

**INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY
OF DENTON, TEXAS
AND
DENTON INDEPENDENT SCHOOL DISTRICT
FOR
THE EXCHANGE OF DENIA PARK AND BORMAN ELEMENTARY SCHOOL**

This Interlocal Agreement (“Agreement”) is made and entered into by and between the City of Denton, Texas, a home-rule municipality located in Denton County, Texas (hereinafter “City”) and Denton Independent School District, an independent school district and a duly organized political subdivision of the State of Texas, (hereinafter “DISD”), and is effective on the date last written hereinbelow (the “Effective Date”). City and DISD are hereinafter collectively referred to herein as “Parties” or individually as “Party.”

Recitals

WHEREAS, V.T.C.A. Government Code Chapter 791, the Interlocal Cooperation Act (“Act”), provides authorization for a local government to contract or agree with another local government to perform governmental functions and services under the terms of the Act; and

WHEREAS the City and DISD are political subdivisions within the State of Texas and engage in the provision of governmental services for the benefit of their citizens; and

WHEREAS The City is the owner of 23.044 acres of land situated at 1001 Parvin Street, Denton, Texas 76205, the legal description of which is set forth on Exhibit "A" hereto attached (the "City Tract"); and

WHEREAS, the City Tract currently operates as a Denia Park and Recreation Facility, which is operated as public land designated for park and recreational area uses and is protected land under Chapter 26 of the Texas Park and Wildlife Code; and

WHEREAS, DISD is the owner of 10.004 acres of land and building located at 1201 Parvin Street, Denton Texas 76205, the legal description of which is set forth on Exhibit “B” hereto attached (the “DISD Tract”); and

WHEREAS, DISD Tract operates as Frank Borman Elementary School (“Borman”), a Pre-K thru Fifth Grade Elementary School; and

WHEREAS, on May 6, 2023, the Denton ISD voters approved a \$1.4 billion bond referendum which provided funding for the construction of a replacement campus for Borman Elementary; and

WHEREAS, based on the approved funding DISD has conducted a comprehensive study of potential available locations, public input, community needs and determined that the best location to construct the new Borman Educational Facility would be in the same neighborhood. This location would keep the community involvement the school is known for and create the least

impact to the educational environment by exchanging said land and constructing the “New” Borman Facility while the current school is still active.; and

WHEREAS, DISD has requested to exchange approximately 3.739 acres of the City Tract for approximately 4.729 acres of the DISD Tract to accommodate the rebuilding of Borman Elementary (“DISD Project”); and

WHEREAS, DISD has also requested, as part of DISD Project, permission to allow for Borman to remain operational until the construction of the new school has been completed (“Phase I”); and

WHEREAS, Phase I of the DISD Borman Elementary School will be reconstructed and reopen for educational purposes in August 2026.

WHEREAS, upon completion of the Phase I of DISD Project, DISD shall demolish the building located on the DISD Tract and convert that space into Park Land (“Phase II”); and

WHEREAS, Phase II of the DISD Project will be completed and open to the public by August 2027; and

WHEREAS, the City will not have access to the 3.739 acre City Tract during Phase I and Phase II of the DISD Project, DISD shall provide the City with approximately 2.28 acres of land located at “Old” Calhoun Middle School located at 709 West Congress, and more particularly described in Exhibit C attached hereto, for open and free use by the public and to provide for City programming until the DISD Project is completed; and

WHEREAS, DISD desires to contract with City for the exchange of the City Tract and the DISD Tract together with all rights, privileges and appurtenances thereto (the “Exchange”), in order to facilitate the DISD Project for the 1) construction of a new Borman Elementary School, 2) demolition of the old Borman Elementary and 3) the development of the 4.729 acres of new Park Land with a newly constructed multi-purpose field, trail and associated amenities as designed and constructed by DISD and approved by City; and

WHEREAS, the City is willing to agree to the Exchange subject to those certain terms and conditions set forth in that Contract for Exchange of Property (“Contract”), attached hereto as Exhibit F, as it will benefit the public interest; and

WHEREAS, the Exchange is a legally permissible exchange of municipal land under Local Government Code Chapter 272, is exempt from Local Government Code Chapter 272 notice and bidding requirements for the sale of land owned by a municipality in that it is a sale to another political subdivision and will be in compliance with Chapter 272.001(b)(5); and

WHEREAS, the exchange of the property complies with Local Government Code Chapter 272 fair market value requirements for the exchange of land owned by a municipality in that the City may exchange the property for less than fair market value because the Exchange is to DISD which is a governmental entity with the power of eminent domain; and

WHEREAS, City and DISD both agree that the Exchange triggers public hearing requirements of Chapter 26 of the Texas Parks and Wildlife Code; and

WHEREAS, City will conduct a public hearing no later than November 30th of this year regarding the Exchange; and

NOW, THEREFORE, and in consideration of the mutual consideration, terms, and provisions contained herein, City and DISD hereby enter into this Agreement, which as a matter of mutual agreement shall survive the Contract of Exchange described herein and operate as a binding Interlocal contract between the parties.

ARTICLE I. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

- 1.01 “City Exchange Property”** shall mean that that certain parcel of land approximately 3.739 acres situated at 1001 Parvin Street, Denton, Texas 76205 (which is owned in fee simple by the City of Denton) together with all, rights, privileges, and appurtenances thereto as it exists to date and/or as it may be changed as permitted by law.
- 1.02 “DISD Exchange Property”** shall mean that that certain parcel of land approximately 4.729 acres situated at 1201 Parvin Street, Denton Texas 76205 (which is owned in fee simple by DISD) together with all rights, privileges and appurtenances thereto as it exists to date and/or as it may be changed as permitted by law, save and except the Building which is to be demolished by December 31, 2025.
- 1.03 “Building”** shall mean the current existing structure known and operated as Frank Borman Elementary School.
- 1.04 “Contract”** shall mean the Contract for Exchange of property attached hereto as Exhibit D.
- 1.05 “Exchange Properties”** shall collectively mean the City Exchange Property and DISD Exchange Property.

ARTICLE II. EFFECTIVE DATE

- 2.01 “Effective Date”** of this Agreement shall be upon execution.

ARTICLE III. EXCHANGE TRANSACTION

3.01 Property Exchange.

- A. **City of Denton.** City agrees to convey the City Exchange Property to DISD in exchange and in consideration for DISD conveyance to City of the DISD Exchange Property and the other consideration described herein and in accordance with and

subject to the terms and conditions set forth in the Contract attached hereto as Exhibit A and incorporated in its entirety for the purposes set forth herein.

- B. **Denton Independent School District**. DISD agrees to convey the DISD Exchange Property to City in exchange and in consideration for City's conveyance to DISD of the City Exchange Property and the other consideration described herein and in accordance with and subject to the terms and conditions set forth in the Contract attached hereto as Exhibit B and incorporated in its entirety for the purposes set forth herein.

3.02 Contract of Exchange Terms:

City and DISD shall exchange and convey the Exchange Properties in accordance with and subject to the terms and conditions set forth in the Contract attached hereto as Exhibit D and incorporated in its entirety for the purposes set forth herein, and which provides in pertinent part as follows:

- A. Exchange Consideration. The parties stipulate and agree that the Exchange Properties have the same value per square foot, and that the DISD Exchange Property is of greater size than the City Exchange Property tract, but that there will be no monetary consideration paid by CITY for the DISD Exchange Property.
- B. Closing. The consummation of the exchange and conveyance of the Exchange Properties in accordance with this Contract ("Closing") shall take place at the offices of the Title Company on the date that is five (5) days following the Absolute Review Period as defined in the Contract (the "Closing Date").
- C. City Deliverables. On the Closing Date, and as a condition to DISD's obligations hereunder, City shall deliver or cause to be delivered to DISD or the Title Company each of the following items, as set forth in the Contract but briefly described herein for purposes of listing:
- (i) A Special Warranty Deed conveying fee simple interest to Denton Independent School District (the "DISD Deed"); and
 - (ii) Such evidence or documents as may be reasonably required by the Title Company evidencing the status and capacity of City and the authority of the person or persons who are executing the various documents on behalf of the City in connection with the exchange of the City Exchange Property.
 - (iii) A Quitclaim and Release of the trail access easement purchased by the City (referenced in D (i) below)
- D. DISD Deliverables. On the Closing Date, and as a condition to City's obligations hereunder, DISD shall deliver to City or the Title Company each of the following items:
- (i) Such evidence or documents as may reasonably be required by the Title Company evidencing the status and capacity of DISD and the authority of the person or persons who are executing the various documents on behalf of the DISD in connection with the acquisition of the DISD Exchange Property.

- E. License. Contemporaneously with the Contract, City, as Licensor, and DISD, as Licensee, shall enter into the License for the use of the Denia parking lot as set forth in Article IV of this Agreement.
- F. Shared Use Agreement. Contemporaneously with the Contract, DISD shall enter into a Shared Use Agreement, as set forth in Article V of this Agreement, for the City to utilize certain other designated real property owned by DISD for the purposes of City of Denton Park Programming including but not limited to athletics, camps, playgrounds, clinics, and public meetings to be determined in a future working agreement (“Shared Use Agreement”).

ARTICLE IV. RESPONSIBILITIES

4.01 DENTON INDEPENDENT SCHOOL DISTRICT.

DISD agrees to:

New Borman Elementary School Construction

- A. Maintenance of the vacant Building and said property shall be the responsibility of DISD during the period of time until the new multipurpose field is turned over to the City.
- B. Demolition shall include removal of all facilities, buildings, structures, systems, equipment, as well as any related appurtenances: fences, and associated lights, pads, patios, and paved lay-down areas, and utilities that are not desired by the City. If any asset is damaged during the demolition process, DISD will repair the asset to an acceptable standard to be agreed upon by all parties.
- C. DISD shall remove vegetation and trees in the demolition work area that cannot be preserved.
- D. During demolition and reconstruction of the new park and amenities, the area must be secured with construction fencing ensuring no public entry to the property.
- E. DISD shall enter into a Demolition Contract, for the removal of the Building by December 31, 2026.
- F. DISD shall include in all contracts with contractors and other third parties who will be doing work on any portion of the Exchange Properties a provision requiring that such contractor or other third party maintains general liability insurance in amounts determined by DISD and naming City as an additional insured.

Park Improvements

- G. Construction of the new multi-purpose field, trail, and associated amenities, as generally depicted on Exhibit F (the “Park Improvements”). The exact scope of work, construction specifications and modifications of the park improvements shall be subject to the approval of the City.

- H. Complete construction of the Park Improvements by August 31, 2027, providing, however, this timeline shall be extended for any and all delays caused by the City of Denton.

Roads

- J. DISD will construct a city collector street, Grackel Street on the south side of the project connecting Roselawn Drive to Goldfinch Drive in accordance with the City's adopted criteria. DISD will be reimbursed the cost of construction for one half of the roadway section.

RESPONSIBILITIES OF CITY.

The City agrees to:

- A. City agrees to pay for any desired upgrades to required DISD construction to be agreed upon with both parties.
- B. City will reimburse DISD for the cost of construction for one half of the new roadway section of Grackel Street.
- C. City will reimburse DISD for the construction of the new driveway that connects the Denia Park south parking lot to the new section of the new roadway.

ARTICLE V.

City and DISD agree and acknowledge that this Agreement does not create a joint venture, partnership, or joint enterprise, and that each party is not an agent of the other. City and DISD each agree to be responsible for their own respective negligent acts or omissions in the course of performance of this Agreement, without waving any sovereign or governmental immunity available to each party under Texas law and without waiving any other defenses of either party under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any person or entity.

ARTICLE VI.

City and DISD agree to consult with each other, on a regularly scheduled basis, as it relates to the types of development criteria which will be permitted on the Exchange Properties. The consultation shall be for the express purpose of providing clear communication through bi-weekly meetings until the needed on the Exchange Properties and coordinating uniformity in development criteria.

ARTICLE VII.

All Parties agree to provide a vigorous defense of this Agreement in the event of litigation by a third party to challenge the validity or enforceability of this Agreement. The cost of such defense shall be borne by the Party incurring same. In the event of any adverse judicial decision

or any other reason the anticipated park use is not allowed, the parties agree to use their best efforts and cooperate with each other to enter into alternative arrangements to establish a park purpose contemplated herein.

ARTICLE VIII.

This Agreement and the rights and obligations set forth herein shall not be assigned or delegated to another person or entity by either Party without the prior express written consent of the other Party.

ARTICLE IX.

This Agreement and any of its terms or provisions, as well as the rights and duties of the Parties hereto, shall be governed by the law of the State of Texas. Exclusive venue shall be in Denton County, Texas.

ARTICLE X.

In case 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 any other provision thereof, and in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable, there shall be added a new provision to this Agreement as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and yet be legal, valid and enforceable, by means of good faith negotiation by the Parties to this Agreement.

ARTICLE XI.

This Agreement shall be perpetual and may be terminated only by the mutual written agreement of all the parties hereto.

ARTICLE XII.

Notwithstanding any provisions contained herein, the obligations of the City and DISD under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Agreement. The Parties shall have no right of action against each other in the event the Parties are unable to fulfill their obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that the Parties are unable to fulfill their obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, the City and DISD, at their sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice at the earliest possible time prior to the end of its fiscal year.

ARTICLE XIII.

This Agreement shall become effective between the Parties hereto on the day of its approval by the City of Denton City Council and the Denton Independent School District Board and shall continue in effect until it has been terminated according to this Agreement.

ARTICLE XIV.

This Agreement may be amended or modified only by the mutual agreement of all the Parties hereto, in writing, to be attached to and incorporated into this Agreement.

ARTICLE XV.

This Agreement contains all commitments and agreements of all the Parties, and oral or written commitments not contained herein shall have no force or effect to alter any term or condition of this Agreement.

ARTICLE XVI.

This Agreement shall be executed by the duly authorized official(s) of the Parties as expressed in the approving ordinances or orders of the governing bodies of each such Party, copy of which are attached hereto.

EXECUTED and effective as of the __ day of _____ 2024, by City, signing by and through its City Manager, authorized to execute same by City Council Ordinance No. ____ - _____, approved by City Council on _____, 2024, and by DISD, _____, duly authorized by Denton Independent School District Board by _____ No. _____ dated _____, 2024.

THE CITY OF DENTON, TEXAS

Sara Hensley,
City Manager

By: _____

Date: _____

APPROVED AS TO FORM:

Mack Reinwand,
City Attorney

By: _____

DENTON INDEPENDENT SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:
Denton Independent School District

By: _____

DRAFT

EXHIBIT A
To
Interlocal Cooperation Agreement
City Exchange Property-1001 Parvin Street, Denton, Texas 76205
(SEE ATTACHED)

DRAFT

EXHIBIT B
To
Interlocal Cooperation Agreement
DISD Exchange Property-1201 Parvin Street, Denton Texas 76205
(SEE ATTACHED)

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EXHIBIT C
To
Interlocal Cooperation Agreement
Terms and Conditions of Temporary Multi-purpose at Old Calhoun Middle School
(SEE ATTACHED)



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EXHIBIT D
To
Interlocal Cooperation Agreement
Contract
(SEE ATTACHED)

DRAFT

EXHIBIT E
To
Interlocal Cooperation Agreement
Terms and Conditions of New Multi-purpose Field and Amenities
(SEE ATTACHED)

- Provide the use of a like multipurpose field at Calhoun Middle School during construction to offset the Denia Park multi-purpose field until it is rebuilt.
- Rebuild the multi-purpose field to the size of existing field or greater, as shown on Exhibit G, attached hereto and made a part hereof. The multi-purpose field shall include the following.
- Provide utilities in-ground: irrigation and electric as specified by Parks and Recreation.
- Provide sod and fencing surrounding the soccer field at varying heights to be determined in the design process.
- ADA access from adjacent parking lot to the multi-purpose field.
- Relocation of utility box for electric services, if needed, pending final design of property and related amenities.
- Install sleeves and conduits for sport lighting and scoreboard to be possibly installed at a later date by the City.
- DISD will work with the City to the best of their ability to address any existing draining challenges on City property. City would participate in any enhancements that would be determined during the design process.
- Rebuild the existing 10' wide loop trail at the multi-purpose field, as shown in Exhibit E, DISD shall install new trail connections to existing trails as appropriate.

EXHIBIT F
To
Interlocal Cooperation Agreement
DISD Bond Information Regarding Borman Reconstruction

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