

INTERLOCAL AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF AN ELECTRIC VEHICLE CHARGING STATION

This agreement (“Agreement”) is made by and between the City of Killeen, Texas, a municipal corporation situated in Bell County, Texas (“City”) and Bell County, Texas (“County”), collectively referred to in this Agreement as the “Parties.” This agreement is authorized by Chapter 791 of the Texas Government Code, the “Interlocal Cooperation Act.”

RECITALS

WHEREAS, the County has entered into a Tax Abatement Agreement with Gransolar Texas Twenty, LLC that includes a requirement for the LLC to make a one-time payment to the County of \$50,000 to help defray the costs of County funded solar panels and/or charging stations for electric vehicles; and

WHEREAS, the City and the County both desire to improve the availability to the public of electric vehicle (EV) charging infrastructure in Killeen in support of sustainability as well as to encourage visitors for economic development; and

WHEREAS, the parties desire to work together to facilitate the construction and operation of a charging station for electric vehicles (the “Project”) in accordance with the general terms and conditions outlined below;

NOW THEREFORE, the City and County agree as follows:

Section 1. Purpose. The purpose of this AGREEMENT is to provide a facility for charging electric vehicles in the City of Killeen and to establish the responsibilities of each of the parties as it relates to this Project.

Section 2. City Responsibilities

- a. The City will purchase one EV charging station (the “EV station”) agreeable to both parties.
- b. If neither party owns suitable property on which to locate the EV station, the City agrees to acquire the necessary property for the Project.
- c. The City will provide project management services and will be responsible for installation and construction of the EV station.
- d. Upon completion of installation and construction of the Project, the City agrees to operate and maintain the EV station for its useful lifespan.

Section 3. County Responsibilities

- a. The County agrees to pay \$50,000 (“County’s contribution”) to City towards the cost to purchase, construct, install, and maintain the EV station within 90 days of the Effective Date of this Agreement.

Section 4. Project Costs

- a. The City agrees to pay for expenses related to this Project with City funds in combination with the County's contribution.
- b. Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

Section 5. Revenue

- a. The Parties agree that in consideration for the City's continuing responsibility to operate and maintain the EV station, City will be entitled to receive and retain all revenue associated with the operation of the EV station with no obligation to share revenue with the County or any other entity.

Section 6. Additional Agreements.

- a. The Parties additionally agree to execute and deliver any additional documents and instruments such as Interlocal Agreements, contracts, or easements necessary or appropriate to accomplish the terms of this Agreement, or to correct any defect, error or omission that may be discovered in this Agreement or any documents executed incidental to it.
- b. The parties agree to cooperate in defending any legal action instituted by a third party challenging (i) the validity of one or more provisions of this Agreement; (ii) the state and local legislation authorizing the Parties to enter into this Agreement; or (iii) any discretionary action and approvals of either Party regarding permits or other entitlements issued pursuant to this Agreement.

Section 7. Term. The term of this Agreement will commence on the execution date hereof and shall terminate upon the earliest to occur of: (a) thirty days following written notice by any party hereto prior to expenditure of funds or provision of in-kind services; (b) agreement of the parties, (c) termination under Section 9; or (d) termination of the operation of the EV station.

Section 8. Relationship of Parties. The parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either party be an agent, representative, trustee or fiduciary of the other. No party shall have any authority to bind the other to any agreement. This Agreement is not assignable or transferable by either party without the all other parties' written consent.

Section 9. Default and Remedies.

- a. Each of the following constitutes a material breach of this Agreement and an Event of Default: (i) failing to fully and timely perform any covenant under this Agreement; and (ii) making any representation found to be materially false, misleading, or erroneous in connection with the Project.
- b. If any party should commit an Event of Default, the party alleging such default shall give the other party not less than ten (10) days' notice specifying the nature of the alleged breach and, when appropriate, the manner in which the alleged breach may be satisfactorily cured. Notwithstanding the preceding sentence, if the nature of the

alleged failure is such that the giving of ten (10) days' written notice is impractical due to a threat of harm to life or property, then the party alleging the failure shall give the other party such notice as may be reasonable under the circumstances.

- c. In the event of an Event of Default that is not timely cured, the non-defaulting Party may (but shall not be obligated to), without prejudice to any other available right or remedy: (i) terminate this Agreement; (ii) seek recovery of any damage suffered; (iii) cure the default and receive reimbursement from the defaulting Party for all reasonable expenses incurred in doing so; (iv) discontinue payment or performance under this Agreement until the default is cured; (v) exercise any other remedy granted by this Agreement or by applicable law; or (vi) any combination of the foregoing.
- d. Each party waives all special, incidental, consequential or punitive damages.
- e. It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.
- f. If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which that party may be entitled.

Section 10. Miscellaneous.

- a. Assignment of Contract. Parties may not assign this Agreement or any rights under the Agreement without the prior written consent of the other party, and any attempted or purported assignment in the absence of such consent shall be void. However, nothing herein shall be construed to prevent Killeen from subcontracting.
- b. Binding Effect. Subject to the provisions regarding assignment, this Agreement shall be binding on the Parties and their respective representatives, successors and permitted assigns.
- c. No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement. Nothing herein shall be construed to waive or limit any defense or immunity available to either Party in response to any third party claim.
- d. Governing Law; Venue. The Parties agree that this Agreement has been made in Texas and that it shall be governed by and construed pursuant to the laws of the State of Texas, without regard to choice of law rules of any other jurisdiction. Venue for any action to construe or enforce this Agreement shall be in Bell County, Texas.
- e. Severability. The provisions of this Agreement are severable. If a court or government agency of competent jurisdiction finds that any provision of this Agreement is unenforceable, the unenforceable provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the unenforceable provision as is legally possible, and the Agreement as

so-modified shall be enforced to the greatest extent permitted by law, except when such construction would operate as an undue hardship on a Party, or constitute a substantial deviation from the general intent and purpose of such parties as reflected in this Agreement.

- f. Interpretation. Each Party has carefully read this entire Agreement, understands the meaning and effect of each and every provision contained herein, and acknowledges that it has relied on its own judgment in entering into this Agreement. Each Party executes this Agreement only after first having obtained, or having had the opportunity to obtain, competent legal advice. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders. The singular form shall include the plural when the context requires. Headings used throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, restrict, modify, amplify or aid in the interpretation or construction of the meaning of the provisions of this Agreement. The terms “hereof,” “hereunder” and “herein” shall refer to this Agreement as a whole, inclusive of all exhibits, except as otherwise expressly provided. This Agreement represents the result of extensive discussion between the parties, and thus should not be construed strictly for or against either party.
- g. Amendment. The Parties agree that they may amend this Agreement only by a written agreement duly executed by persons authorized to execute agreements on behalf of the Parties.
- h. Multiple Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, or the acknowledgment of such Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the Parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- i. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties. This Agreement supersedes and cancels all previous written and oral agreements and communications between the Parties relating to the subject matter of this Agreement.

Executed and effective this ____ day of _____ 20__.

CITY OF KILLEEN

BY: _____
City Manager
Kent Cagle

ATTEST:

City Secretary
Laura Calcote

BELL COUNTY, TEXAS

BY: _____
County Judge
David Blackburn

ATTEST:

County Clerk
