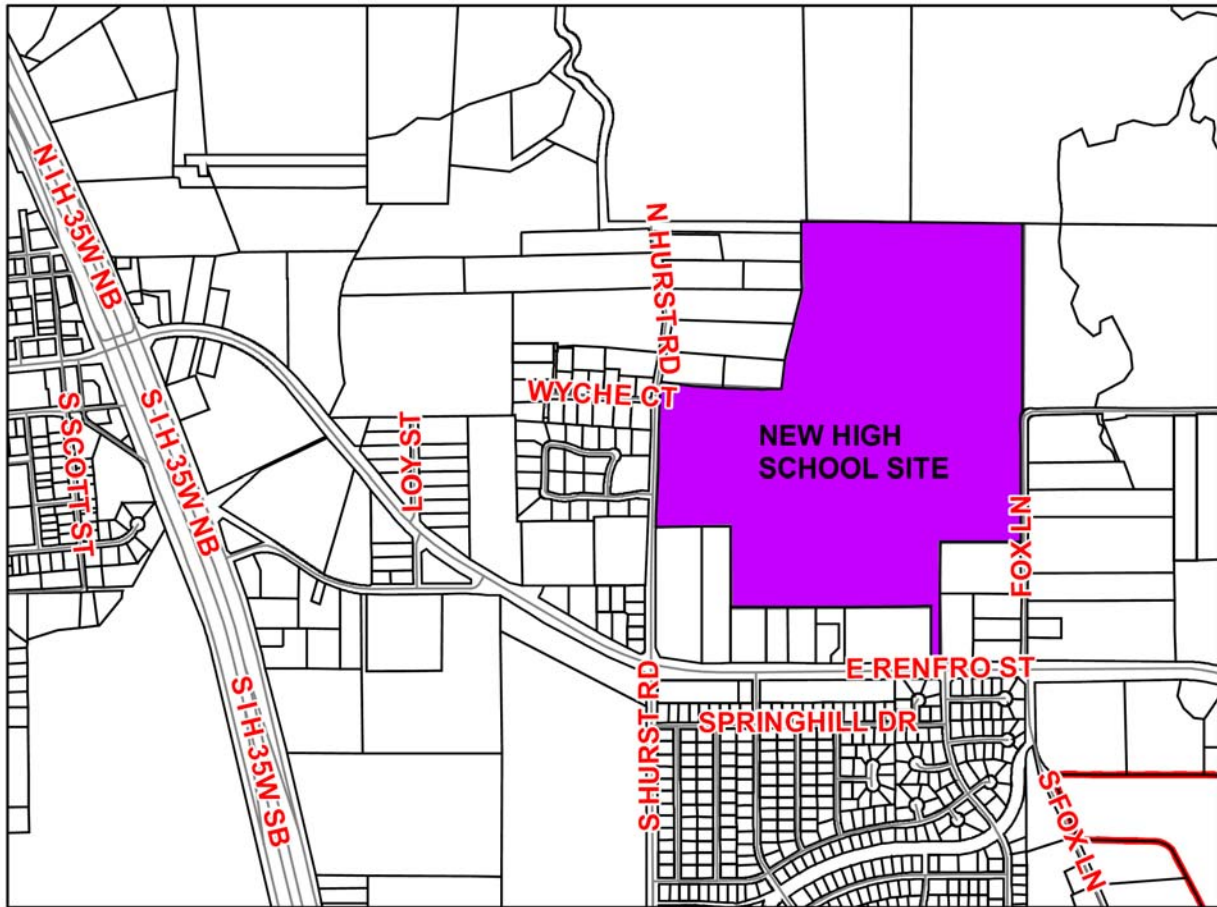
Attachments:

1. Location Map
2. Cost Distribution Map
3. Interlocal Agreement

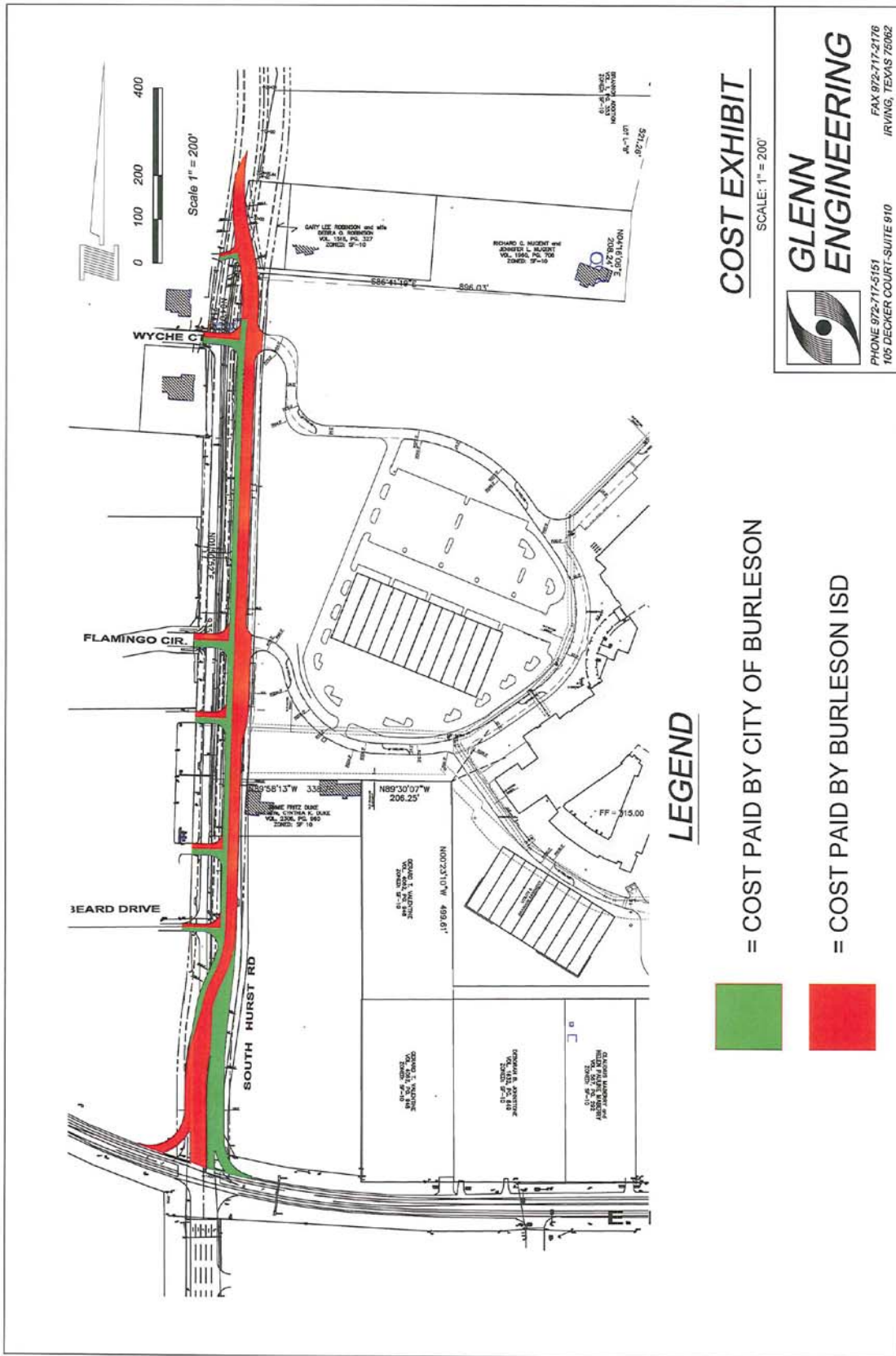
Staff Contact:

Mandy Clark, Deputy City Engineer
817-4475400 ext. 292
mclark@BurlesonTx.com

Location Map



Cost Distribution Map



INTERLOCAL AGREEMENT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS

STATE OF TEXAS §
§
COUNTIES OF JOHNSON AND TARRANT §
§
CITY OF BURLESON §

This Agreement is entered into by and between the City of Burleson, a municipal corporation of Johnson and Tarrant Counties, Texas ("City") and Burleson Independent School District, 1160 SW Wilshire Boulevard, Burleson Johnson County, Texas ("District").

WHEREAS, concurrent with its development of Lot 1, Block 1, Burleson High School East Addition to the City of Burleson, Texas (the "Development"), the District desires to begin construction of Street Paving Facilities and Underground Storm Drainage Improvements (collectively, the "Improvements") to serve the portion of South Hurst Road located between East Renfro Street (FM 3391) and Wyche Court, in accordance with approved construction plans; and

WHEREAS, Article 4 (Community Facilities Policy) of the City's Subdivision and Development Ordinance B-783-08 requires that any developer constructing community facilities enter into a Community Facilities Contract with the City; and

WHEREAS, Chapter 791 of the Texas Government Code provides that a local government may contract or agree with another local government to perform governmental functions and services in accordance with Chapter 791; and

WHEREAS, this Interlocal Agreement is executed in lieu of and in fulfillment of the standards and requirements established by the City's Community Facilities Policy, in compliance with the City's Subdivision and Development Ordinance B-783-08 and other applicable ordinances and regulations to allow the District to begin construction of the Improvements subject to the terms and conditions set forth herein; and

WHEREAS, Article 9 of the City's Subdivision and Development Ordinance B-783-08 contains the Community Facilities Contract which requires a developer to provide the City with a performance bond, payment bond, maintenance bond and proof that the contractor has adequate insurance; and

WHEREAS, pursuant to Article 4.2.A.2 of the Subdivision and Development Ordinance B-783-08, the District is responsible for the construction of 24' of width of Hurst Road due to its location as a perimeter street to the development; and

WHEREAS, the City desires construction of 36' of width of Hurst Road in order to complete construction of one-half of the ultimate roadway; and

WHEREAS, the City shall pay to the District a total of 30% of the construction cost of the roadway based on the bid or proposal obtained by the District under the competitive procurement method selected by the District which provides the best value to the District; and

WHEREAS, the City shall pay to the District 30% of any change orders that it approves in coordination with the District. The District shall provide a copy of each change order to the City for approval before the change orders are executed; and

WHEREAS, this Agreement shall operate as a covenant running with the land and shall be binding upon the District and the City and their successors heirs, representatives, grantees, trustees, officers, agents, servants employees and assigns.

NOW, THEREFORE, the District and the City in consideration of the mutual covenants and agreements contained herein, do agree as follows:

A. Improvements to Be Constructed.

The District agrees to construct South Hurst Road as a 36' wide city street between East Renfro Street (FM 3391) and Wyche Court with paving, curbs and gutters, and to construct on-site water facilities, sanitary sewer, necessary underground storm drainage and street lights (the "Improvements") as hereinafter provided.

B. Applicable Regulations. The District agrees that it will construct the Improvements in accordance with the current City requirements as established by Article 4 (Community Facilities Policy) of the City's Subdivision and Development Ordinance B-783-08, the final plans and specifications of the Development as approved by the City's Engineering Department, and all other applicable federal, state, and local requirements.

C. Construction and Administration Fees. The City will waive the payment of the administration and inspection fee by the District for the construction of Hurst Road in accordance with this agreement.

D. District Responsibilities.

1. The District shall pay the cost of Portland cement concrete or hot mix asphaltic concrete mix design and batch plant control;
2. The District shall pay all engineering design fees and survey fees and fees for preparation of legal descriptions and other documents for right-of-way acquisitions associated with the project.
3. The District shall pay the required costs of main installation or adjustments for street lighting or other utilities or entities for the Development which are charged by public utility companies (including without limitation Lone Star Gas Company, Southwestern Bell Telephone Company, TXU Electric Company, or other utilities or entities that are affected by the Development or related work).

4. The District will award, execute and manage the construction contract. The City shall have the right to approve the form of the construction contract before the contract is signed by the District and the Contractor.
5. The District shall be responsible for funding 70% of the construction contract plus 70% of all change orders.
6. The District shall prepare legal descriptions for right-of-way and easement parcels and forward them to the City for acquisition.

E. *City Responsibilities.*

1. The City shall pay 30% of the total construction contract amount based on competitive sealed bids or proposals received by the District under the competitive procurement method selected by the District to provide the best value to the District. The District shall approve the construction contract from the bidder or proposer that provides the best value to the District. The City shall pay its share upon the execution of the construction contract by the District.
2. The City shall further be responsible for 30% of any change orders to the construction contract and shall pay the 30% upon the execution of the change order by the District. Before a change order is executed by the BISD, it must first be submitted to the Public Works Director for review and approval.
3. The City shall acquire the right-of-way and easements based on the legal descriptions of parcels provided by the District. Title shall be acquired in the name of the City.
4. As part of the consideration for this Agreement, the City hereby leases to the District the existing Hurst Road right-of-way within the limits of the project and the right-of-way and easements to be acquired by the City, to allow the District to construct the Improvements thereon. Such lease shall automatically terminate when the City issues a Letter of Acceptance for the Improvements as provided in Section M of this Agreement.
5. Upon construction acceptance, the District shall refund to the City 30% of any excess payments made by the City for the construction contract.
6. Street signs shall be relocated where possible. The City will be responsible for installation of all other regulatory signs recommended by the Manual on Uniform Traffic Control Devices and as directed by the Public Works Director.

F. *General Requirements.* On all the Improvements included in this Agreement, the District agrees to follow the procedures set forth below:

1. The District's construction contractor shall be bonded in a form and with a surety company authorized to do business in the State of Texas that is

acceptable to the City. The contractor must have demonstrated acceptable prior work experience and have financial resources necessary for performance of the specified project. The Public Works Director shall render the determination as to adequacy of work experience and financial resources. The District shall notify the City Secretary of the contractor selected and provide a copy of the signed contract bid along with all supporting documents.

2. After this Agreement is fully executed, the contractor will give a minimum of 48 hours written notice to the Public Works Director indicating the time and date construction will commence. Construction shall be subject to inspection at any time by the City's inspection forces. Any work initiated prior to written notice to the City shall be removed if directed by the City.
3. If the contractor leaves the job site for five consecutive workdays (for reasons other than weather related causes), at least 24 hours written notice of intent to commence construction again shall be required. Any work initiated prior to written notice to City shall be removed if directed by the City.
4. The contractor shall not backfill or cover any sanitary sewer, storm drain or water pipes unless a City inspector is present and gives his consent to proceed. Further, no service lines or water and sewer mains shall be connected to any building until the service lines and water and sewer mains have been completed, inspected, and accepted by the City.
5. Street construction shall conform to the requirements in the City of Burleson Design Standards Manual. The District will be responsible for arranging with the electric utility provider and paying any related costs for installation of streetlights at locations specified by the Design Standards Manual and approved by the Public Works Director.
6. All water, sanitary sewer, and storm drainage utilities that are anticipated to be installed within the streets or within the street right-of-way will be completed prior to the commencement of street construction on the specific section of the street in which the utility improvements have been placed or for which they are programmed. It is understood that in every construction project a decision may be made after construction has commenced that will require a line or service to be realigned. The District hereby agrees to advise the Public Works Director as quickly as possible when such a need has been identified and to work cooperatively with the City to make sure such utility is changed in a manner that will be least disruptive to street construction or stability.
7. The District's construction contractor shall provide a good and sufficient maintenance bond in an amount equal to 100 percent of the total cost of the Improvements (including all change orders) guaranteeing the maintenance in good condition of the improvements for a period of two years from and after the date that a Letter of Acceptance is issued by the City indicating that the Improvements have been completed by the District and accepted by the City.

8. The District may obtain from the Public Works Director a statement that the contractors work has been completed in accordance with City requirements. However, the maintenance bond will not go into effect until after the City has accepted all Improvements for maintenance by the City. The District shall notify all contractors and subcontractors working on the Improvements that all of their work is subject to inspection by the City at any time.
 9. The City may require certification of materials being used.
 10. Lab testing shall be performed and charged in accordance with the attached Laboratory Testing Responsibilities.
 11. Should any point not be covered in the plans, this Agreement or other applicable City ordinances or regulations, the District shall contact the Public Works Director for a determination of the City's requirements.
 12. If the City determines that any work does not meet the City requirements or has not had proper City inspection, the Public Works Director will notify the contractor and the District, in writing, of the inadequacies which may require the contractor to cease all operations until defects have been corrected and proper inspection has been made. The City agrees not to delay approval of any work which meets the City requirements and has passed proper City inspection.
 13. A regular workday will be any Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except designated holidays. A contractor may find it necessary to request inspection personnel to work overtime or on a non-regular workday. The District's Contractor shall reimburse the City for costs incurred for overtime worked by City personnel. All overtime work requests shall be made by the contractor a minimum of 24 hours in advance and approved, in writing, by the Public Works Director. All City inspection overtime costs incurred by a contractor shall be paid by the District's Contractor prior to the acceptance of the Improvements by the City.
- G. The District expressly acknowledges that by entering into this Agreement the District its successors, assigns, vendors, grantees, and/or trustees, shall never construe this Agreement as waiving any of the requirements of the City's Zoning Ordinance; the City's Subdivision and Development Ordinance; the City's Floods Ordinance; any other ordinance or applicable regulation of the City; or any other Agreement between the District and the City except as herein agreed upon.
- H. Nothing in this Agreement obligates the City to issue any building permits or accept any of the Improvements constructed by the District prior to the District's full compliance with the City's Zoning Ordinance, Subdivision and Development Ordinance, all other ordinances or applicable regulations of the City, and all other Agreements between the District and the City. The District specifically covenants and agrees that it will revise or remove any Improvements that do not conform to any applicable City requirements, at the District's sole cost and expense.

- I. *No Assumption of Liability for Design or Inspection.* Nothing in this Agreement, nor any payment of fees by the District or the City, nor any approval by the Public Works Director or other City employee of any plans designs, or specifications submitted by the District pursuant to this Agreement shall in any way constitute or be deemed to be a release of the responsibility and liability of the District, its engineer, employees, officers, or agents for the accuracy and competency of its design and specifications for the Improvements or for the conformance of the Development to the City's ordinances and regulations.
- J. *Indemnification. District agree to include the following term in any contract with the Contractor selected to construct the Improvements:* **THE CONTRACTOR DOES HEREBY COVENANT AND AGREE TO INDEMNIFY, AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND THE DISTRICT, AND THEIR OFFICERS, EMPLOYEES, AGENTS, ASSIGNS, GRANTEES, TRUSTEES, OR SERVANTS, TO THE EXTENT ALLOWED BY LAW, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED (INCLUDING WITHOUT LIMITATION REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE CONSTRUCTION, MAINTENANCE, OCCUPANCY, USE, EXISTENCE OR LOCATION OF THE IMPROVEMENTS, OR THE FAILURE TO PROPERLY SAFEGUARD THE IMPROVEMENTS, OR ON ACCOUNT OF ANY ACT OR OMISSION, INTENTIONAL OR OTHERWISE, NEGLIGENCE, OR MISCONDUCT OF THE CONTRACTOR AND ITS OFFICERS, EMPLOYEES, AGENTS, ASSIGNS, GRANTEES, TRUSTEES, SERVANTS, SUBCONTRACTORS, LICENSEES, INVITEES, OR TRESPASSERS. TO THE EXTENT THE CONTRACTOR, THE DISTRICT, AND THE CITY, AND THE CITY'S OR DISTRICT'S OFFICERS, EMPLOYEES, AGENTS, ASSIGNS, GRANTEES, TRUSTEES, AND SERVANTS ARE HELD BY A COURT OF COMPETENT JURISDICTION TO BE JOINTLY AND SEVERALLY LIABLE FOR ANY DAMAGES, CLAIMS OR LIABILITIES ARISING FROM ANY CONCURRENT NEGLIGENCE ACT OR OMISSION OF THE DISTRICT AND THE CITY, AND THEIR OFFICERS, EMPLOYEES, AGENTS, ASSIGNS, GRANTEES, TRUSTEES, AND SERVANTS, THE CONTRACTOR AGREES TO INDEMNIFY THE CITY AND THE DISTRICT FOR THEIR PROPORTIONAL SHARE OF SUCH LIABILITY.**
- K. *Final-Approved Engineering Plans.* The District shall furnish two sets of full-size and four sets of half-size final engineering plans, as approved by the Public Works Director, to the City at the time of execution of this Agreement, which shall become a part of this Agreement.
- L. *As-Built Engineering Plans.* The District shall furnish to the City at the completion of the Improvements, one set of "as-built plans," one set of "as-built reproducible plans," and one set of "as-built plans" prepared as digital files. The "as-built" plans and "as-built reproducible plans" shall be submitted to the Public Works Director's office prior to the issuance of a Letter of Acceptance for the Improvements.

- M. *Letter of Acceptance.* The City will not issue a Letter of Acceptance until all Improvements covered by this Agreement are completely constructed to the satisfaction of the Public Works Director or his agent ("Final Completion"). However, upon Substantial Completion, a "punch list" of outstanding items shall be presented to the District's contractors indicating those outstanding items and their deficiencies that need to be addressed for Final Completion of the Improvements.
- N. *Title to Improvements.* Upon issuance of a Letter of Acceptance, title to the Improvements shall be vested in the City and the District hereby relinquishes any right, title or interest in and to the Improvements or any part thereof. It is understood and agreed that the City shall have no liability or responsibility in connection with the Improvements until the Letter of Acceptance is issued.
- O. *Certificate of Occupancy; Building Permits.* No Certificate of Occupancy shall be issued for any building constructed in the Development until such time as the construction of the Improvements is completed and accepted by the City. Further, no temporary occupancy of any building located in the Development shall be allowed until such time as the construction of the Improvements has been completed and accepted by the City.
- P. *Erosion Control.* During construction of the Improvements and after the streets have been installed the District agrees to keep the streets free from soil build-up. The District agrees to use soil control measures such as hay bales, silt screening, hydromulch, sod, etc., to prevent soil erosion. It will be the District's responsibility to present to the Public Works Director a soil control development plan that will be implemented for the Improvements. When, in the opinion of the Public Works Director, there is sufficient soil buildup on the streets or other drainage areas and notification has been given to the District the District will have 72 hours to clear the soil from the streets or affected areas. If the District does not remove soil from the streets or other areas within 72 hours the City may cause the soil to be removed either by contract or City forces and place the soil within the Development at the District's expense. All expenses must be paid to the City prior to issuance of a Letter of Acceptance for the Improvements.
- Q. *Mowing.* The District will be responsible for ensuring that all grass and weeds are mowed and the aesthetics of all land and Improvements are maintained during construction. After 15 days written notice, should the District fail in this responsibility, the City may contract or use City forces to mow the grass or weeds or provide other such maintenance and the City may bill the District for its reasonable costs. All expenses must be paid to the City prior to issuance of a Letter of Acceptance for the Improvements.
- R. *Remedies.* Notwithstanding any other remedy provided herein should the District fail to complete the construction of the Improvements or otherwise fail to comply with this Agreement, the City may take all enforcement actions authorized by law or at equity, including without limitation, seeking damages for breach of contract withholding building permits or certificates of occupancy, or refusing to issue a Letter

of Acceptance for the Improvements.

S. Miscellaneous Provisions.

1. This Agreement shall not be assigned by the District without the prior written consent of the City Manager.
2. Changes in this Agreement must be approved by the City Council. Upon approval, an addendum to this Agreement shall be executed by the District and the City.
3. This Agreement shall constitute a covenant which will run with the land and will be binding upon the District, its successors, heirs, assigns, grantees, trustees, and/or representatives.
4. Each party, when paying for the performance of governmental functions or services, must make those payments from current funds available to the paying party.
5. The District hereby agrees to comply with all federal, state, and local laws that are applicable to the Improvements and the Development.
6. Venue for any action brought hereunder shall be in Johnson County, Texas.
7. The provisions of this Agreement are severable and in the event any word, phrase, sentence paragraph section or other provision of this Agreement, or the application thereof to any person or circumstance shall ever be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative as of the date represented below:

EXECUTED this the _____ day of _____, 2009.

CITY OF BURLESON, TX

BURLESON INDEPENDENT
SCHOOL DISTRICT

BY: _____
KENNETH SHETTER, MAYOR

BY: _____

ATTEST:

BY: _____
AMANDA MCCRORY
CITY SECRETARY

BY: _____

**ACKNOWLEDGEMENT
(CITY)**

STATE OF TEXAS

COUNTY OF JOHNSON

BEFORE ME, the undersigned authority in and for Johnson County, Texas, on this day personally appeared Kenneth Shetter, known to me to be the same person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the duly authorized Mayor of the City of Burleson and that he executed the same on behalf of said City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2009

Notary Public in and for the State of Texas

Notary's Name

My Commission Expires: _____

**ACKNOWLEDGEMENT
(DISTRICT)**

STATE OF TEXAS

COUNTY OF JOHNSON

BEFORE ME, the undersigned authority in and for Johnson County, Texas, on this day personally appeared _____, known to me to be the same person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the duly authorized _____ of the _____ and that he executed the same on behalf of said City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2009

Notary Public in and for the State of Texas

Notary's Name

My Commission Expires: _____

LABORATORY TESTING RESPONSIBILITIES

1. The City will pay for initial testing for the following:
 - a. Sanitary Sewer Trench Backfill Density
 - b. Water Line Trench Backfill Density
 - c. Storm Drain Trench Backfill Density
 - d. Lime or cement stabilized subgrade gradation and density
 - e. Portland Cement Concrete Paving Strength Text/Cylinders
 - f. Concrete Thickness Test/Coring
 - g. Concrete Structures Strength Test/Cylinders

The City pays for only the initial testing. Any retests based on failed tests are at the expense of the contractor. The City will contract with an independent testing laboratory.

2. The contractor will pay for the following tests:
 - a. Sanitary Sewer Line Pressure Test
 - b. Sanitary Sewer Manhole Vacuum Test
 - c. Video of Sanitary Sewer Line
 - d. Water Line Pressure Test
 - e. Water Line Sterilization
 - f. Pavement Mix Design/Plant Control
 - g. Concrete Structure Mix Design/Plant Control

The contractor shall use an approved laboratory that is a member of the American Council of Independent Laboratories and which comply with standard recommended practice for inspection and testing agencies for concrete, steel and bituminous materials as used in construction, ASTM Designation E 329.

Additional laboratory tests may be required during construction. The contractor will be responsible for the cost of any additional testing.