

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF COLLEGE STATION AND  
COLLEGE STATION INDEPENDENT SCHOOL DISTRICT  
FOR THE CONSTRUCTION OF DRAINAGE IMPROVEMENTS TO  
PEBBLE CREEK PARK**

This agreement is made and entered into this 20th day of November, 2006, by and between the CITY OF COLLEGE STATION, TEXAS (hereinafter referred to as "City"), a Texas Home Rule Municipal Corporation, and COLLEGE STATION INDEPENDENT SCHOOL DISTRICT, a Texas local government (hereinafter referred to as "CSISD"), acting through its Board of Trustees.

WHEREAS, Chapter 791 of the TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION 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, and engineering;

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;

WHEREAS, CSISD is a Texas local government and is authorized by the authority of its Board of Trustees to enter into this Agreement;

WHEREAS, CSISD and the City each own property, with such property known collectively as the Pebble Creek Park, located adjacent to Pebble Creek Elementary School in Brazos County, College Station, Texas;

WHEREAS, CSISD and the City have identified a drainage problem at Pebble Creek Park;

WHEREAS, CSISD and the City desire construction of drainage improvements at Pebble Creek Park in order to resolve the drainage problem;

WHEREAS, the City agrees to cooperate with CSISD in the construction of drainage improvements to Pebble Creek Park for the mutual benefit of both parties;

WHEREAS, the City will provide and pay for the design of the drainage improvements;

WHEREAS, CSISD will provide and pay for construction of the drainage improvements;

WHEREAS, the City and CSISD agree that the City will reimburse half of the cost of construction of the drainage improvements to CSISD, in a total amount not to exceed **Fifty Thousand and No/100 Dollars (\$50,000.00)**, for the expenses incurred in the construction of the drainage improvements and that any and all additional funds necessary for the construction of the drainage improvements will be expended by CSISD;

WHEREAS, the City agrees to maintain the drainage improvements;

WHEREAS, the City and CSISD desire to enter into an Interlocal Agreement for the purpose of constructing the drainage improvements in Pebble Creek Park;

NOW THEREFORE, for and in consideration of the representations and recitations hereinabove and the promises and covenants that follow hereinbelow, the parties enter into this Agreement pursuant to the above-named act to authorize CSISD to contract for construction of the drainage improvements on behalf of itself and the City under the following terms and conditions.

The following establishes the obligations of each party for the Drainage Improvements to be constructed in Pebble Creek Park, on both the portion owned by CSISD and the portion owned by the City.

1. **Scope of Services**

CSISD will advertise the project to the public for bids or proposals and upon receipt of a bid or proposal response that is acceptable to the Board of Trustees, CSISD will contract with an independent contractor for the construction of drainage improvements at Pebble Creek Park (hereinafter "Project") in accordance with the design and specifications outlined in the scope of services which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

CSISD may not modify the scope of services for the Project without the express written authorization of the City. Notwithstanding the foregoing, if there are no bids or proposals reasonably acceptable to CSISD, or if the total cost of the Project is reasonably expected to exceed \$100,000.00, then CSISD may terminate this Agreement by giving written notice to the City setting forth the basis for such termination.

2. **Insurance**

CSISD shall require that the Contractor's insurance coverage be primary with respect to CSISD and the City, their officials, employees, and volunteers, and that the City is included as an "Additional Insured" on the policies required in the contract between CSISD and the Contractor. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers, shall be considered in excess of the CSISD's and Contractor's insurance and shall not contribute to it. **All Certificates of Insurance and endorsements shall be furnished to both the City's and CSISD Representative and approved by the City and CSISD before work commences on the Project.**

3. **Project Cost and Payment Provision**

Upon final completion of the Project, CSISD will submit a request for reimbursement to the City accompanied by a detailed, written invoice. The City will reimburse one-half of the actual cost of the Project to CSISD; subject to the limitation that the City's reimbursement to CSISD shall not

exceed \$50,000.00. CSISD agrees to pay all costs of the Project that exceed the City's reimbursement. The City shall pay CSISD within ten (10) days of the City's receipt of the invoice.

4. **Term of Work**

All work on this Project must be completed by September 1, 2007; subject to weather delays, force Majeure, and other construction delays not reasonably within the control of CSISD. CSISD shall notify the City, in accordance with Paragraph 10, in the event that any extensions to the completion date are anticipated of this Agreement.

5. **Time is of the Essence of this Agreement**

Time is of the essence in this Agreement.

6. **The City and CSISD Further Agree That:**

- a. Payments for this service will be taken from the available current revenues of each party.
- b. The terms and conditions of the Agreement may be modified as provided in Paragraph 14 hereinbelow, and upon the mutual consent of both parties. Mutual consent will be demonstrated approval of each governing body of each party hereto.
- c. From and after the completion of the Project, the City shall maintain the Project and the drainage improvements.

7. **Termination**

This Agreement may be terminated by either party at any time before the contracts for construction are entered into by CSISD, by providing thirty (30) days advance notice to the non-cancelling party. Notice of termination shall be in writing and provided in accordance with Paragraph 12 herein.

8. **Indemnification**

**Subject to the limitations as to damages and liability under the Texas Tort Claims Act or the Texas Recreational Use Statute, and without waiving its governmental immunity, each party to this Agreement agrees to hold harmless each other, its governing board, officers, agents and employees for any liability, loss, damages, claims or causes of action caused, or asserted to be caused, directly or indirectly by any other party to this Agreement, or any of its officers, agents or employees as a result of its performance under this Agreement.**

9. **Consent to Suit**

**Nothing in this Agreement will be construed as a waiver or relinquishment by CSISD or the City of its right to claim such exemptions, privileges and immunities as may be**

provided by law. Neither the City nor CSISD, by entering into this Agreement, gives its consent to suit.

10. **Municipality Privileges and Immunities**

Nothing in this Agreement will act as a waiver or relinquishment by either party of any right, exemption, privileges and/or immunities that may be provided by law.

11. **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.

12. **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**  
ATTN: Eddie Coulson, Superintendent  
1812 Welsh  
College Station, Texas 77840

**City of College Station**  
Parks and Recreation Department  
ATTN: Steve Beachy, Director  
1000 Krenk Tap Road  
College Station, Texas 77840

13. **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 terms or obligations hereunder.

14. **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 both parties.

15. **Texas Law**

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

16. **Place of Performance**

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

17. **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 corporations.

18. **Waiver**

Failure of any 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 or 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.

19. **Agreement Read**

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

20. **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.

21. **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.

22. **Effective Date**

This Agreement will be effective when signed by the last party whose signing makes the Agreement fully executed.

**COLLEGE STATION INDEPENDENT  
SCHOOL DISTRICT**

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**Ron Silvia, Mayor**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**Connie Hooks, City Secretary**

Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
**Glenn Brown, City Manager**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**City Attorney**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Jeff Kersten, Chief Financial Officer**

\_\_\_\_\_  
**Date**

**Exhibit "A"**

**Attached hereto and incorporated herein for all purposes is the scope of services which includes and design specifications.**