

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF MCKINNEY AND THE
ALLEN INDEPENDENT SCHOOL DISTRICT
FOR SCHOOL CROSSING GUARDS**

THIS AGREEMENT (the "Agreement") is hereby made and entered into as of this the 20th day of August, 2013, by and between the City of McKinney, Texas, a Texas municipal corporation ("McKinney"), and the Allen Independent School District ("District"), hereinafter referred to collectively as the "Parties."

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform governmental functions and services under the terms thereof; and

WHEREAS, McKinney has developed and implemented a School Crossing Guard Program (the "Program") through which Program McKinney agrees to reimburse school districts that have school campuses located within McKinney's corporate limits for certain costs associated with placing a school crossing guard ("Guard") at intersections designated by the McKinney Traffic Engineering Department ("Department"); and

WHEREAS, District would like to participate in the Program for its school campuses located within McKinney at intersections determined by the Department as needing a Guard underwritten, in part at least, by McKinney; and

WHEREAS, an Interlocal Agreement between McKinney and District applying the Program to school campuses situated in McKinney will promote the Parties' valid governmental interest in protecting the health, safety, and welfare of children traveling to and from school in the region.

NOW, THEREFORE, McKinney and District agree as follows:

I. SCOPE OF THE AGREEMENT

McKinney agrees to have the Department evaluate the intersections around and about the District's school campuses that are situated within McKinney to determine for which of such intersections McKinney will reimburse the District "Guard Costs," as that phrase is defined herein-below, to have a Guard assigned to such designated intersection(s) by District. In order to qualify for reimbursement under the Program, the District shall employ Guards to assist children traveling to and from school campuses at the intersections designated by the Department on days when school is in session and students are attending classes: (1) beginning at least forty-five (45) minutes before school begins and continuing until fifteen (15) minutes after classes begin for the day; and (2) resuming fifteen (15) minutes before school is dismissed for the day and extending for at least forty-five (45) minutes following such dismissal of the school campus's students for the day.

Nothing contained in this Agreement is intended to limit or otherwise restrict or prohibit the District from determining how many Guards it wishes to hire and/or designating at which intersections around and about school campuses the District wishes to place Guards. Neither is

this Agreement intended to satisfy or in any way substitute for the District's obligation, if any such obligation exists and which obligation is hereby denied, to examine and determine at which intersections around and about a school campus should have a Guard placed to assist school students to and from the District's school campuses. Rather, this Agreement is simply a cost-sharing agreement by and between McKinney and District.

II. TERM OF THE AGREEMENT

Subject to the approval of the governing bodies of both entities, the initial term of this Agreement is for a period of one school year, which school year begins on the 26th day of August, 2013 and ends on the 5th day of June, 2014. Thereafter, this Agreement may be renewed without further action by the respective governing bodies for a total of five (5) successive school-year-terms, which subsequent school-year-terms shall begin and end on the dates established by District, unless terminated earlier by either party in accordance with the terms of this Agreement. District must provide McKinney with written intent to renew this Agreement within 90 days before the expiration of any term. The expiration of each term is the last day of each school year that students within the District attend school, as determined by the District's Board of Trustees and as noted on the District's school calendar.

III. PAYMENT FOR SCHOOL CROSSING GUARDS

The actual number of Guards for which McKinney will pay Guard Costs and the specific intersections at which those Guards shall be assigned pursuant to this Agreement may change from year to year based on the Department's annual evaluation of intersections and without further action by the respective governing bodies. McKinney shall identify the number of Guards for which McKinney will pay Guard Costs, the intersections to which such Guards shall be assigned by District, and the amount the City will reimburse to District as Guard Costs per Guard at least sixty (60) days prior to the beginning of each school-year-term of this Agreement. The number of Guards so identified and the payment of Guard Costs therefor shall be subject to the Department's annual update evaluation of intersections around school campuses and the specific designation and availability of funding for Guard Costs in McKinney's annual budget.

McKinney agrees to pay the reasonable and customary labor costs and equipment costs ("Guard Costs") for the number of Guards at such school crossings as may be determined to be necessary in the sole discretion of McKinney. The maximum amount that McKinney will pay for Guard Costs per Guard during the initial term of this Agreement is set out in Exhibit "A," attached hereto and incorporated herein by reference for all purposes allowed by law. The maximum amount that McKinney will pay for Guard Costs per Guard in subsequent school-year-terms of this Agreement may be increased or decreased depending upon the amount of money designated for Guard Costs for the District in the annual budget of the Department as approved and adopted by the governing body of McKinney.

Payment shall be made to District within 30 days of receipt of an invoice from District seeking reimbursement of Guard Costs at the end of each school-year-term of this Agreement. Only one payment will be made per school-year-term.

IV. EMPLOYMENT OF SCHOOL CROSSING GUARDS

District is solely responsible for the selection, employment, training, supervision, discipline, and termination of Guards under this Agreement. District, at its sole discretion, may: (1) determine the employment status of the Guards, whether as employees of District or as independent contractors; (2) contract with another entity for the training of the Guards; (3) confer or contract with another entity such as another school district for the provision of substitute Guards when needed; and/or (4) take any other action with regard to the employment of Guards as District in its sole discretion deems necessary and appropriate. Under no circumstances shall the Guards be considered or construed as being employees of the City of McKinney.

V. TERMINATION OF THE AGREEMENT

Either party may, at its sole option, terminate this Agreement by providing thirty (30) days written notice to the other party.

VI. RELEASE AND HOLD HARMLESS

Each party agrees to waive all claims against, to release, and to hold harmless the other party and its officials, officers, agents, and employees, in both their public and private capacities, for any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action that may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party is responsible for its proportionate share of liability.

VII. IMMUNITY

In the execution of this Agreement, the Parties do not waive or intend to waive any immunity or defense available 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, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

VIII. NOTICES

Unless otherwise instructed in writing, each party will send via certified mail all contractual notices or communications to the other party at the following respective address:

If to McKinney:

City Manager
City of McKinney
222 Tennessee
McKinney, Texas 75069

If to District:

Superintendent
Allen Independent School District
P.O. Box 13
Allen, Texas 75013

IX. ENTIRE AGREEMENT OF PARTIES

This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. Any other agreement, statement, or promise that is not contained in this Agreement is not valid or binding. The Parties agree that this Agreement and its attachments constitute the entire understanding of the Parties. Further, the Parties may only amend, supplement, modify, or cancel this Agreement through a properly executed written instrument.

X. SEVERABILITY OF PROVISIONS

In the event a term, condition, or provision of the Agreement is determined as void, unenforceable, or unlawful by a court of competent jurisdiction, the parties agree that such term, condition or provision is severable, and that the remainder of the Agreement shall remain in full force and effect.

XI. GOVERNING LAW / VENUE

The laws of the State of Texas govern the validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties. The Parties agree that exclusive venue shall lie in Collin County, Texas.

XII. WAIVER

Neither party may waive any covenant or condition of this Agreement without the express written consent of the other party. Failure by either party to enforce a breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of such provision.

SIGNED AND EXECUTED on the dates indicated below:

ALLEN INDEPENDENT SCHOOL DISTRICT

DATE: _____

BY: _____
KEN HELVEY, ED.D.,
Superintendent

CITY OF MCKINNEY, TEXAS

DATE: _____

BY: _____
JASON GRAY
City Manager

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

APPROVED AS TO FORM:

MARK HOUSER
City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COLLIN COUNTY §

This instrument was acknowledged before me on the ____ day of _____, 2013 by **KEN HELVEY, Ed.D.**, Superintendent for the Allen Independent School District, on behalf of the Allen Independent School District.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COLLIN COUNTY §

This instrument was acknowledged before me on the ____ day of _____, 2013 by **JASON GRAY**, City Manager of the City of McKinney, Texas, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

Labor	\$ 5,340.00
<u>Associated Benefit Cost</u>	<u>\$ 583.13</u>
Total	\$ 5,934.13 per Guard

COST PER GUARD = \$ 5,934.13

GRAND TOTAL COSTS

The grand total cost that will be reimbursed to the District is the Cost per Guard multiplied by the number of Guards as follows:

Cost per Guard of \$5,934.13 X 3 Guards = \$ 17,802.39

GRAND TOTAL OF COSTS REIMBURSABLE TO DISTRICT: \$ 17,802.39

SCHEDULE OF PAYMENTS

Allen ISD will bill the McKinney at the end of the school-year-term for reimbursement.

Bill To: Paul Sparkman
McKinney Streets Dept
P.O. Box 517
McKinney, Texas 75070