

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MESQUITE, MESQUITE INDEPENDENT SCHOOL DISTRICT, AND DALLAS COLLEGE FOR THE USE, RENOVATION, OPERATION, AND MAINTENANCE OF THE POOL AT EASTFIELD CAMPUS FOR 25 YEARS WITH OPTIONS TO RENEW FOR FOUR ADDITIONAL FIVE-YEAR TERMS; AUTHORIZING THE CITY MANAGER AS THE AUTHORIZED OFFICIAL TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, Dallas College approached the City of Mesquite (the “City”) and Mesquite Independent School District (“MISD”) about the opportunity to utilize the existing pool ~~at~~ and related facilities at Eastfield Campus (the “Pool”) for community purposes; and

WHEREAS, the residents of the City would benefit from Dallas College allowing the City to have access to and use of the Pool for community purposes;

WHEREAS, Dallas College has agreed to provide access and use of the Pool to MISD and the City; and

WHEREAS, MISD has agreed to construct an enclosure and other improvements to make the Pool an all-weather facility; and

WHEREAS, the City has agreed to assist with maintaining and operating the Pool for use by the City and MISD; and

WHEREAS, the Interlocal Cooperation Act, V.T.C.A., Texas Government Code, Chapter 791, provides authorization for any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, an Interlocal Agreement between the City, MISD, and Dallas College will further outline the responsibilities of Dallas College, the City, and MISD for the construction, operation, and maintenance of the Pool.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Manager is hereby (i) authorized to finalize and execute the Interlocal Agreement substantially in the form attached hereto as Exhibit A between the City of Mesquite, Mesquite Independent School District, and Dallas College for the use,

renovation, operation, and maintenance of the pool at Eastfield Campus for 25 years with options to renew for four additional five-year terms and (ii) authorized to take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Interlocal Agreement.

SECTION 2. That the resolution shall take effect immediately on and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 20th day of June 2022.

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Daniel Alemán, Jr.  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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Sonja Land  
City Secretary



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David L. Paschall  
City Attorney

**EXHIBIT “A”**

**INTERLOCAL AGREEMENT BETWEEN**

**DALLAS COLLEGE, THE CITY OF MESQUITE, AND**

**MESQUITE INDEPENDENT SCHOOL DISTRICT**

**FOR THE USE, RENOVATION, OPERATION, AND MAINTENANCE OF THE POOL  
AT**

**EASTFIELD CAMPUS**

THE STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS           §

**INTERLOCAL AGREEMENT BETWEEN DALLAS COLLEGE,  
THE CITY OF MESQUITE, AND MESQUITE INDEPENDENT  
SCHOOL DISTRICT FOR THE USE, RENOVATION,  
OPERATION AND MAINTENANCE OF THE POOL AT  
EASTFIELD CAMPUS**

This INTERLOCAL AGREEMENT (“Agreement”) is made and entered into by and between Dallas College (“DC” or “College”) a Texas political subdivision of higher education, Mesquite Independent School District, a Texas independent school district (“MISD”), and the City of Mesquite, a home-rule municipality (“COM”). The COM, MISD and DC may individually be referred to hereafter as “Party” or collectively be referred to as the “Parties.”

WHEREAS, the Parties wish to enter into an agreement to jointly finance, construct and maintain the pool on Eastfield campus for use by students and residents of the City of Mesquite; and

WHEREAS, the COM and MISD wish to operate, maintain, and make certain improvements to the pool at their own expense for the benefit, use and enjoyment of students and residents of the City of Mesquite; and

WHEREAS, the Parties wish to enter into an Agreement in order to establish their respective duties, responsibilities and obligations in relation to the operation, maintenance, and renovation of the pool; and

WHEREAS, DC is willing to enter into this Agreement contingent upon all maintenance, improvements, and operating costs for the Pool being assumed by either the COM or MISD; and

WHEREAS, this Agreement is being entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended, authorizes a political subdivision of the State of Texas to contract with one or more political subdivisions of the State of Texas to perform governmental functions and services; and

WHEREAS, the expenditures and payments to be made by the parties under this Agreement for the services to be performed will be made from funds available to such governmental entities and such payments fairly compensate the performing entity for the services performed under this Agreement; and

WHEREAS, each of the Parties is duly authorized to enter into this Agreement and the signatories hereto have legal authority to bind the party on whose behalf they sign; and

WHEREAS, any expenditures and/or payments that any Party is required to make under

this Agreement, if any, shall be made from available funds; and

NOW, THEREFORE, in consideration of the covenants, conditions, and provisions set forth in this Agreement, the receipt and sufficiency of which are hereby affirmed, the Parties agree to terminate and replace the Contract in its entirety and agree as follows:

**1. Scope of Agreement:**

**A. Purpose.** The purpose of this Agreement is to provide a framework for the Parties' agreement regarding the operation, renovation, and maintenance of DC's 50-meter swimming pool located on the DC's Eastfield Campus at 3737 Motley Dr., Mesquite, TX 75150 and all associated and supporting pool facilities (collectively, the "Pool").

**B. Warranties:** Each Party to this Agreement warrants that the services are necessary and authorized for activities properly within its statutory functions and programs; (2) that it has authority to contract for the services under authority granted in Chapter 791, Government Code; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and (4) the representative signing this Agreement on each Party's behalf is authorized by its governing body to do so.

**C. Grant of License:** The College grants to the City a limited, non-exclusive license to use the College's Pool, subject to the terms and conditions of this Agreement. COM and MISD shall not change the function or activity described herein without a written amendment to this Agreement signed by the College and COM and MISD.

COM and MISD understand, acknowledge, and agree that the Licensed Space is provided "as is" and "with all faults" and that the College makes no representation or warranty of any kind, express or implied, with respect to the condition of the Licensed Space, including habitability, fitness or suitability for a particular purpose. THE COLLEGE HEREBY DISCLAIMS AND COM AND MISD HEREBY WAIVES THE BENEFIT OF, ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF HABITABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE. COM AND MISD ACKNOWLEDGE THAT NEITHER THE COLLEGE NOR ANY AGENT OF THE COLLEGE HAS MADE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE LICENSED SPACE OR THE SUITABILITY OF THE LICENSED SPACE FOR THE PURPOSE HEREIN INTENDED. BY OCCUPYING THE LICENSED SPACE, THE CITY IS DEEMED TO HAVE ACCEPTED THE LICENSED SPACE AS SUITABLE FOR ITS PURPOSE.

**D. Duties and Rights of MISD.** The MISD shall:

1) Fund any and all needed renovations ("MISD Expenditure"), unless an increase

in cost is agreed upon in writing by all Parties, for the design and construction of renovations and improvements to the Pool as further described and depicted in **Exhibit “A”** attached hereto and incorporated by reference (“Pool Renovations”). The MISD Expenditure shall include but not be limited to architect/consulting fees, reimbursable and miscellaneous costs, hard and soft construction costs, cost of licensing and permits, the cost of regulatory compliance, as well as the cost for all fixtures, furniture, and equipment. The plans and specifications for the Pool Renovations and the estimate of Renovation Costs are subject to the review and approval of DC. Construction of the Pool Renovations shall commence no later than five months after the execution of this agreement and will achieve Substantial Completion (as that term is defined in Section 1(B)(3) no later than twelve months from the start of construction.

- 2) Shall procure and manage all contracts pertaining to the Pool Renovation, including but not limited to architect, engineer, consultants, and general contractors. Additionally, the MISD shall procure all necessary purchases related to fixtures, furniture, and equipment for the Pool Renovations. All such work must be approved by DC and comply with all applicable laws and regulations including but not limited to competitive bidding requirements.
- 3) Upon Substantial Completion (as hereafter defined) of the Pool Renovations, the MISD shall be entitled to free use of the Pool. For purposes of this Agreement, the term “Substantial Completion” means the date of substantial completion of a project or specified area of a project when the construction is sufficiently completed, in accordance with the contract documents, as modified by any change order agreed to by the parties, so that the Parties can occupy or utilize the project or specified area of the project for the use for which it was intended.
- 4) Provide trained and qualified staff and lifeguards during any period of use of the Pool by MISD, in compliance with local, state or federal laws and regulations.
- 5) In the event that MISD and COM agree that specific, non-routine maintenance or operation cost is necessary or desirable, then COM and MISD shall equally split the cost of any such maintenance or operation.
- 6) In the event any operation or maintenance necessary under this Agreement exceeds Five Thousand dollars (\$5,000.00) or more, if it falls within COM’s duties herein, COM shall only be responsible for fifty percent (50%) of the cost and MISD shall be responsible for the other fifty percent (50%) of the cost.
- 7) Have the right to full access and use of the Pool for their official swim teams, subject only to other uses as agreed to, in writing, by the Parties.

- 8) Have the right to the full use of approximately 60 male and 60 female lockers, the adjacent shower and locker room facilities in the “P” building. (as further described and depicted on Exhibit “B,” attached hereto and incorporated herein by reference).

**E. Operation and Maintenance Duties and Rights of the COM.** The COM shall:

- (1) Be responsible for the Routine operation and maintenance of the Pool including all associated costs, except as otherwise limited herein. For purposes of this Agreement, activities shall be considered “Routine” if: (i) they are regularly scheduled or necessary activities or repairs necessary to maintain the Pool Obligations, Interior Obligations, and O&M Obligations (as those terms are defined in this Section C) running in good working order. The term “Routine” does not include replacements, renovations, reconstruction, or activities that are not regularly scheduled or necessary to maintain the Pool Obligations, Interior Obligations, and O&M Obligations in good working order. The COM shall be responsible for the following Routine activities: cleaning, disinfecting, heating, lighting, and water directly associated with operation of the Pool (“Pool Obligations”). The Pool (including water chemistry, equipment, etc.) must meet all local, state and federal laws, regulations, and requirements.
- (2) Purchase, maintain and coordinate all supplies necessary to carry out Pool Obligations.
- (3) Provide trained and qualified COM staff (including lifeguards) to manage the Pool in compliance with the Texas Administrative Code, as amended, (Standard for Public Pools and Spas) as well as any other local, state or federal requirements. The COM shall not pay salaries of any DC or MISD staff. Upon request, COM will provide lifeguards during periods of use by MISD at the sole expense of MISD.
- (4) Maintain a set of keys providing DC access to the Pool area to be utilized only for purposes of security, safety, or DC’s use of the Pool as preapproved, in writing, by COM.
- (5) Be responsible for the Routine operation and maintenance of the interior areas as referenced in **Exhibit “B,”** attached hereto and incorporated by reference herein (the “Interior Obligations”). Operate and provide Routine maintenance for the Boiler, Air Handler, telephone, and any information technology network systems located in the Pool (the “O&M Obligations”) Provide Routine preventive maintenance and Routine maintenance.

- (6) Maintain commercial general liability and property/contents insurance on the Pool listing all Parties as insureds, at its own expense, with one or more insurers that are both licensed to engage in the insurance business in the State of Texas and rated as “A” or higher by A.M. Best or insurers acceptable to all Parties, with coverage limits of at least \$1,000,000 per occurrence and at least \$3,000,000, in the aggregate.
- (7) If requested to do so by the DC, the COM shall furnish DC a Certificate of Insurance evidencing such coverage. The cost of such insurance shall be included in total expenses upon which the COM proportionate share is based.
- (8) Provided MISD and COM agree a specific non-routine maintenance or operation cost is necessary or desirable, COM shall only be responsible for fifty percent (50%) of the total cost and MISD shall be responsible for the other fifty percent (50%) of the total cost.
- (9) In the event any agreed to operation or maintenance (whether Routine or not) is necessary under this Agreement and exceeds Five Thousand dollars (\$5000) or more, if it falls within COM’s duties herein, COM shall only be responsible for fifty percent (50%) of the cost and MISD shall be responsible for the other fifty percent (50%) of the cost.
- (10) Assume full fiscal responsibility for costs associated with the Routine operation and maintenance of the Pool Obligations, Interior Obligations and/or the O&M Obligations (collectively, the “COM Obligations”) provided the costs do not exceed \$5000 for any single occurrence. Any proposed single expenditures that exceed \$15,000.00 must be approved in writing by MISD and DC. In the event such repairs are performed without the prior written approval of DC, DC reserves the right to inspect the repairs. If, upon inspection by DC’s engineers, consultants, and appropriate staff and upon consensus MISD’s engineers, consultants, and appropriate staff, it is determined that corrections to the repairs are needed, it will be at no cost to DC. However, in the event urgent repairs are needed, and obtaining prior consent from DC and MISD is not reasonably practical, the COM may proceed with repairs to the extent necessary to address the urgent situation and shall not be considered in breach of this Agreement.
- (11) Subject to the DC’s written approval, which shall not be unreasonably withheld, develop an annual plan with MISD for any planned expenditures over \$10,000.00 for the Pool. The COM will initiate this planning no later than February 1st of each year during the Term of this Agreement.
- (12) Maintain and follow an emergency call out protocol that has been approved by DC in writing.
- (13) Reimburse DC for actual expenses for utilities (water, electricity and gas) directly associated with the Pool, during the term of this Agreement. DC



requires, as part of “Pool Renovations,” that MISD and/or COM install meters and/or other associated equipment to monitor actual usage of water, electricity, and gas. It is permissible for the bills to be sent directly to MISD and or COM for direct billing.

- (14) Have the right to full access of the Pool at all times subject only to MISD’s use for their official swim teams or as otherwise agreed in writing by the Parties.
- (15) Have the right to the full use of approximately 60 male and 60 female lockers, the adjacent shower and locker room facilities in the “P” building. (as further described and depicted on **Exhibit “B,”** attached hereto and incorporated herein by reference).
- (16) Have the exclusive right to manage the Pool, which includes but is not limited to:
  - a. Setting the schedule for other uses, such as: open swim, classes, reservations, etc.
  - b. Setting and collecting fees for any uses of the Pool as COM deems appropriate
- (17) In the event MISD and/or COM utilize the Pool outside operating hours (as defined in Section 3) a separate Facilities Use Agreement, shown in **Exhibit C,** shall be utilized. MISD and/or COM may have separate expenses to cover DC costs to include, but not be limited to, Facilities and Police services.

**F. Duties and Rights of DC.** DC shall:

- (1) Maintain exterior common areas of the Pool including:
  - a. Adjacent shower and locker room facilities in the “P” building.
  - b. Exterior sidewalks, roadways, parking areas, service zones, and grounds.
  - c. DC shall be responsible for exterior common areas as further depicted in **Exhibit “B.”**
- (2) Operate and maintain central building systems such as energy management, fire alarms and lightning detection;
- (3) Have the right to utilize the Pool upon thirty (30) days written notice to COM subject to the schedules of MISD and COM;
- (4) Separately meter or sub-meter gas, electricity and water from other college facilities, to be reimbursed by MISD or COM;

- (5) Recover DC Expenses pursuant to this Section 1(D) and Section 1(C)(1).
- (6) Maintain landscaping, irrigation, roadways, parking lots, exterior lighting, and common areas in 'P' building.
- (7) Manage all water, natural gas, electricity, and sanitary sewer utilities. Any activity on the part of MISD or the COM involving connection, modification, repair, or control of these utilities must have prior written approval of DC, which approval shall not be unreasonably withheld, conditioned, or delayed.
- (8) Maintain reasonable access to the Pool and its supporting facilities during the Term of the Agreement.
- (9) Have the right to approve all exterior and common area signage; however, such approval shall not be unreasonably withheld.
- (10) Maintain full property insurance on the Pool and exterior common areas as described in this Agreement. The premiums and, as may be applicable, any deductible(s) associated with the property insurance obligation of DC, shall be reimbursed by MISD.

Reserve the right, but not the duty, through its duly appointed representatives and upon consultation with MISD, to eject any objectionable persons from the Pool.

- (11) Provide MISD and the COM the full use of approximately 60 male and 60 female lockers, the adjacent shower and locker room facilities in the "P" building (as further described and depicted on **Exhibit "B"**).

**G.** It is understood and agreed that DC hereby reserves the right for its authorized representative to, upon prior reasonable notice to COM and MISD, enter the premises at any reasonable time to make inspections regarding COM's and MISD's conformity with the terms of this Agreement. Nothing contained herein shall be construed to prevent or prohibit the DC's safety and security personnel from entering upon the Pool at any time, without notice, in connection with the discharge of their duties.

**2. Schedule:** During the Term of this Agreement (as defined in Section 4 below), the COM and MISD shall be entitled to use the Pool for their respective instructional and recreational programs in accordance with Campus Operating Hours, 5:00 AM – 10:00 PM seven days a week. Any and all changes to the operating hours of the Pool shall be submitted to DC for review thirty (30)-days in advance of the proposed changes taking effect. DC shall not unreasonably withhold or deny any change in the operating hours. On an annual basis, the COM and MISD will jointly develop and provide in writing a master calendar that specifies Pool operating hours and closure dates. Closure dates can be due to holidays (Federal and/or State), College closures, or other

maintenance and/or repair issues that COM and MISD deem necessary.

**3. Term:** Subject to prior termination or revocation of this Agreement as provided in Section 5, the initial term shall be in full force and effect beginning June 7, 2022, and ending June 7, 2047, at midnight, (the “Term”). IF COM and MISD mutually agree, then upon 180 days’ written notice to DC, COM and MISD shall have the option to extend this Agreement for 4 additional 5-year renewal periods. If the Parties do not approve and execute this Agreement or are not making reasonable good faith efforts to execute this Agreement on or before June 7, 2022, COM and MISD shall vacate the Pool premises no later than June 7, 2022 and shall have no further rights with respect to same.

**4. Termination:**

A. This Agreement may be terminated in the following manner:

- 1) By mutual written agreement and consent of the Parties;
- 2) By any Party upon the failure of the other Party or Parties to cure an Event of Default(hereinafter defined); or
- 3) Upon two (2) years’ written notice to the other Parties and with or without cause, by any Party unable to perform its respective obligations under the Agreement;  
or

B. In the event DC, COM or MISD fails to perform their respective material obligations as set forth in this Agreement (an “Event of Default”), the other Parties (each a “Non-Defaulting Party” and collectively, the “Non-Defaulting Parties”) shall provide prompt written notice of such Event of Default. An Event of Default shall also include: (i) an intentional violation of the policies and rules of the DC as related to the operation and maintenance of DC facilities; and (ii) a Party knowingly making a misrepresentation or false statement to another Party as related to the use, renovation, operation or maintenance of the Pool. The Party or Parties receiving the notice (as the “Defaulting Party” or collectively, the “Defaulting Parties”) shall then have thirty (30) days in which to cure the Event of Default, or if the failure is such that it cannot be cured in thirty (30) days, to make substantial and continued progress toward curing the Event of Default within a reasonable period of time. In the event that a Defaulting Party fails to cure the Event of Default after receipt of written notice, or, if the Event of Default is such that it cannot be cured in thirty (30) days, fails to make substantial and continued progress toward curing the Event of Default within a reasonable time, then the Non-Defaulting Party or Non-Defaulting Parties may immediately terminate this Agreement upon written notice to the Defaulting Party or Defaulting Parties.

C. If the Agreement is terminated in accordance with the above provisions, the Parties will be responsible for the payment of their respective shares of costs incurred, if any, under the terms of the Agreement up to the time of termination.

D. If the required cure cannot feasibly be completed within thirty (30) days, then the curing

party must initiate the cure within thirty (30) days and diligently and continuously pursue completion of the cure, except in an instance of force majeure as described below.

- E. In the event of revocation or termination prior to the expiration of the full Term of this Agreement as set out in Section 3, DC agrees to and shall pay MISD the unamortized costs of the design, construction, and renovation of the improvements described in Section 1(B) (1). In this respect, such costs shall be amortized on a straight-line basis from date of completion to the date of original expiration of this Agreement, and shall be prorated to the nearest whole month.

**5. Fire and Other Casualties:**

- A. If the Pool, or any portion thereof, is damaged by fire or other casualty, COM or MISD shall give immediate notice thereof to DC, and this Agreement shall continue in full force and effect except as hereinafter set forth.
- B. Subject to the provisions of Section 5(C), if the Pool is damaged or rendered unusable by fire or other casualty covered under an insurance policy required by this Agreement to be maintained by DC, any damage shall, subject to Section 5(C) below, be repaired by and at the expense of MISD, provided that MISD will be entitled to receive and apply to such repair all insurance proceeds paid by reason of the subject casualty, and will have no obligation to expend for such repair any amount in excess of the amount of such insurance proceeds plus the entire amount of the applicable insurance deductible. MISD shall commence any repairs required by this Section 5(B) within thirty (30) days of any said fire or other casualty, and shall thereafter pursue and complete such repairs within one hundred and twenty (120) days after the date of the subject fire or other casualty.
- C. COM and/or MISD may, by notice to DC within sixty (60) days from the date of the casualty, terminate this Agreement, if either: (i) the Pool is rendered unusable, or damaged to an extent materially impairing the operation of the Pool; or (ii) based on good faith projections by a reputable contractor or contractors reasonably acceptable to DC, COM and MISD, repair or reconstruction of the Pool to a condition substantially as good or better than the condition in which it existed prior to the occurrence of the subject casualty cannot be completed within one hundred and twenty (120) days following the date of the subject casualty.
- D. If COM and/or MISD elect to terminate this Agreement pursuant to this Section 5, this Agreement will terminate as of the date of COM and/or MISD's vacation of the Pool, which will occur within a reasonable time. Subject to the preceding sentence, in the event COM and/or MISD elect to terminate this Agreement pursuant to this Section 5, the Term of this Agreement will expire completely and fully as of the date of vacation of the Pool without prejudice to any Parties' rights and remedies against the other(s) under this Agreement in accordance with provisions in effect prior to such vacation.

E. In the event COM and/or MISD elect to terminate this Agreement pursuant to Section 5(C) or 5(D) above, DC shall be entitled to receive and retain any and all such insurance proceeds and COM/or MISD shall have no claim thereto but shall thereby be relieved of any and all obligations to repair, rebuild, or restore the Pool.

6. **Assignment:** No Party may assign their interest in this Agreement without the written permission of all other Parties.

7. **Waiver:** The failure of any Party hereto to exercise the rights granted to them herein upon the occurrence of any of the contingencies set forth in this Agreement shall not in any event constitute a waiver of any such rights upon the occurrence of any such contingencies.

8. **Immunity and Liability:** DC, NOT WAIVING ANY RIGHTS OR ANY IMMUNITY OR DEFENSE, AGREES TO THE EXTENT ALLOWED BY THE TEXAS LAW, TO BE RESPONSIBLE FOR ANY LIABILITY OR DAMAGES DC MAY SUFFER AS A RESULT OF CLAIMS, DEMANDS, COSTS OR JUDGMENTS, INCLUDING ALL REASONABLE ATTORNEY'S FEES, AGAINST DC INCLUDING WORKERS' COMPENSATION CLAIMS, ARISING OUT OF THE PERFORMANCE OF DC AGENTS, OFFICERS, EMPLOYEES, OR REPRESENTATIVES UNDER THIS AGREEMENT, OR ARISING FROM ANY ACCIDENT, INJURY OR DAMAGE, WHATSOEVER, TO ANY PERSON OR PERSON(S), OR TO THE PROPERTY OF ANY PERSON(S) OR CORPORATIONS(S) OCCURRING DURING THE PERFORMANCE OF THIS AGREEMENT AND CAUSED BY THE SOLE NEGLIGENCE OF DC, ITS AGENTS, OFFICERS, AND/OR EMPLOYEES.

MISD, NOT WAIVING ANY RIGHTS OR ANY IMMUNITY OR DEFENSE, AGREES TO THE EXTENT ALLOWED BY THE TEXAS LAW TO BE RESPONSIBLE FOR ANY LIABILITY OR DAMAGES MISD MAY SUFFER AS A RESULT OF CLAIMS, DEMANDS, COSTS OR JUDGMENTS, INCLUDING ALL REASONABLE ATTORNEY'S FEES, AGAINST MISD INCLUDING WORKERS' COMPENSATION CLAIMS, ARISING OUT OF THE PERFORMANCE OF MISD AGENTS, OFFICERS, EMPLOYEES, OR REPRESENTATIVES UNDER THIS AGREEMENT, OR ARISING FROM ANY ACCIDENT, INJURY OR DAMAGE, WHATSOEVER, TO ANY PERSON OR PERSONS, OR TO THE PROPERTY OF ANY PERSON(S) OR CORPORATIONS(S) OCCURRING DURING THE PERFORMANCE OF THIS AGREEMENT AND CAUSED BY THE SOLE NEGLIGENCE OF MISD, ITS AGENTS, OFFICERS, AND/OR EMPLOYEES.

DC, COM AND MISD AGREE THAT ANY LIABILITY OR DAMAGES AS STATED ABOVE OCCURRING DURING THE PERFORMANCE OF THIS AGREEMENT CAUSED BY THE JOINT OR COMPARATIVE NEGLIGENCE OF THEIR EMPLOYEES, AGENTS AND OFFICERS SHALL BE DETERMINED IN ACCORDANCE WITH THE COMPARATIVE RESPONSIBILITY LAWS OF THE STATE OF TEXAS TO THE EXTENT TO WHICH SUCH LAWS APPLY TO EACH PARTY. THIS OBLIGATION SHALL BE CONSTRUED SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS AGREEMENT, AND NOT THE BENEFIT OF ANY THIRD PARTIES NOR TO CREATE LIABILITY FOR THE BENEFIT OF ANY THIRD

**PARTIES. THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.**

**9. Force Majeure:** It is expressly understood and agreed by the Parties to this Agreement that the Parties shall proceed with due diligence to perform their respective obligations hereunder; provided, however, a Party shall not be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder in the event of “force majeure”. For this purpose, “force majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, state, federal or municipal government, or de facto governmental action (unless caused by acts or omissions of a Party), fires, explosions, floods, strikes, pandemics, epidemics, and public health emergency. In an event of force majeure, a Party shall notify the other Parties in writing within ten (10) days following such circumstances and shall be excused from doing or performing the same during such period of delay so that the completion dates or duties or obligations applicable to such performance shall be extended for a period of time equal to the period the Party was delayed.

**10. Right to Remove Property:** COM and MISD shall be entitled, during the Term of this Agreement and upon termination or expiration hereof, to remove from the Pool, or any part thereof, all personal property, trade fixtures, tools, machinery, equipment, materials and supplies placed thereon by it; provided that COM and MISD shall repair all damage resulting from such removal.

**11. Applicable Law:** This Agreement and all materials and/or issues collateral thereto shall be governed by the laws of the State of Texas applicable to contracts made and performed entirely therein.

**12. Parol Evidence and Status of Agreement:** This Agreement represents the entire agreement of the parties and there are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the parties to this Agreement other than those set forth in this Agreement and duly executed in writing.

**13. Modification:** - This Agreement may be modified, amended, extended, or augmented, only by written amendment signed by the Parties.

**14. Limitation of Authority:** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**15. Venue:** Venue to enforce this Agreement shall lie exclusively in Dallas County, Texas.

**16. Notice:** All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if sent by facsimile transmission or mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

**Dallas College**

**To:** Chief Financial Officer  
1601 Botham Jean Blvd  
Dallas, Texas 75215

**Mesquite Independent School District**

**To:** Superintendent  
3819 Towne Crossing Blvd.  
Mesquite, Texas 75150

**City of Mesquite**

**To:** City Manager  
1515 N. Galloway Ave.  
Mesquite, Texas 75149  
972-288-7711

Each Party reserves the right to designate in writing to the other Party any change of name, change of person, or address to which the notices shall be sent.

**17. Nondiscrimination:** Parties to this Agreement shall not discriminate on the basis of race, color, national origin, sex, religion, age, disability, gender, gender identity, gender expression, sexual orientation or any other basis prohibited by law.

**18. Severability:** If any term, covenant or condition of this Agreement or its application to any person or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected, and each term shall be valid and enforceable to the fullest extent permitted by law.

**19. Conflict/Dispute Resolution:** The Parties agree to work together in good faith to resolve any disputes or conflicts related to this Agreement. The basis for any dispute which is not resolved on an informal basis shall be reduced to writing and sent to the other Parties. Thereafter, the Parties shall endeavor to meet to work through the issue(s) to effect the underlying purposes of this Agreement. The foregoing notwithstanding, as a prerequisite to any lawsuit being filed related to this Agreement, the Parties shall participate in non-binding mediation utilizing a mutually agreed upon mediator.

**20. Signatory Clause:** The individuals executing this Agreement on behalf of DC, COM and MISD acknowledge that they are duly authorized to execute this Agreement. All Parties hereby acknowledge that they have read, understood, and shall comply with the terms and conditions of this Agreement. This Agreement shall not become effective until executed by each party. Therefore, the Parties to this Agreement shall begin their respective duties only after the last party has signed and dated this Agreement.

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by Dallas College, The City of Mesquite, and Mesquite Independent School District, upon said date indicated.

**DALLAS COLLEGE**

**BY:** \_\_\_\_\_  
**John Robertson** **Date**  
**Chief Financial Officer**

**MESQUITE INDEPENDENT SCHOOL DISTRICT**

**BY:** \_\_\_\_\_  
**Eddie Rose** **Date**  
**Board President**

**APPROVED AS TO FORM:**

**BY:** \_\_\_\_\_  
**Scott Thomas** **Date**  
**Legal Counsel**



**CITY OF MESQUITE**

**BY:** \_\_\_\_\_  
**Cliff Keheley** **Date**  
**City Manager**

**ATTEST:**

**BY:** \_\_\_\_\_  
**Sonja Land** **Date**  
**City Secretary**

**APPROVED AS TO FORM:**  
**David L. Paschall, City Attorney**

**BY:** \_\_\_\_\_  
**Sr. Assistant City Attorney** **Date**

**EXHIBIT A – POOL RENOVATIONS**  
**EXHIBIT B – INTERIOR / EXTERIOR OBLIGATIONS**  
**EXHIBIT C – FACILITIES USE AGREEMENT**