

**CITY - SCHOOL DISTRICT INTERLOCAL COOPERATION
CONTRACT AS AUTHORIZED BY CHAPTER 791 OF
THE TEXAS GOVERNMENT CODE**

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS
COUNTY OF MIDLAND	§	

THAT THIS AGREEMENT is effective this 28th day of April, 2021, by and between the City of Midland, Texas, hereinafter referred to as “City” and Greenwood Independent School District, hereinafter referred to as “Greenwood.”

WITNESSETH

WHEREAS, Greenwood Independent School District property is situated outside the corporate limits of the City of Midland, Texas; and

WHEREAS, Greenwood desires access to sewer facilities owned and operated by City to serve Greenwood Independent School District property; and

WHEREAS, the City Council of the City of Midland, Texas, has determined that the provision of sewer service will be of an economic benefit to City; and

WHEREAS, City and Greenwood desire to enter into an agreement pursuant to Chapter 791, Texas Government Code, in which City will allow Greenwood access to sewer facilities owned and operated by City, and in return, Greenwood pay City for access to City’s sewer facility as outlined below.

NOW, THEREFORE, in consideration of the rates, fees and deposits paid and to be paid by Greenwood to City, and the mutual covenants herein, the parties hereto agree as follows:

1. Definitions.

- a. “*Sewer Line*” means an underground sewer pipeline, including any and all pump stations and other necessary appurtenances thereto, originating from Greenwood Independent School District property and connecting to City’s Sewer Facility.
- b. “*Sewer Facility*” means City’s Water Pollution Control Plant, located at 3600 E. IH-20, Midland, Texas, 79706.
- c. “*Service Connection*” means the point where Greenwood’s Sewer Line meets City’s Sewer Facility.
- d. “*City Manager*” means the City Manager for the City of Midland, Texas.
- e. “*Director of Utilities*” means the Director of Utilities for the City of Midland, Texas.

2. Duties. Greenwood's Sewer Line shall remain attached or connected and Greenwood shall be responsible for the maintenance thereof. City agrees to allow the Sewer Line to be attached or connected to City's Sewer Facility, upon certification by City's Director of Utilities that the Sewer Line constructed by Greenwood continues to comply with City specifications.

3. Compliance. Greenwood agrees that its Sewer Line must comply with all applicable local, state and federal regulations, and that Greenwood is solely responsible for compliance with any rule or requirement mandated by the Texas Commission on Environmental Quality ("TCEQ") or any other state or federal regulatory agency with proper jurisdiction.

4. Payment. In consideration of City's allowing Greenwood to connect or attach its Sewer Line, Greenwood agrees to pay for any services used promptly and when due, and at the rate established by ordinance from time to time by the City Council for customers outside the corporate limits of the City of Midland, Texas, which rate is presently one and one-half (1-1/2) times the rates established for commercial customers inside the corporate limits of the City of Midland, Texas. City shall have the right to terminate service and this Agreement for nonpayment by Greenwood in accordance with standard City procedures as well as reasons stated in this Agreement. City shall provide notice of rate increases as required by law.

5. Inspection. Greenwood shall allow its Sewer Line to be inspected by City for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by City or its designated agent prior to initiating service and periodically thereafter upon prior written notice and at City's sole expense. The inspections shall be conducted during City's normal business hours. City shall notify Greenwood in writing of any cross-connection or undesirable plumbing practice which has been identified during the initial inspection or periodic re-inspections. Greenwood shall immediately disconnect any identified cross-connection and/or correct any undesirable plumbing practice regarding Greenwood's sewer line. Greenwood shall, at its expense, properly install, test and maintain any backflow prevention device, valve, sampling tap or other quality assurance device on its Sewer Line as required by City.

6. Ordinances and Regulations. It is expressly agreed and understood that all present or future ordinances and regulations applicable to sewer customers and related to sewer service within the City limits are incorporated by reference as express conditions of this Agreement; and that Greenwood expressly agrees to be bound by all such ordinances or regulations of City related to sewer service as if Greenwood were in fact within the corporate limits of the City of Midland, and that any violation of any such ordinance(s) or regulation(s) by Greenwood, its agents, servants, or employees, shall constitute an Item of Default and shall be grounds for a cancellation by City of this Agreement and/or discontinuance of the services furnished hereunder.

7. Waiver of Attorney's Fees. By executing this Agreement, **GREENWOOD AND CITY AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM EITHER HAS OR MAY HAVE AGAINST THE OTHER PARTY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT AND BOTH GREENWOOD AND CITY SPECIFICALLY AGREE THAT IF EITHER PARTY TO THIS**

AGREEMENT BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), BOTH PARTIES AGREE TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH GREENWOOD OR CITY MIGHT OTHERWISE BE ENTITLED.

Greenwood and City agree that this is the intentional relinquishment of a presently existing known right. Greenwood and City acknowledge that each understands all terms and conditions of the Agreement. This section shall not be construed as a waiver of sovereign immunity.

8. Sovereign Immunity. By executing this Agreement, neither City nor Greenwood is waiving governmental immunity, sovereign immunity or qualified immunity, and each party expressly retains all immunity from suit. Neither City nor Greenwood grants consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY BY EITHER PARTY.**

9. Governing Law and Venue. All performance, undertakings and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. All obligations to perform shall be in Midland County, Texas. This Agreement shall be governed by the laws of the State of Texas.

10. **RELEASE. NOTWITHSTANDING ANY OTHER PROVISIONS, GREENWOOD HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH GREENWOOD HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, BREACH OF CONTRACT, TORT CLAIMS OR CITY'S NEGLIGENCE.**

11. Third Party Beneficiary. City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

12. Default. In the event Greenwood fails to comply with any term of this Agreement, City shall, at its option, either terminate service or properly install, test, and maintain an appropriate backflow prevention device at the Service Connection. Any expenses associated with the enforcement of this Agreement shall be billed to Greenwood.

13. Termination. Notwithstanding any other provisions, City may terminate this Agreement at will for any or no reason and without penalty by giving at least three (3) years written notice to Greenwood. City and Greenwood have bargained for this flexibility. The parties understand that it

is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. Greenwood also understands and acknowledges that Greenwood has no property right in sewer service by virtue of this Agreement. All sewer service shall cease and be suspended immediately upon termination of this Agreement becoming effective.

Further, upon the occurrence of an Item of Default, City may terminate this Agreement, without penalty, by giving at least thirty (30) days written notice ("Notice of Default") to Greenwood. All sewer service shall cease and be suspended immediately upon termination of this Agreement becoming effective. However, should Greenwood remedy such Item of Default during said 30-day notice period to City's satisfaction, then said Notice of Default shall be deemed rescinded, and the Agreement shall continue as if such Item of Default had never occurred. The term "Item of Default" includes, but is not limited to, the following:

- a. Any connection to or from Greenwood's Sewer Line so as to allow any property, person, corporation, partnership or other entity access to the Sewer Line for the purpose of any discharge whatsoever into said Sewer Line,
- b. The passage of any chemical into City's Sewer Facility, originating from or passing through any portion of Greenwood's Sewer Line, and contrary to Title 3, Chapter 1, Section 24 of the Municipal Code of the City of Midland, a copy of which is attached to this Agreement as Exhibit "A" and incorporated herein for all legal purposes, or
- c. Violation by Greenwood, or any of Greenwood's officers, agents, contractors or subcontractors, of any applicable local, state or federal law or regulation, which in any way impacts City's Sewer Facility or the operations therein, as determined by City's Director of Utilities.

14. Notice. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

If to the City of Midland, Texas:

Robert Patrick
Interim City Manager
Midland City Hall
P.O. Box 1152
Midland, Texas 79702

If to Greenwood Independent School District:

Edward Elliot
Superintendent
Greenwood Independent School District
2700 F.M. 1379
Midland, Texas 79706-5330

15. Assignment. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

16. Consideration. The parties agree that this Agreement, and each part thereof, is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

17. Insurance. Notwithstanding any other provisions, Greenwood shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and

minimum amounts with companies authorized to do business in the State of Texas:

Comprehensive General Liability (including Contractual liability):

-Personal Injury: \$1,000,000 per person
\$1,000,000 per occurrence
-Property Damage: \$500,000 per occurrence

Worker's Compensation: Statutory limits

Employers' Liability: \$500,000 per accident or occurrence

The Workers' Compensation coverage provided by Greenwood shall inure to the benefit of employees injured during the course and scope of their employment by Greenwood pursuant to this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name City as an additional insured. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to City. All insurance coverage, including City's status as an additional insured, as appropriate, as well as a waiver of subrogation in favor of City, shall be evidenced by one or more certificate(s) of insurance provided to City upon signing of this Agreement. City shall be provided the notice by Greenwood's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. City shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Greenwood shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured (except workers compensation).

18. Controlling Document. This Agreement supersedes any other contracts or agreements, whether oral or written, between the parties, regarding these matters contained herein, and contains all the covenants and agreements between said parties regarding said matter. Each party acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promises not contained herein shall be valid or binding.

19. Severability. If any section, subsection, sentence, clause or phrase of this Agreement is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Agreement.

20. Amendments, Modifications and Alterations. This Agreement may be amended or modified by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this Agreement.

21. Independent Contractor. It is expressly understood and agreed that Greenwood shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Greenwood shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Greenwood, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Greenwood. No person performing any of the work and services described hereunder by Greenwood shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Greenwood shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of Greenwood's work. Greenwood shall assume exclusive responsibility for the work. Greenwood shall be entirely free to do the work in its own way.

22. Notice of Alleged Breach; Statutory Requirements. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Greenwood or its legal representative shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-and eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Greenwood will settle, the physical and mailing addresses of Greenwood at the time and date the claim was presented and the physical and mailing addresses of Greenwood for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Greenwood relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Greenwood that Greenwood's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Greenwood's failure to comply with the requirements herein shall perpetually bar Greenwood's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Greenwood agrees that the requirements of this entire Agreement are reasonable.

