

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

**Interlocal Cooperation Agreement
for the Maintenance of Bolin Elementary School
Sewer Lift Station**

This Interlocal Cooperation Agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and the Allen Independent School District ("AISD") (collectively the City and AISD the "Parties"), acting by and through their authorized officers.

RECITALS:

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791 (the "Act") authorizes units of local governments to contract with one or more units of local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, AISD has requested City to provide certain maintenance services and repairs for the Bolin Elementary School Sewer Lift Station (the "Sewer Lift Station") on behalf of AISD on the terms set forth herein; and

WHEREAS, the Parties 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 at the time the payment becomes due;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I
Purpose**

The purpose of this Agreement is, as described in the foregoing recitals, to evidence the Agreement of the Parties, for the City to provide for certain maintenance of the Sewer Lift Station on behalf of AISD.

**Article II
Definitions**

"AISD" shall mean the Allen Independent School District.

"City" shall mean the City of Allen, Texas.

"Effective Date" shall mean the last date of execution hereof.

"Payment Request" shall mean a written request from the City to AISD for payment of costs for Sewer Lift Station Repairs accompanied by written evidence of the costs incurred and paid by City for the maintenance of the Sewer Lift Station, and such other information as the AISD may reasonably request.

“Sewer Lift Station” shall mean the AISD Bolin Elementary School sewer lift station located in Lucas, Texas.

Article III Term; Termination

3.1 The term of this Agreement shall be for a period of one (1) year beginning on the Effective Date. Thereafter the term of this Agreement shall automatically renew for successive terms of one (1) year each, unless sooner terminated as provided herein.

3.2 Either Party may terminate this Agreement if the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof. Either Party may terminate this Agreement by providing thirty (30) days prior written notice to the other Party.

Article IV Project

4.1 Maintenance. City agrees to be responsible for the following preventive maintenance for the Sewer Lift Station:

- (a) Monitoring the proper operation of the Sewer Lift Station twenty-four (24) hours a day seven (7) days per week through the City’s Supervisory Control and Data Acquisition System (SCADA). City shall dispatch a City personnel twenty-four (24) hours a day seven (7) days per week to the Sewer Lift Station to investigate any reported or identified problems or conditions requiring an inspection;
- (b) Performing daily inspections of the Sewer Lift Station by City personnel. Daily inspections shall include visually inspecting the Sewer Lift Station site, assuring both wet well pumps operate, visualize the wet well for abnormal conditions, and take wet well readings for various toxic and explosive gases;
- (c) Performing monthly preventative maintenance with a VACTOR crew. Monthly maintenance shall include wet well cleaning, including high pressure spray down and vacuuming of the wet well. City shall add degreasing agent to the wet well if grease and oils that require remediation are present;
- (d) Pulling the lift station pumps to clear obstructions or diagnose operational issues;
- (e) Including the Sewer Lift Station in City plans for periodic SCADA upgrades;
- (f) Assisting with cleanup of Sanitary Sewer Overflows (SSOs) coming from the Sewer Lift Station; and

- (g) Make periodic capital improvement recommendations to the AISD Facilities Maintenance Department for replacement or refurbishment of the components of the Sewer Lift Station, including but not limited to the Sewer Lift Station control panel, electrical components, and the wet well pumps.

4.2 The City shall not be responsible for the following:

- (a) Inspecting or maintaining the wastewater lines in the Bolin Elementary School and the wastewater lines that lead from or connect to the Bolin Elementary School to the Sewer Lift Station; the private 4" sewer force main sewer main that leads from the Sewer Lift Station to the point of entry to the serving City sewer main along the alley between 1308 and 1310 Cassandra Lane Lucas, Texas;
- (b) Reporting or having the responsibility or liability for any sanitary sewer overflows emanating from Bolin Elementary School property.

4.3 Sewer Lift Station Repairs.

- (a) AISD shall be responsible for the payment of the costs incurred by City for services provided for the Sewer Lift Station beyond the normal inspection and preventive maintenance services as set forth in section 4.1 above which includes but is not limited to equipment repair and replacement and repairs to and replacement of the SCADA system that is installed on the Sewer Lift Station site ("Sewer Lift Station Repairs").
- (b) AISD shall pay to City the costs for Sewer Lift Station Repairs within thirty (30) days after AISD receipt of a Payment Request. Except for emergency Sewer Lift Station Repairs, City shall, prior to performing or providing Sewer Lift Station Repairs notify AISD Facilities and Maintenance Department in writing of the necessary Sewer Lift Station Repairs and the estimated costs. In the event of emergency conditions that would impact the Bolin Elementary School to conduct instructional activities or in the event of other emergency conditions City shall perform the necessary Sewer Lift Station Repairs and notify AISD as soon as reasonably practical. Repairs associated with SCADA operation are typically handled as an emergency condition.

4.4 Insurance. AISD shall during the term of this Agreement obtain and maintain in full force and effect, at its expense, adequate Commercial General Liability for a Texas political subdivision of its type, including the following:

- (a) Commercial General Liability Policy. Commercial General Liability Policy covering bodily injury, death and property damage with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit, and Two Million Dollars (\$2,000,000) aggregate.

- (b) Additional Insured Status. All insurance required pursuant to this Agreement shall be endorsed to name City as additional insureds.
- (c) Certificates of Insurance. Certificates of Insurance and policy endorsements shall be provided to or made available to the City prior to the commencement services by City.
- (d) Carriers. All policies of insurance required to be obtained by AISD pursuant to this Agreement shall be maintained with insurance carriers authorized to issue insurance in the state of Texas and rated at least "A" or better" by AM Best or other equivalent rating service.

Article V Miscellaneous

5.1 Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of the other party.

5.2 Notice. Any notice, demand or request required or permitted to be delivered hereunder shall be deemed received when delivered in person or sent by United States Mail, postage prepaid, certified mail, or by hand-delivery or facsimile transmission addressed to the party at the address set forth below:

If intended for City of Allen:

City of Allen
Attn: Peter H. Vargas
City Manager
One Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

With copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

If intended for AISD:

Attn: Scott Niven, Ed.D.
Superintendent
Allen Independent School District
612 E. Bethany Drive
P.O. Box 13
Allen, Texas 75002

Any party may, at any time, by written notice to the other party, designate different or additional persons or different addresses for the getting of notices hereunder.

5.3 Amendment. This Agreement may be amended by the mutual written agreement of both parties hereto.

5.4 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

5.5 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the jurisdiction of said court.

5.6 Governmental Immunity. It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to or against claims arising in the exercise of governmental functions relating hereto or otherwise. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in any parties not signatory hereto. Each Party agrees to and accepts full responsibility for the acts, negligence and/or omissions of such Party's officers, agents and employees in the execution and performance of this Agreement.

5.7 Indemnification. To the extent allowed by law, each Party agrees to release, 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 attorney's 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. This Agreement and the indemnity provided herein is not intended to and shall not create any cause of action for the benefit of third parties or any person not a party to this Agreement. It is expressly understood and agreed that, in the execution of this agreement, no 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.

5.8 Entire Agreement. This Agreement represents the entire agreement among the parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

5.9 Recitals. The recitals to this Agreement are incorporated herein.

5.10 Exhibits. The exhibits to this Agreement are incorporated herein.

5.11 Counterparts. This Agreement may be executed in any number of counterparts, each of whom shall be deemed an original and constitute one and the same instrument.

5.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

(Signature page to follow)

EXECUTED this _____ day of _____, 2018.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

Attest:

By: _____
Shelley George, City Secretary

Approved as to form:

By: _____
Peter G. Smith, City Attorney

EXECUTED this 23 day of May, 2018.

ALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Scott Niven, Ed.D., Superintendent