

## **ROADWAY CONSTRUCTION FUND DEPOSIT AGREEMENT**

THIS ROADWAY CONSTRUCTION FUND DEPOSIT AGREEMENT (this “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and among the Collin County Community College District, a political subdivision of the State of Texas (the “District”) and the City of Celina, Texas, a Home Rule Municipality located within Collin County, Texas (the “City”). District and City are sometimes hereinafter individually referred to as a “Party”, and collectively referred to as the “Parties”.

### RECITALS

A. The City and District entered into one certain Development Agreement (the “Development Agreement”) recorded on October 1, 2009, in Document Number 20091001001221050 of the Official Public Records of Collin County, Texas.

B. Pursuant to Section 4.C of the Development Agreement, the District shall deposit Four Hundred Twenty-One Thousand Two Hundred Twenty-Three and 21/100 Dollars (\$421,223.21) (the “Improvement Funds”) with the City in full satisfaction of any District obligations relating to future County Road 88 improvements. These funds must be deposited prior to the City issuing a certificate of occupancy for the real property being more fully described in Exhibit “A” hereto.

C. Pursuant to Section 4.C of the Development Agreement, the District shall provide all Right-of-Way necessary for County Road 88 Improvements on the Property.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Delivery of Improvement Funds. The District will cause to be deposited with the City the Improvement Funds. With the Improvement Funds, the City shall establish an escrow (the “Escrow”) upon the terms and conditions set forth in this Agreement.

2. City’s Use of Improvement Funds. The City shall use the Improvement Funds to construct future improvements to County Road 88 as provided in the Development Agreement.

3. Right of Way Dedication. The District will dedicate the southern one-half of the ultimate one-hundred (100) feet wide Right-of-Way for County Road 88 (future Choate Parkway) by plat. This Right-of-Way dedication will fully satisfy the Right-of-Way dedication obligation described in Section 4.C of the Development Agreement.

4. Notices and Communications. Any and all notices, consents or other communications required or permitted by this Agreement shall be given in writing and delivered by

facsimile, personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by a nationally recognized overnight courier, addressed as follows:

To District: Dr. Neil Matkin  
Collin County Community College District  
3452 TX-399 Spur, Ste. 400  
McKinney, TX 75069

With a copy to: Abernathy, Roeder, Boyd & Hullett  
Attn: Rob Daake  
1700 Redbud Boulevard, Ste. 300  
McKinney, TX 75069

To City: Jason Laumer  
City Manager  
142 North Ohio  
Celina, TX 75009

With a copy to:

or at any other address or telecopier number designated by any Party hereto in writing. Any notice or communication shall be deemed to have been given (i) as of the date of receipt, if sent by telecopier (with written confirmation of the date and time of transmission and receipt) on or before 5:00 p.m.; (ii) as of the next day after receipt, if sent by telecopier (with written confirmation of the date and time of transmissions and receipt) after 5:00 p.m.; (iii) as of the date of delivery, if hand delivered or sent by nationally recognized overnight courier; (iv) as of 3 days after the date of mailing, if mailed within the continental United States; or (v) as of 7 days after mailing, if mailed outside the continental United States.

5. Release of Liability Under Development Agreement. The Parties acknowledge that the District has performed, in their entirety, its obligations with respect to County Road 88 improvements under the Development Agreement and is hereby released from any liability thereunder.

6. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No change or addition is to be made to this Agreement except by written amendment executed by the Parties hereto.

(b) Assignment. No Party hereto shall have the right to assign this Agreement or any of its rights or obligations hereunder to any person, corporation or other entity without the written approval of the other Party which approval shall not be unreasonably

withheld or delayed. In no event, however, shall such assignment and/or assumption release the assignor from its duties and liabilities under this Agreement.

(b) Good Standing; Authorization. The Parties hereby represent and warrant to one another as follows: (i) each of the Parties is duly formed and validly existing under the laws of its state of organization; and (ii) the individuals executing this Agreement on behalf of the respective Parties are authorized and empowered to bind the Party on whose behalf each such individual is signing.

(c) Governing Law. This Agreement is entered into in the State of Texas and shall be construed and interpreted under the laws of the State of Texas.

(c) Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement.

(d) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. The Parties hereto agree and acknowledge that a facsimile signature to this Agreement or any documents contemplated by this Agreement shall have the same force and effect as an original signature.

(e) Dispute. In the event of any dispute between the Parties arising under or in relation to this Agreement, the prevailing party in such dispute or litigation shall have the right to receive from the non-prevailing party all of the prevailing party's reasonable costs and attorneys' fees incurred in connection with any such dispute.

(f) Waiver. The waiver by any party of any covenant term, condition or provision of this Agreement or any breach thereof shall not be deemed to be a waiver of any subsequent contravention or breach of same or any other covenant, term, condition or provision herein contained. No covenant, term, condition or provision of this Agreement shall be deemed to have been waived by any party, unless such waiver is in writing, signed by the Parties involved.

(g) Time is of the Essence. Time is of the essence of this Agreement and every term and condition hereof.

(h) Further Instruments and Documents. Each Party hereto shall, promptly upon the request of the other Parties, have acknowledged and delivered to any other party any and all further instruments and assurances reasonably requested or otherwise necessary to carry out the intent of this Agreement.

(i) No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any owner-contractor, contractor-subcontractor, employer-employee, partnership, joint venture or other arrangement between or among District and City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

(j) Computation of Periods. All time periods referred to in this Agreement shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday, or other day that any Party is not open for business, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a national holiday, or other day that such Party is not open for business.

(k) Cooperation. The Parties each agree to cooperate with the other in connection with the construction of the Improvements as set forth in this Agreement. The Parties shall promptly upon written request execute, acknowledge and deliver to the appropriate party any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

District:

Collin County Community College District, a political subdivision of the State of Texas

By: \_\_\_\_\_  
Neil Matkin, President

City:

City of Celina, Texas

By: \_\_\_\_\_  
Jason Laumer, City Manager

Exhibit "A"