

**INTERLOCAL COOPERATION AGREEMENT FOR
EMERGENCY ACCESS DRIVEWAY IN CONNECTION WITH SITE PLAN APPROVAL AND
PERMITTING FOR NEW T.M. CLARK ELEMENTARY SCHOOL FACILITY**

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the City of Portland, Texas ("City"), a municipal corporation and home-rule city of the State of Texas, acting by and through its governing body, the City Council, and the Gregory-Portland Independent School District (“District”) acting by and through its governing body, the Board of Trustees.

RECITALS

WHEREAS, District has applied for approval of a site plan and building permit under the City’s Unified Development Ordinance (“UDO”) to build a new elementary school at the intersection of Billy G. Webb Drive and Memorial Parkway in Portland, Texas;

WHEREAS, the District has submitted for City approval a site plan, and permit application for the new school project, which include a traffic impact analysis study revised to include proposed school zones and other information requested by City officials.

WHEREAS, the City has expressed concern about adverse impact on City emergency responder access to and from municipal police station facilities on Billy G. Webb Drive across the street from the proposed new elementary school, and the City as a condition for site plan approval and permitting requires a commitment by the District to construct on District land a secondary paved access drive from the rear of the Police Department property to Cedar Drive for use by the City emergency responders to access City facilities.

WHEREAS, District may spend the public school funds of the District only as provided in Texas Education Code §45.105 for public school purposes necessary in the conduct of the public schools, and District has expressed concerns about the legal propriety of building and paying for the entire additional cost (estimated to be over \$400,000) for providing the City a secondary paved access road/easement on G-PISD land for use by the City.

WHEREAS, District wishes in a spirit of interlocal collaboration to cooperate with the City by sharing with the City the cost of an alternative paved access road on G-PISD property to allow City emergency responder access to the City’s police department, to the extent permitted by Texas law and required by the City’s UDO;

WHEREAS, the City wishes to facilitate the approval of the District plans and permit application for construction of the needed new elementary school facility, and the City will agree to pay to District 46% of the construction cost (including soft costs) for construction of an alternative paved emergency access road on G-PISD property to allow City emergency responder access to the City’s police department, if the District accepts and agrees to include in its plans and to bear 54% of the cost of construction (including soft costs) of a secondary paved private access drive on District land from the rear of the Police Department property to Cedar Drive for City emergency responder use.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the participating local governments ("Parties"), authorized by appropriate actions of their governing bodies, hereby agree as follows:

SECTION 1. PURPOSE.

The purpose of this Agreement is to facilitate City UDO approvals and permitting to allow the District to proceed with construction of a needed new elementary school at the intersection of Billy G. Webb Drive and Memorial Parkway, and to also provide for construction of a secondary paved private access drive on District land from the rear of the Police Department property to Cedar Drive for City emergency responder use.

SECTION 2. CITY COVENANTS

- a) City will process approval of the District's site plan, plat and permit application promptly and work cooperatively with District and District's representatives in this process.
- b) City will present the final site plan and permit application to the Planning Commission (or other appropriate reviewing authority) for approval of: (a) the new school facility, and (b) the secondary paved private access drive.
- c) City will perform ministerial actions necessary to record the plans, permits and related documentation.
- d) City will expeditiously review District submittals to facilitate issuance of a building permit for the District's new elementary school project and for a secondary paved private access drive.
- e) City agrees that if the Private Access Road to be constructed by District on District land for City emergency responder use will entail rerouting of fiber optic lines servicing City facilities, the City shall bear all costs of rerouting of the fiber optic lines.
- f) City covenants that upon District completion of construction of the secondary paved private access drive on District land, City shall pay to District 46% of the construction cost (including soft costs such as engineering design and professional fees, surveying, permitting, testing and project management) for construction of the alternative paved emergency access road on G-PISD property to allow City emergency responder access to the City's police department.

SECTION 3. DISTRICT COVENANTS

- a) The District agrees and covenants that upon City approval of the District's site plan for the elementary school project, and issuance of building permits for the new elementary school facility and the secondary paved private access drive, the District will proceed to construct in full compliance with all requirements of the approved plans, the City's UDO and Texas law the new elementary school facility, and also construct a 24' wide asphalt secondary access road from the rear of the Police Department property to Cedar Drive for City emergency responder use. The secondary Private Access Road shall be constructed according to applicable ordinances for a private driveway with curbs and storm drainage culverts as shown in the attached Schematic Layout (Exhibit A to this Agreement). The District will include a monetary allowance for construction of the Emergency Access Driveway as part of the new T.M. Clark Elementary School bid documents. Upon completion of the secondary private access road on District property the District will grant the City a non-exclusive easement for use of the private emergency

access road for City emergency responder use on condition that the City maintains and repairs the access road at the City's expense. The Board of Trustees of the District determines that the new elementary school facility, and private emergency access road for City emergency responder use, are for purposes necessary in the conduct of the public schools as determined by the governing body of the District.

SECTION 4. FUNDS AND PAYMENT.

Each Party which performs services under this Agreement shall do so with funds available from its current revenues.

SECTION 5. INTERLOCAL COOPERATION ACT.

The Parties agree that activities contemplated by this Agreement are "governmental functions and services" and that Parties are "local governments" as that term is defined in the Interlocal Cooperation Act. This Agreement is made under chapter 791 of the Texas Government Code.

SECTION 6. IMMUNITY NOT WAIVED.

Nothing in this Agreement, including the execution and performance of the covenants contained in this Agreement, is intended to or may constitute a waiver or limitation of any governmental, official, or other immunity, defense, or other protection afforded under state and federal law to any Party or its officers, employees, representatives, and agents.

SECTION 7. TERM OF AGREEMENT.

This Agreement shall begin on the final date of execution by all Parties.

SECTION 8. AMENDMENTS TO AGREEMENT.

Unless otherwise provided herein, this Agreement may only be amended by written instrument duly executed on behalf of each party. The City authorizes the City Manager and the District authorizes the Superintendent to execute subsequent amendments, limited to non-substantive modifications that do not require the appropriation of funds, without further approval from the governing bodies.

SECTION 9. NOTICES.

All notices required or permitted hereunder shall be in writing and shall be deemed properly delivered when actually received or, if earlier, on the seventh (7th) day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested), addressed to the respective other Party at the address prescribed below, or at such other address as the receiving Party may have theretofore prescribed by notice to the sending Party:

City:

City of Portland
Attn: City Manager
1900 Billy G. Webb Dr.
Portland, Texas 78374

District:

Gregory-Portland Independent School District
Attn: Superintendent of Schools
1200 Broadway Blvd.
Portland, Texas 78374

SECTION 10. ENTIRE AGREEMENT.

This Agreement, representing the entire agreement between Parties, supersedes any and all prior agreements between Parties, whether written or oral, relating to the subject matter of this Agreement. No officer or employee of either Party may waive or otherwise modify the limitations in this Agreement without the express action of the governing body of the Party or its duly authorized agents.

SECTION 11. SEVERABILITY.

In the event any term, covenant, or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant, or condition herein contained, provided that such invalidity does not materially prejudice either City or District in their respective rights and obligations contained in the valid terms, covenants, or conditions hereof. To this end, the remaining terms, covenants, and conditions hereof are severable and continue in full force and effect.

SECTION 12. VALIDITY AND ENFORCEABILITY.

If any current or future legal limitations affect the validity or enforceability of any provision of this Agreement, then the legal limitations are made a part of this Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations. As so modified, this Agreement continues in full force and effect.

SECTION 13. LAWS AND VENUE.

City and District shall comply with all federal, state, county, and local laws, ordinances, rules, and regulations applicable to this Agreement and each Party's respective performance thereunder. This Agreement shall be interpreted according to Texas laws governing the interpretation of contracts. Venue for an action arising under this Agreement shall lie in San Patricio County, Texas and be in accordance with the Texas Rules of Civil Procedure.

SECTION 14. CAPTIONS.

Captions to provisions of this Agreement are solely for convenience and shall not be considered in the interpretation of any provision.

SECTION 15. NON-ASSIGNMENT.

District shall not assign or transfer, in whole or in part, directly or indirectly, any of its rights or obligations hereunder without the prior written consent of City, and any attempt of assignment or transfer without such consent shall be void. However, this Agreement is binding upon the parties to this Agreement and their respective successors in office.

SECTION 16. WARRANTY.

Each signatory to this Agreement guarantees and warrants that the signatory has full authority to execute this Agreement and to legally bind their respective Party to the Agreement.

CITY OF PORTLAND

City Manager/Designee (Date)

ATTEST:

City Secretary (Date)

247491.1

**GREGORY-PORTLAND INDEPENDENT
SCHOOL DISTRICT**

Tim Flinn (Date)
President, School Board of Trustees

Dr. Michelle Cavazos (Date)
Superintendent