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Writer's e-mail: mike.gentry@westwebblaw.com

December 2, 2010

Via Hand Delivery

City of College Station
Legal Department
Attn: Carla Robinson
1101 Texas Ave.
College Station, TX 77840

RE: CSISD Fire Station Interlocal Agreement

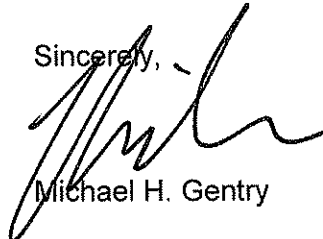
Dear Carla:

Enclosed please find a final version of the proposed Interlocal Agreement between the City of College Station and CSISD regarding the Fire Station and Lift Station ("ILA"). We approved and accepted your changes and did not make any additional changes.

The CSISD Board of Trustees will consider the ILA at its December 14, 2010, Board meeting. I will notify you once the ILA has been approved by the Board.

If you should have any questions, do not hesitate to contact me.

Sincerely,



Michael H. Gentry

Enclosures

cc: Via Email cealy@csisd.org
Clark Ealy

**Interlocal Agreement for Exchange of Real Property and Development Services
Between College Station Independent School District and
The City of College Station**

THIS AGREEMENT is made and entered into by and between COLLEGE STATION INDEPENDENT SCHOOL DISTRICT (hereinafter referred to as "**CSISD**"), and the CITY OF COLLEGE STATION, TEXAS (hereinafter referred to as the "**City**"), a Texas Home Rule Municipal Corporation. (CSISD and the City may be referred to hereinafter either individually as the "**Party**" or "**Agency**" or collectively as the "**Parties**" or the "**Agencies.**")

WHEREAS, Texas Local Government Code § 272.001(a), contains notice and bidding procedures that must be followed by a local government entity that wishes to sell real property owned by the entity; and

WHEREAS, Texas Local Government Code § 272.001(b)(5) permits a local government entity to convey real property to another local government entity with the power of eminent domain, without complying with the notice and bidding procedure, so long as the sale is for fair market value; and

WHEREAS, CHAPTER 791 OF THE TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION ACT, (the "**Act**"), authorizes all local governments to contract with each other to provide a governmental function or service that each Party to the contract is authorized to perform individually and in which the contracting Parties are mutually interested, such as administrative functions, planning, parks and recreation, waste disposal, engineering, and other governmental functions in which the parties are interested; and

WHEREAS, the City is a Home-Rule Municipal Corporation organized under the laws of Texas and is authorized to enter into this Agreement pursuant to ARTICLE II, SECTION 5 OF ITS CITY CHARTER; and

WHEREAS, CSISD is an independent school district and is authorized to enter into this Agreement pursuant to the approval of its board of trustees; and

WHEREAS, the City and CSISD represent that each is independently authorized to perform the functions and obligations contemplated by this Agreement; and

WHEREAS, the governing bodies of the City and CSISD are mutually interested in the availability of City operated fire service facilities; and

WHEREAS, the governing bodies of the City and CSISD are mutually interested in the availability of a fiber optic network to support data, telephone, and traffic telecommunication operations; and

WHEREAS, access to a sewage system is essential to the operation of a public school; and

WHEREAS, full cooperation between the City and CSISD is necessary to achieve the best services for the citizens of College Station in a cost effective manner; and

WHEREAS, CSISD owns approximately 53.51 acres of real property adjacent to FM 2154, Wellborn, Brazos County, Texas, ("**Eidson Tract**"), said tract is identified on **Exhibit "A,"** attached hereto and incorporated for all purposes herein; and

WHEREAS, CSISD also owns approximately 46.028 acres of real property at the intersection of Royder Road and Greens Prairie Trail, in College Station, Brazos County, Texas, ("**Nelson Tract**"); said tract is identified on **Exhibit "A,"** attached hereto and incorporated for all purposes herein; and

WHEREAS, the City is the owner and operator of a lift station located at the intersection of Royder Road and Greens Prairie Trail, ("**Lift Station**"); and

WHEREAS, the Lift Station is a facility constructed to pump sewage to the College Station sewage treatment facility; and

WHEREAS, the City has requested that CSISD convey to the City a two acre tract of land on the Eidson Tract, adjacent to Royder Road, generally at the location indicated by an "X" on **Exhibit "A,"** attached hereto and incorporated for all purposes herein (the "**Fire Station Tract**"); and

WHEREAS, the two acre tract shall be located with access to a public road and shall be free of wetlands and floodplain; and

WHEREAS, the City may construct a fire station on the Fire Station Tract in the future; and

WHEREAS, the City has offered to provide CSISD use of the Lift Station for four (4) schools or school facilities built on the Nelson and Eidson tracts; and

WHEREAS, in consideration for use of the Lift Station, CSISD has agreed to convey the Fire Station Tract to the City upon the City's advance written notification as provided herein; and

WHEREAS, CSISD will bear all costs associated with the construction of on-site sewer lines that will connect its schools or school facilities to existing sewer lines or manholes with available capacity that will feed the Lift Station; and

WHEREAS, CSISD will bear all costs associated with the design, bidding, and construction of off-site sewer lines and appurtenances required to extend sewer service from the Lift Station to any schools or school facilities built on the Nelson or Eidson tracts; and

WHEREAS, the City will bear all costs associated with the operation, improvement and maintenance of the Lift Station and downstream force main, now or in the future; and

WHEREAS, upon completion of the off-site sewer lines and appurtenances constructed by CSISD described above, the City will assume all responsibility for the operation and maintenance of such infrastructure and for any required modifications to the Lift Station or any lines or manholes that feed into the Lift Station, now or in the future, and

WHEREAS, the City will ensure that the Lift Station, and associated sewer infrastructure, has sufficient capacity to transport sewage from up to four (4) CSISD schools or

school facilities located on either the Eidson Tract or the Nelson Tract, to the College Station sewer treatment facility; and

WHEREAS, the City has created a fiber optic network within the City in support of its data, telephone and traffic telecommunications operations; and

WHEREAS, on or about September 4, 2004, the City and CSISD entered an interlocal agreement for the connection of CSISD fiber optic cable to City fiber optic cable, to allow the parties access to each other's data, as well as to expand the individual networks of the City and CSISD; and

WHEREAS, CSISD is in immediate need of access to fiber optic cable network for use at its planned school facilities on the Nelson Tract ("CSISD fiber optic cable network"); and

WHEREAS, the cost to install the CSISD fiber optic network is approximately \$100,000.00; and

WHEREAS, CSISD has determined that it is in the best interest of CSISD to install the CSISD fiber optic cable network as soon as possible; and

WHEREAS, the City has agreed that it will maintain the CSISD fiber optic cable network once it is installed; and

WHEREAS, the City will need access and connection to the CSISD fiber optic cable network when it begins to construct the Fire Station; and

WHEREAS, the City has agreed to pay to CSISD one-half of the actual cost of installation of the CSISD fiber optic cable network from the connection point to existing City fiber network to the entrance to CSISD property on (The "Nelson Tract") as shown in Exhibit A, when the City requests the deed to the Fire Station site; and

WHEREAS, CSISD has determined that the fair market value of the Fire Station Tract is comparable to the value received by the CSISD in the form of access to the Lift Station, at no cost to CSISD; and

WHEREAS, the authority to administer this Agreement may be delegated by the City and CSISD to the City Manager and the Superintendent, respectively, or their designees; and

WHEREAS, the recitals set forth above are incorporated into this Agreement and form part of the agreement between the Parties.

NOW THEREFORE, the City and CSISD herein enter into this Agreement pursuant to Chapter 791 of the Texas Government Code and Section 272.001 of the Texas Local Government Code, to authorize their representatives to cooperate by allowing the sale, exchange, and conveyance of real property and services under the following terms and conditions:

1. Upon ninety (90) days advance written notice from CSISD that it intends to commence design of either a school or school facility on the Eidson Tract or the Nelson Tract, the City will take whatever steps are necessary, at the City's expense unless otherwise provided herein, to provide to CSISD the necessary capacity in the Lift Station and

sewer force main downstream of the Lift Station for the operation of such school or school facility. As a part of making the Lift Station available to CSISD, the City will make whatever modifications or improvements to the Lift Station or existing sewer infrastructure downstream of the Lift Station required to provide the capacity anticipated by such school or school facility.

- a. The City will allow CSISD to use the Lift Station for up to a total of four schools or school facilities constructed by or for the use of CSISD on the Nelson Tract and the Eidson Tract, and the City will pay for any improvements or modifications that will need to be made to the Lift Station and/or the associated sewer infrastructure downstream of the lift station for such purposes, now or in the future, unless otherwise provided herein.
 - b. CSISD will bear the cost of onsite facilities necessary to connect its schools or school facilities to an existing manhole or sewer line that feeds the Lift Station.
 - c. CSISD will bear all costs associated with the design, bidding, and construction of off-site sewer lines and appurtenances required to extend sewer service from the Lift Station to any schools or school facilities built on the Nelson or Eidson tracts.
 - d. The City will provide CSISD with access to all City easements and rights –of-way necessary to facilitate the connection of a CSISD school or school facility to the Lift Station.
2. Upon ninety (90) days advance written notice from the City to CSISD, the parties will enter into a real estate contract (in form and substance reasonably acceptable to the City and CSISD) for purposes of transferring the Fire Station Tract to the City.
 - a. Costs associated with construction and installation of the Fire Station, including the costs to prepare the survey of the Fire Station Tract and costs to obtain a title policy, will be the sole responsibility of the City.
 - b. In the event that the City notifies CSISD as provided above, CSISD will petition the City to annex the Eidson Tract prior to conveying the Fire Station Tract.
 3. The City agrees to assume costs of fiber optic cable maintenance, upon CSISD's construction and installation of the fiber optic cable network.
 4. Upon transfer of the Fire Station Tract to the City, the City will pay to CSISD one-half (1/2) of the costs incurred by CSISD in its installation of the fiber optic cable network.

A. Terms of Agreement.

The term of this Agreement shall be two (2) years commencing on the date upon which the Agreement is approved by both parties. Thereafter, this agreement shall be automatically renewed for successive two-year terms, for a total of ten years, unless terminated earlier by either Party giving the other 120 days advance written notice; provided, however, that once ninety (90) days written notice is given by either party as

provided in 1. and 2. above, this Agreement may be terminated only by mutual agreement of both parties.

B. Hold Harmless

The City and CSISD each individually agree to hold the other harmless from and against any and all claims, losses, damages, causes of action, suits, and liabilities of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury or death of any person, for damage to any property, arising out of or in connection with the work done under this Agreement.

The Parties understand and agree that each Party is a "Governmental Unit" as that term is defined in Section 101.001(3) of the Texas Civil Practice Code. The Parties further understand and agree that they are entitled to the, rights, protections and limitations which Title 5 of the Texas Civil Practice and Remedies Code provides for Governmental Units, including the protections and limitations afforded under Chapter 101 of the Texas Civil Practice and Remedies Code. The Parties agree to indemnify and hold the other Party and its officers, trustees, directors, employees, and agents harmless from claims, demands, causes of action, suits, damages, costs, and attorney fees, in favor of any third party, subject to the following: (a) the Party's obligation to indemnify extends only to those claims, demands, suits, causes of action, damages, costs, or attorney fees, which arise out of or are connected with their own acts or negligence; and (b) the Party's obligation to indemnify is subject to Title 5 of the Texas Civil Practice and Remedies Code. Notwithstanding anything which may be construed to the contrary herein, the Party's liability to indemnify will only exist to the extent and to the limits that it would itself otherwise be exposed to liability under Title 5 of the Texas Civil Practice and Remedies Code.

C. Invalidity

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the Parties.

D. Written Notice

Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein.

College Station Independent School District
1812 Welsh
College Station, Texas 77840
Attn: Superintendent of Schools

City of College Station
P. O. Box 9960
College Station, Texas 77842-9960
Attn: City Manager

E. Entire Agreement

It is understood that this Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements, arrangements, or understandings between the Parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

F. Amendment

No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of each Party.

G. Texas Law

This Agreement has been made under and shall be governed by the laws of the State of Texas.

H. Place of Performance

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

I. Authority to Enter Contract

Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

J. Waiver

Failure of either Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

K. Agreement Read

The Parties acknowledge that they have read, understand, and intend to be bound by the terms and conditions of this Agreement.

L. Assignment

This Agreement and the rights and obligations contained herein may not be assigned by either Party without the prior written approval of the other Party.

M. Multiple Originals

It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

EXECUTED on this the _____ day of _____, 2010.

COLLEGE STATION INDEPENDENT SCHOOL DISTRICT

By: _____
Randall W. Pitcock, Board President
College Station Independent School District

STATE OF TEXAS

COUNTY OF BRAZOS

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ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____ 2010, by **Randall W. Pitcock**, in his capacity as **Board President of College Station Independent School District**, a political subdivision, on its behalf.

Notary Public in and for the State of Texas

My Commission expires on: _____

CITY OF COLLEGE STATION

By: _____
Mayor
City of College Station

Attest: _____
City Secretary

APPROVED:

City Manager

Date

City Attorney

Date

City Chief Financial Officer

Date

STATE OF TEXAS
COUNTY OF BRAZOS

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ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____, 2010, by _____, in her capacity as **Mayor** of the **City of College Station**, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for the State of Texas

My Commission expires on: _____

Exhibit "A"

