

JOINT PARTICIPATION INTERLOCAL AGREEMENT

This Joint Participation Interlocal Agreement (“Agreement”) is entered into by and between **Montgomery Independent School District** (“MISD”) and the **City of Montgomery, Texas** (“City”) pursuant to the Interlocal Cooperation Act, Tex. Gov’t Code Ch. 791.001, *et seq.*, City and MISD may each be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, it is of mutual benefit to both Parties to construct improvements which include an eight-inch (8”) public sanitary sewer line to the point of connection to the MISD system and a twelve-inch (12”) public water line to the western boundary of the property owned by MISD (the “Improvements”) (collectively, the work to construct the Improvements shall be referred to as the “Project”);

WHEREAS, both Parties desire to cooperate in accordance with the terms of this Agreement to jointly accomplish the construction of the Project; and

WHEREAS, both Parties agree that all funds used under this Agreement shall be from current fiscal funds.

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties agree as follows:

TERMS

Section 1. Responsibilities of the Parties

A. City’s Responsibilities

- (i) Upon receipt of the bids and award recommendation from MISD for construction of the Improvements, City will remit payment to MISD for the Improvements in accordance with Section 2 of this Agreement.
- (ii) City will engage their engineer to inspect the Improvements during construction upon successful completion of necessary testing and inspection and the recommendation of the City’s engineer, the City will review and accept the Improvements at a City Council meeting into a one year warranty period.
- (iii) Upon accepting the Project into the one year warranty period, the City shall assume full responsibility for the ongoing maintenance and repairs of the Improvements within the City’s right of way and within public utility easements dedicated to the City, with the exception of any items due to the faulty material or workmanship of the contractor.
- (iv) Within 30 days of the one year warranty period, the City will engage their engineer to conduct a one year warranty inspection with MISD and the contractor. A punch list, if any, will be generated by the City and the contractor will be required to address within 30 days of the date of the punch list. Upon completion of all punch list items, the City will fully accept the infrastructure.

B. MISD Responsibilities

- (i) MISD agrees to provide a fully installed and operational eight-inch (8”) sanitary sewer line and a twelve-inch (12”) publicly maintained water line to the boundary of the property owned by MISD.
- (ii) MISD will prepare the plans, specifications, and estimates for the Improvements (the “Improvements PS&E”).
- (iii) MISD shall advertise for and receive bids for construction of the Project, in a manner similar to that of other City projects in accordance with Chapter 252 of the Texas Local Government Code or, if determined by MISD in its discretion, in a manner consistent with the procurement laws applicable to MISD, including, as applicable, Chapter 2269 of the Texas Government Code. MISD may elect to have the work performed through its existing Construction Manager under contract on the subject elementary school.
- (iv) Upon receipt of bids for the construction of the Project, MISD shall provide an invoice to City for the Project in accordance with Section 2 of this Agreement.
- (v) MISD shall be responsible for obtaining all necessary permits and jurisdictional approvals for construction of the Project.
- (vi) MISD shall award contract(s) for the construction of the Project to the best value bidder in accordance with the usual and customary procedures of MISD. MISD reserves the right to decline to award the contract(s) to any bidders, in which event, MISD shall re-advertise for bids pursuant to the same understanding with regard to rejection of bids.
- (vii) Upon award of a contract for construction of the Project, MISD will:
 - (a) Through its contractor, construct the Project in accordance with the Improvements PS&E. MISD may make minor changes in the Improvements PS&E through change(s) in contract (“CIC”) that the City deems to be necessary or desirable during the construction of the Project, so long as the original scope and intent of the Project is maintained.
- (viii) MISD agrees to convey necessary utility easements and Improvements to the City for provision of public utilities.
- (ix) Pay actual cost plus two hundred percent (200%) on the tap and meter costs plus the costs incurred for inspection of the Improvements.

Section 2. Funding of the Project

Notwithstanding any provision in this Agreement to the contrary, the following provisions will apply to all payments made under this Agreement:

- A. The City agrees to provide Seventy-five Thousand and No/100 dollars (\$75,000.00) necessary for the Improvements of the Project (“City Funding Share”). In no event shall the City Funding Share exceed Seventy-five Thousand and No/100 dollars (\$75,000.00).

Any Notice given by mail hereunder is deemed given upon deposit in the United States Mail and any Notice delivered in person shall be effective upon receipt.

Each Party shall have the right to change its respective address by giving at least fifteen (15) days' written notice of such change to the other Party.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

- C. Independent Parties. It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. The City is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of MISD for any purpose. MISD, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of the City for any purposes. Neither Party has the authority to bind the other Party.
- D. No Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties and their legal successors and assigns. The City is not obligated or liable to any party other than MISD for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to confer or create rights or remedies upon any third party, increase the rights or remedies of any third party, or the duties or responsibilities of the City with respect to any third party.
- E. Waiver of Breach. No waiver or waivers of any breach or default (or any breaches or defaults) by either Party hereto of any term, covenant, condition, or liability hereunder, or the performance by either Party of any obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under and circumstances.
- F. No Personal Liability; No Waiver of Immunity.
- (1) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the City.
 - (2) The Parties agree that no provision of this Agreement extends the City's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
 - (3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.

- B. MISD agrees to provide the funding necessary for the Improvements of the Project including the actual cost plus 200% on the tap and meter (“MISD Funding Share”), provided that these costs shall be offset by the City Funding Share paid by the City pursuant to Paragraph 2.A.
- C. City agrees to provide payment of the City Funding Share to MISD within fourteen (14) business days of receipt of the invoice.
- D. Parties agree that any Improvement costs incurred during the construction of the Project or other work to be performed for the Improvements under this Agreement in excess of the award amount may be funded by the MISD.

Section 3. Term and Termination

- A. This Agreement shall commence upon final execution by all the Parties (the “Effective Date”) and shall remain in full force and effect until the acceptance of all public infrastructure included in the Project (after the completion of the one year warranty period) or the MISD’s receipt of all payments due from the City under this Agreement, whichever occurs later (“Term”).
- B. This Agreement may be terminated by the City before award of the construction contract and at any time by mutual written consent of the Parties, or as otherwise provided under this Agreement.

Section 4. Miscellaneous

- A. Non-Assignability. The City and MISD bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither the City nor MISD shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party.
- B. Notice. Any notice required to be given under this Agreement (“Notice”) shall be in writing and shall be duly served when it shall have been (a) personally delivered to the address below, (b) deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the City or MISD at the following addresses:

City: City of Montgomery, Texas
 c/o Alan P. Petrov
 Johnson Petrov LLP
 2929 Allen Parkway, Ste 3150
 Houston, Texas 77019
 Email: apetrov@johnsonpetrov.com

MISD: Montgomery Independent School District
 20774 Eva Street
 Montgomery, Texas 77356
 Attention: Mark Ruffin, Superintendent
 Email: mark.ruffin@misd.org

[EXECUTION PAGE FOLLOWS]

CITY OF MONTGOMERY, TEXAS

By: _____
Sara Countryman, Mayor

MONTGOMERY INDEPENDENT SCHOOL DISTRICT

By:  _____
Dr. Mark Ruffin, Superintendent

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney

ATTEST

Nici Browe, City Secretary

- G. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Montgomery County, Texas.
- H. Binding Arbitration; Right to Jury Trial. The Parties do not agree to binding arbitration, nor does either Party waive its right to a jury trial.
- I. Contract Construction.
- (1) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not authorize this Agreement.
 - (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
 - (3) When terms are used in the singular or plural, the meaning shall apply to both.
 - (4) When either the male or female gender is used, the meaning shall apply to both.
- J. Recital. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.
- K. Entire Agreement; Modifications. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.
- L. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.
- M. Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- N. Multiple Counterpart /Execution. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- O. Warranty. By execution of this Agreement, the District warrants that the duties accorded to the District in this Agreement are within the powers and authority of the District.