

INTERLOCAL COOPERATION AGREEMENT FOR HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENT

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF BELL §

This Interlocal Cooperation Agreement For Household Hazardous Waste Collection Events (“**Agreement**”) is entered into as of April 11, 2017 (“**Effective Date**”), by and between the City of Killeen (“**Killeen**”) and the City of Harker Heights (“**HH**”). Killeen and HH are each referred to individually in this Agreement as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

A. Killeen and HH held a joint Household Hazardous Waste Collection (“**HHW**”) event on September 13, 2014. The cost breakdown for the September 13th event was: City of Killeen-\$25,367 and the City of Harker Heights-\$5,000. The objective of the event was to reduce landfill waste, hazardous materials and illegal dumping.

B. Killeen desires to invite HH to participate in two HHW events per year. The HHW events will be open to Killeen and HH residents exclusively under the conditions described herein. HH’s share of each event in which it participates will be \$5,000, with Killeen paying for the remainder of the event.

C. The dates, times, and locations of the two HHW events in which HH participates, singularly referred to as the “**Event**”, will be scheduled by Killeen.

AGREEMENT

Now, therefore, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. **Purpose and Authority.** The purpose of this Agreement is to facilitate the participation of residents of HH in a Killeen sponsored HHW Collection Event. This Agreement is authorized by the Parties’ broad and inherent authority as home-rule municipalities under Article 11, Section 5, of the Texas Constitution to promote the public health, safety, and general welfare of their respective residents. In addition, this Agreement is authorized by TEX. GOV’T. CODE Chapter 791, the “Interlocal Cooperation Act.”

2. **Term of Agreement.** The term of this Agreement shall be April 11, 2017 through April 10, 2018 (“**Original Term**”). This Agreement shall automatically renew for two successive one year terms (“**Renewal Term**”) unless either Party notifies the other Party thirty (30) days prior to the expiration of the Original Term or Renewal Term that the Party does not desire to renew the contract.

3. **Participation.** Killeen will select a date and location for each Event. Killeen will notify HH at least forty-five (45) days prior to the Event of the invitation for HH residents to attend the Event. Within five (5) business days of receipt of the invitation, HH will notify Killeen whether HH will participate in the Event. Notwithstanding anything to the contrary, the Parties may agree that HH may participate in an Event even if the notices are not timely.

4. **Payment.** Not later than three weeks after each Event for which HH notified Killeen that it would participate in or after each Event in which HH did participate, HH will pay Killeen the sum of \$5,000.00, representing HH's full share of the cost of participating in the Event. Killeen's share of each of the two Events is the remaining cost. Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

5. **Event Changes.** If the Event for which HH has notified Killeen that it will participate in must be postponed due to inclement weather or other unforeseen circumstances, the Parties will cooperate in good faith to re-schedule the Event as soon thereafter as reasonably practicable. Killeen will keep HH reasonably apprised of all material developments in the planning process, and will notify HH of any changes as soon as they are established.

6. **Conduct of the Event.**

A. Killeen will be primarily responsible for conducting the Event, including furnishing the location, traffic control, equipment, and such personnel as may be necessary for the safe and orderly operation of the Event.

B. HH will provide at least one HH employee to provide assistance at the Event location during the Event hours. While at the Event location, all HH employees will comply with the reasonable and lawful instructions of the person(s) designated by Killeen to run the Event.

C. Within thirty (30) days after the Event, Killeen will provide HH with general collection statistics relating to the Event, including HH's approximate percentage of total participation, a general statement of the types and quantities of materials collected, and the approximate percentage of HH residents bringing each type of materials.

D. This Agreement does not establish a partnership between the Parties, and neither Party has the authority to bind the other to any debt, liability, obligation or other commitment.

7. **Employment Status.** All employees of the Parties shall at all times remain employees of their respective employers. In no instance shall an employee of either Party be construed to be a "borrowed servant" of the other Party. Each Party will pay and provide all of the normal benefits (wage, salary, pension, worker's compensation, etc.) to its own employees engaged in the conduct of the Event.

8. **Marketing.** Each Party may at its own expense engage in such promotion of the Event as it deems appropriate. All promotions will conspicuously indicate that the Event is hosted by Killeen.

9. **Insurance; Claims.** Each Party agrees to maintain its usual and customary liability insurance coverages during the Event. Each Party agrees to notify the other within one (1) business day of learning of any actual or potential accident or claim arising in connection with the Event.

10. **Joint Obligations.** The Parties mutually agree:

A. To cooperate in good faith in the planning and running of the Event, and not to unreasonably interfere with or delay the Event.

B. Not to unreasonably withhold, condition or delay any requested approval or consent made by a Party hereto.

C. 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 pursuant to this Agreement.

D. 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.

11. **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.

12. **Notice.** All notices under this Agreement shall be in writing, and (a) delivered personally to the person to whom the notice is to be given, (b) given by certified or registered mail, return receipt requested, or (c) given by e-mail or facsimile transmission. Notice given by mail shall be effective three (3) days (exclusive of Saturdays, Sundays and postal holidays) after the same is deposited in the United States Postal Service, properly post-paid and certified and addressed to the Party to be notified. Notice given by e-mail or facsimile transmission shall only be deemed received if the transmission thereof is confirmed and such notice is followed by written notice as provided in subparts (a) or (b) within three (3) business days following the e-mail or facsimile notice. Notice given in any other manner shall be effective only if and when actually delivered to the Party to be notified or at such Party's address for purposes of notice as set forth herein. A change in the notice address of any Party may be effected by serving written notice of such change and of such new address upon the other Party in the manner provided herein. Initially, notices shall be addressed as follows:

A. To HH:

Mr. Mark Hyde
Harker Heights Municipal Building
305 Miller's Crossing
Harker Heights TX 76548
mhyde@ci.harker-heights.tx.us

B. To Killeen:

Mr. David Olson
Killeen City Hall Annex
P.O. Box 1329
Killeen, TX 76540
dolson@killeentexas.gov

13. **Miscellaneous.**

A. Binding Effect. This Agreement shall be binding on the Parties and their respective representatives, successors and permitted assigns.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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. The exhibits, attachments and addenda which are a part of this Agreement are: None.

CITY OF HARKER HEIGHTS

CITY OF KILLEEN

By: _____
David Mitchell, City Manager

By: _____
Ronald L. Olson, City Manager

Date: _____

Date: _____

ATTEST:

ATTEST:

Patricia Brunson, City Secretary

Dianna Barker, City Secretary

Date: _____

Date: _____