

THE CITIES OF MESQUITE AND BALCH SPRINGS ELECTION PARTICIPATION INTERLOCAL AGREEMENT

This Interlocal Agreement (this “Agreement”) is entered into as of the Effective Date between the **CITY OF MESQUITE (“Mesquite”)** and the **CITY OF BALCH SPRINGS (“Balch Springs”)**, Texas home-rule municipalities with the authorization of their governing bodies. Mesquite and Balch Springs may be collectively referred to herein as the “Parties” or individually as a “Party”.

WITNESSETH:

WHEREAS, on July 7, 1994, Mesquite purchased, among other property, 171.393 acres of land in Balch Springs from the Department of Housing and Urban Development (“HUD”) (the “Property”); and

WHEREAS, Mesquite used funds designated for park use to acquire the Property from HUD; and

WHEREAS, Mesquite is interested in selling the Property and utilizing the proceeds of sale to fund and enhance the Mesquite park and recreation system; and

WHEREAS, Balch Springs desires that the Property be placed into economic use in order to benefit the citizens of Balch Springs; and

WHEREAS, state law requires that Mesquite hold a special election to authorize conveyance of park land by sale; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “Act”), provides authority for local governments of the State of Texas to enter into Interlocal Agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, the Parties desire to cooperate in the cost sharing of the special election for the sale of the Property (the “Special Election”).

NOW, THEREFORE, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the Parties agree as follows:

I. COST SHARING

1.01 Duties of Mesquite. Mesquite will advertise and arrange for translation services for the Special Election and will contract with the County of Dallas (“Dallas County”) for election services to conduct the Special Election.

1.02 Election Costs. Mesquite and Balch Springs agree to cooperate in sharing the cost of the Special Election as more fully set forth herein. Mesquite shall invoice Balch Springs for one-half of the cost of the Special Election, up to a maximum of \$30,000.00. Upon request of Balch Springs, Mesquite agrees to make available documentation evidencing the estimated election costs for which payment is sought. Balch Springs shall pay the invoiced amount within thirty (30) days of the invoice date. Payment not mailed within 30 calendar days of the invoice date will accrue interest at the rate set forth in Government Code Section 2251.025(b). For the purpose of this Agreement, the costs of the Special Election include all legal advertising and publication costs, the costs of translation services, and the costs assessed by Dallas County to conduct the May 4th Special Election pursuant to the election services contract between Mesquite and Dallas County.

1.03 Use of Funds. Mesquite agrees that the funds provided pursuant to this Agreement are to be utilized solely to defray the costs of the Special Election. Mesquite agrees to make available to Balch Springs documentation reasonably required by Balch Springs to verify that said sum has been utilized solely for this purpose.

1.04 Expense Accounting. If under the election services contract with Dallas County, the final, written accounting performed by the Elections Administrator requires payment of additional money from Mesquite, Mesquite shall invoice Balch Springs for its one-half of the additional amount, up to the maximum not-to-exceed cost share of \$30,000.00. Balch Springs shall pay the additional invoiced amount within thirty days of the invoice date, as provided in Paragraph 1.02. Conversely, if the final cost of the Special Election is less than estimated and a credit is received by Mesquite from Dallas County, the credit shall be applied as follows: (i) estimated costs paid in excess of \$60,000.00 shall be reimbursed 100% to Mesquite; and (ii) any remaining credit shall be shared equally between Mesquite and Balch Springs. By way of example only, if the total estimated cost of the Special Election is \$70,000.00 and the actual cost of the Special Election is \$55,000.00, the first \$10,000 shall be paid 100% to Mesquite and the remaining \$5,000 shall be paid \$2,500.00 to Mesquite and \$2,500.00 to Balch Springs. The obligations of this paragraph shall survive the termination of this Agreement.

II. TERM

2.01 Term. This Agreement shall commence on the Effective Date and shall continue until and including September 30, 2020 (the “Term”).

2.02 Appropriation of Funds. As home rule municipalities in the State of Texas, each Party is subject to Article III, Section 52a of the Texas Constitution prohibiting unfunded debt. All expenditures to be made by each Party under the terms of this Agreement shall be subject to such Party’s appropriation of funds for such purpose to be paid in the fiscal year for which such expenditure is to be made and shall be paid only from funds of such City authorized by Article III, Section 52a of the Texas Constitution.

III. GENERAL PROVISIONS

Interlocal Agreement Between the Cities of Mesquite and Balch Springs

3.01 Immunity. It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

3.02 Entire Agreement; Conflict. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral, with regard to the subject matter hereof. This Agreement may be amended and modified only by written instrument signed by all Parties. There are no oral agreements between the Parties.

3.03 Notices. All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective two (2) days after deposit in the United States mail. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change the Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

Notice to City of Mesquite:

Mesquite Representative:

Sean Fox
Special Projects Director
City of Mesquite
1515 North Galloway Avenue
Mesquite, Texas 75149

With a copy to:

City Attorney
City of Mesquite
1515 North Galloway Avenue
Mesquite, Texas 75149

Notice to City of Balch Springs:

Balch Springs Representative:

Chris Dyer
Community Development Director
City of Balch Springs
13503 Alexander Road
Balch Springs, Texas 75181

With a copy to:

City Secretary
City of Balch Springs
13503 Alexander Road
Balch Spring, Texas 75181

IV.

AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer or agent of each of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties

hereto. The Parties are each executing this Agreement pursuant to duly authorized action by each of their respective City Councils.

**V.
SEVERABILITY**

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be invalid, unenforceable or contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the validity, enforceability or legality of any of the remaining portions of the Agreement and the remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, unenforceable or illegal provision had never been included in the Agreement.

**VI.
VENUE**

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 laws of the State of Texas. The Parties agree that this Agreement shall be enforceable in Dallas County, Texas, and, if legal action becomes necessary, exclusive venue shall lie in state courts of competent subject matter jurisdiction in Dallas County, Texas.

**VII.
INTERPRETATION OF AGREEMENT**

This is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the terms and provisions of this Agreement shall not be construed more favorably for or strictly against any Party.

**VIII.
NO PARTNERSHIP, JOINT VENTURE, AGENCY
OR EMPLOYER/EMPLOYEE RELATIONSHIP**

Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership, joint venture, joint enterprise, agency or employer/employee relationship between the Parties and/or between any Party.

**IX.
HEADINGS**

The headings of this Agreement are for convenience of reference only and shall not affect in any manner any of the terms and conditions of this Agreement.

**X.
DUPLICATE ORIGINAL DOCUMENTS**

This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered

one and the same instrument. A digital or electronic signature shall be considered an original signature for all purposes.

EXECUTED by the Parties as of the _____ day of _____, 2019 (“the Effective Date”).

**CITY OF MESQUITE, TEXAS,
a Texas home-rule municipality**

BY: _____
Cliff Keheley, City Manager

APPROVED AS TO FORM:

Ileana N. Fernandez, Sr. Asst. City Attorney

**CITY OF BALCH SPRINGS, TEXAS
a Texas home-rule municipality**

BY: _____
Susan Cluse, City Manager

APPROVED AS TO FORM:

Monte Akers, City Attorney