

## INTERLOCAL AGREEMENT FOR SECURITY SURVEILLANCE PROJECT AT RGAAF

### RECITALS

A. This agreement (“Agreement”) is by and between the City of Killeen, a home rule municipal corporation in Bell County, Texas (“Killeen”), and the County of Bell, State of Texas (“County”), acting through their governing bodies. Killeen and County are collectively referred to in this Agreement as the “Parties.”

B. This Agreement will be deemed to be effective (“Effective Date”) immediately following the full satisfaction of the last condition precedent to this Agreement, which shall consist of: 1) County Commissioners approval of this Agreement following finalization of various funding mechanisms as shown on Exhibit A hereto; and 2) Killeen City Council approval of this Agreement.

C. Killeen intends to enter into contracts for the design and completion of the security surveillance project (“Project” and as defined below) at Robert Gray Army Airfield (“RGAAF”).

D. County, recognizing the critical need for security upgrades to the RGAAF and the benefit that the County would receive, sponsored an application for a State of Texas Defense Economic Adjustment Assistance Grant (“DEAAG”). To ensure the Project could be completed in whole, the County engaged communities surrounding the Fort Hood military installation, and obtained commitments from four surrounding cities and two economic development corporations. With funding commitments assured, the County submitted the application and was selected for a DEAAG on December 10, 2017.

E. This Agreement is made under the authority of Chapter 791 of the Texas Government Code.

F. The purpose of this Agreement is to state the terms and conditions under which County will participate in funding the Project.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Term and Termination.** Unless otherwise provided for, this Agreement shall commence on the Effective Date, and continue until the services specified in the Agreement have been fully and completely performed or upon mutual agreement of the parties.

2. **Project.** The Project consists of the installation of closed-circuit television (“CCTV”) cameras and network infrastructure around the perimeter of RGAAF. Improvements will also include CCTV cameras at the ASR-11 and transmitter sites, entry control points (“ECPs”) 14 and 54, and Gate 19, as well as head-end equipment for network management and video storage.

**3. Killeen Rights and Obligations.**

A. Killeen agrees to:

- (1) Either personally or through its agents and contractors furnish all bid/proposal documents, contracting, construction, superintendence, administration, licenses, permits, facilities, tools, machinery, equipment, personnel, labor, materials and supplies necessary to complete the Project in the manner set forth herein.
- (2) Provide County with copies of all draft agreements with third parties for review by the County to assure such agreements in the aggregate are within available funds as set forth in Exhibit A.
- (3) Provide County with a copy of requests for payment or invoices from the Contractor or vendors as well as the related project documents and final contracts approved by Killeen for the Project in a timely manner such that County can process and make payment to the Contractor or vendors. All Project invoices shall be made out to be payable by the County and sent to the County for payment.
- (4) Promptly notify County if at any time Killeen is unable to comply with its obligations hereunder, and state the reasons for noncompliance.
- (5) Provide County quarterly Project status reports throughout the duration of the project until Project and DEAAAG closeout.

B. Killeen may subcontract all or any part of the work to be performed hereunder.

**4. County Rights and Obligations.**

County agrees to:

- (1) Obtain project funding in the amount of \$4,575,000 (“Project funds”) to fully fund the Project. County shall immediately notify Killeen if anticipated grant funding is imperiled or has not been received as committed. The County and those sources listed on Exhibit A will be the sole funding sources for the Project, and the City has no financial obligation, nor will it commit any funds to the Project.

The County has no funding obligation, nor will it commit any County funds to the Project, other than the County’s grant obligation as shown on Exhibit A hereto.

- (2) Review all draft contracts provided by Killeen to assure the same, in the aggregate, do not exceed available funding as provided by the donors listed on Exhibit A.
- (3) Agree, in each contract for the purchase of goods or services for the Project, to pay the applicable vendor, it being understood the County will become a party to such contracts for this limited purpose. Costs incurred under such contracts shall be considered costs incurred by the County.

- (4) Promptly pay any requests for payment or invoices from the Contractors or vendors for the Project no later than 30 days after receipt up to the amount of Project funds in Exhibit A. All payments will be made directly to the Contractor. County agrees to pay only those invoices that are approved to be paid by Killeen. Payment of invoices approved by Killeen shall be considered a ministerial act; County shall not have discretion to deny payment of an invoice/pay application that has been approved by Killeen up to the amount of Project funds.
- (5) Ensure compliance with all grant assurances and requirements, including provision and maintenance of all necessary accounting for expenditures from the grant funds.
- (6) Provide Killeen with copies of all accounting documents and proof of payment of all requests for payment and invoices.
- (7) Comply with all reasonable requests and guidance from Killeen relating to funding of the Project.

**5. Joint Obligations.** The Parties agree:

- A. To meet upon request of either Party throughout the course of the Project to review the status, discuss any concerns that might arise, and coordinate any decisions materially affecting this Agreement.
- B. Not to unreasonably interfere with or delay the Project.
- C. Not to unreasonably withhold, condition or delay any requested approval or consent made by a Party hereto.
- D. 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.
- E. To execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement, or to correct any defect, error or omission that may be discovered in this Agreement or any documents executed incidental to it.

**6. Payment.** Each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party. The County's financial obligations under this agreement are intended to be payable ultimately from funds received by the County as shown on Exhibit A attached hereto. Certain of the funding mechanisms (being "Grant funding from the state (DEAAG)" and the "Fort Hood" funding, both as shown on Exhibit A) require that the County expend its own funds first, then seek reimbursement, and the County agrees to do so.

**7. Force Majeure.** Neither party shall be required to perform any term, condition or covenant hereunder for so long as performance is delayed or prevented by: acts of God; strikes; lockouts; orders or actions of any governmental or military authority; expropriation or confiscation of facilities; civil riots or disturbances; acts of war, terrorism, the public enemy, rebellion or sabotage; fires, floods, storms, epidemics, earthquakes, drought, explosions or other calamity; unavoidable accents or breakdowns, or any other cause not reasonably within the control of the party despite the exercise of due diligence by that party. If a party shall be delayed, hindered, or prevented from performance of any of its obligations by reason of force majeure, and such party is not otherwise in default, the time for performance of such obligation shall be extended for the period of such delay, provided that the affected party shall: (a) give prompt written notice to the other party; (b) diligently attempt to remove, resolve, or otherwise eliminate such event, keep the other party advised with respect thereto; and (c) commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination.

**8. Dispute Resolution.** Any dispute between the Parties related to this Agreement that is not resolved through informal discussion may be submitted to a mutually acceptable mediation service or provider. The Parties to the mediation shall bear the mediation costs equally. Said mediation shall be non-binding, however, the Parties shall endeavor to resolve their disputes through this process in good faith. This paragraph does not preclude a Party from seeking equitable or other relief from a court of competent jurisdiction.

**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 either 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.

**10. Miscellaneous.**

A. **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.

B. 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.

C. 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.

D. 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.

E. 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.

**11. 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.

**12. Compliance with DEAAG.** Both the City and the County shall conduct their activities in compliance with the requirements of the DEAAG. Notwithstanding that the County is the named “Grantee” under the DEAAG, the parties intend that the County shall be responsible only for all accounting and payment functions as well as reporting, closeout and any other administrative duties to administer the grant in accordance with this Agreement and the DEAAG.

COUNTY OF BELL

CITY OF KILLEEN

By: \_\_\_\_\_  
Jon Burrows, County Judge

By: \_\_\_\_\_  
Ronald L. Olson, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Dianna Barker, City Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**

Funding Sources

<u>Name</u>	<u>Amount</u>
Grant funding from State (DEAAG)	\$3,103,750
Fort Hood	1,000,000
Killeen Economic Development Corp.	278,472
Bell County	117,813
City of Copperas Cove	36,018
Temple Economic Development Corp.	25,447
City of Belton	5,000
City of Harker Heights	5,000
City of Gatesville	<u>3,500</u>
Total Dollars	\$4,575,000
In-kind items from all entities	200,000
Total Dollars plus In-kind	\$4,775,000