

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND TRAVIS COUNTY, TEXAS
FOR THE PROCUREMENT OF A CONSULTING CONTRACT FOR
ASSISTANCE WITH THE DEVELOPMENT OF A
COMMUNITY WILDFIRE PROTECTION PLAN**

THIS AGREEMENT is made and entered into by and between the following parties: Travis County, Texas, (the "County") and the City of Austin, Texas, (the "City"), for the purposes and consideration in this Agreement.

RECITALS

1. The City of Austin City Council and the Travis County Commissioners Court intend to hire a consultant for the cooperative development and implementation of a Community Wildfire Protection Plan for the Austin – Travis County project area (CWPP). The purpose of the plan is to provide information needed to reduce risks, loss of life, and loss of property from wildfire. The plan will address community needs for wildfire prevention, suppression, mitigation, and recovery in the Austin/Travis County area.
2. The City and County have determined that hiring a consultant experienced in the development of community wildfire protection plans is the most efficacious method of initiating this plan.
3. The County and City have the authority to enter into this Agreement pursuant to Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act.

AGREEMENT

In consideration of these recitals and mutual covenants in this Agreement, the parties agree as follows:

1.0 DEFINITIONS

- 1.1 “Agreement” means this Interlocal Cooperation Agreement between the City of Austin and Travis County, Texas for the procurement of a consulting contract for assistance with the development of a Community Wildfire Protection Plan.
- 1.2 “Consulting Contract” means the agreement being procured under this Agreement for the central Texas area, as further described throughout this Agreement.

- 1.3 “Joint Wildfire Task Force” means the group of representatives that has been organized to develop methods and plans for the prevention and control of wildfires in the central Texas area around and including the City of Austin and Travis County and includes at least the following governmental entities and their departments, and any other interested persons who may participate from time to time:
 - 1.3.1 City of Austin
 - 1.3.1.1 Austin Fire Department
 - 1.3.1.2 Office of Homeland Security and Emergency Services
 - 1.3.1.3 Austin Water Utility
 - 1.3.1.4 Watershed Protection Department
 - 1.3.2 Travis County
 - 1.3.2.1 Emergency Services Department
 - 1.3.2.2 Transportation and Natural Resources Department
 - 1.3.3 Emergency Services Districts One through Fourteen
 - 1.3.4 City of Lakeway
 - 1.3.5 Texas Forest Service
 - 1.3.6 United States Fish and Wildlife Service
- 1.4 “RFP Committee” means the committee of the Joint Wildfire Task Force formed to develop the Request for Proposals (RFP), to review Proposals, and to recommend to City Council and Commissioners Court the Consultant that the RFP Committee finds is the most competent to prepare the Community Wildfire Protection Plan. The RFP Committee consists of one representative from each of these groups:
 - 1.4.1 City of Austin
 - 1.4.2 Travis County
 - 1.4.3 Joint Wildfire Task Force
 - 1.4.4 Capital Area Fire Chiefs’ Association
 - 1.4.5 Travis County Small Cities/Villages Group
 - 1.4.6 City of Austin Office of Homeland Security & Emergency Management

2.0 SELECTION OF CONSULTANT

- 2.1 Under the Consulting Contract, the consultant shall be required to conduct a county-wide risk assessment, identify appropriate strategies and practices for mitigating wildfire in Central Texas ecosystems, and prepare a Community Wildfire Protection Plan in consultation with the Joint Wildfire Task Force. The Community Wildfire Protection Plan shall provide data for neighborhoods, cities, emergency services districts, and the county to prepare local community wildfire protection plans in addition to the overall plan.
- 2.2 City and County jointly agree to follow City of Austin Purchasing procedures to procure the Consulting Contract. The City, through its Purchasing Department, will perform all administrative duties necessary to procure the services of a consultant and enter into a Consulting Contract.

- 2.3 City and County shall jointly select a proposer with which to enter into a Consulting Contract through participation in the Joint Wildfire Task Force RFP Committee. The RFP Committee shall recommend the successful proposer to City Council and Commissioners Court for approval.
- 2.4 City and County shall jointly negotiate and enter into the Consulting Contract with the selected proposer. The total compensation under the Consulting Contract, including any expenses to be reimbursed, shall not exceed \$200,000.00. The Consulting Contract shall be prepared in multiple counter parts.
- 2.5 In the event that City Council selects a Consultant that is not acceptable to the County, the County reserves the right to withdraw from financial participation in the CWPP. In the event that the County selects a Consultant that is not acceptable to the City, the City Council reserves the right to withdraw from financial participation in the CWPP.
- 2.6 City and County designate the Austin Fire Department as being responsible for supervision of the Consultant and administration of the Consulting Contract.

3.0 OVERSIGHT OF PLANNING PROCESS FOR COMMUNITY WILDFIRE PROTECTION PLAN

- 3.1 City and County shall cooperatively oversee the planning process for the development of a Community Wildfire Protection Plan for the central Texas area in conjunction with the Joint Wildfire Task Force RFP Committee.
- 3.2 A joint management team, comprised of one representative from the Austin Fire Department, one representative from the Austin Water Utility and one representative from Travis County, shall oversee the work performed by the Consultant. City and County shall each review the Community Wildfire Protection Plan for the central Texas region prepared by the consultant under the Consulting Contract. The plan must be acceptable to both City and County.

4.0 BILLING AND PAYMENT

- 4.1 City and County shall share equally the amounts payable under the Consulting Contract, not to exceed \$100,000 each.
- 4.2 If another member of the Joint Wildfire Task Force provides any amount to assist in funding the Consulting Contract, then City and County shall apply the amount provided to the amounts owing pursuant to the Consulting Contract and share equally in the remainder payable under the Consulting Contract.

- 4.3 The County will provide \$100,000 to the City no later than thirty (30) days after the execution of this Agreement, unless otherwise agreed to by the County and the City in writing. Any additional funding will require the approval of the Travis County Commissioners Court.
- 4.4 The City Treasurer shall act as Escrow Agent for the management of the County's funds. The City may retain income earned on the escrowed funds, if any. The City Treasurer shall not release any portion of the escrowed amount for any other purpose than payment of invoices due under the terms of the Consulting Contract and paid in compliance with 4.5. Any unused portion of the \$100,000 provided by the County under this Agreement will be paid to the County within thirty (30) calendar days after the completion of the Consulting Contract or termination of this Agreement, whichever occurs first. The City shall provide the County with an accounting of the deposits to and disbursements from the County's escrow account upon request and at the completion of the Consulting Contract or termination of this Agreement. The City will make its records available, at reasonable times, to the County's internal and external auditors, its independent financial advisors or other professionals who provide arbitrage rebate calculations to the County.
- 4.5 The City Treasurer shall timely pay submitted invoices for the Consulting Contract. The invoices for the Consulting Contract will be paid on the basis of work completed in accordance with associated Consulting Contract. The City Treasurer shall not pay any invoices from the consultant unless Travis County's designated project manager has approved that invoice.

5.0 TERM AND TERMINATION

- 5.1 This Agreement becomes effective on the date the last required signature is affixed. This agreement terminates seven and one half months (7 ½) after the execution of the Consulting Contract, which allows forty five (45) days for payment after the six (6) months allowed for the performance of the Consulting Contract.
- 5.2 If the parties fail to reach agreement about the proposer to which the Consulting Contract will be awarded, either party may terminate this Agreement by providing the other with thirty (30) days' written notice of the effective date of termination.
- 5.3 If the Travis County Commissioners Court or the City of Austin City Council fails to provide funding for this Agreement, this Agreement shall terminate and the County or City as applicable shall so notify the other party with written notice thirty (30) days' prior to the effective date of termination.

- 5.4 Any violations of any of the terms or conditions of this Agreement by either party are grounds for termination of this Agreement at the sole option of the other. The non-violating party shall notify the other party in writing in compliance with 6.9 of any violation of the terms or conditions, and the other party shall have a reasonable time in which to correct any violation, provided, however, that such reasonable time shall not exceed thirty (30) days after receipt of written notification. Upon failure to correct a violation within thirty days after receipt of notice, the non-violating party shall have the right, at its sole option, to terminate this Agreement, provided, however, that the other party shall remain liable following such termination for any damages occurring as a result of any violation of the terms or conditions of this Agreement. All rights and remedies under this Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
- 5.5 It is understood that upon termination of this Agreement for any reason, all files, related data or information gathered by the consultant shall remain the property of the County and City.
- 5.6 Upon termination of this Agreement, as hereinabove provided, neither party shall have any further obligations hereunder except for (1) obligations accruing prior to the date of termination, and (2) obligations, promises, or covenants contained herein that extend beyond the terms of this Agreement.

6.0 MISCELLANEOUS

- 6.1 The party or parties paying for the performance of governmental functions or services shall make these payments from current revenues available to the paying party.
- 6.2 This Agreement shall be construed in accordance with the laws and constitution of the State of Texas. All obligations hereunder are performable in Travis County, Texas, and venue for any action arising hereunder shall be in Travis County, Texas.
- 6.3 The City and County shall comply with all laws, rules and regulations applicable to performance of this Agreement.
- 6.4 To the extent provided by Texas law, the City and the County are each responsible for their own negligent acts and omissions in the activities undertaken pursuant to this Agreement.
- 6.5 All questions or disputes that may arise between the County and City relative to the performance of this Agreement may be referred to an agreed upon mediator for informal mediation. Lacking resolution of a dispute through mediation, further recourse by either or both parties shall be through the appropriate court of law having jurisdiction over such matters.

- 6.6 It is expressly understood and agreed that this Agreement does not waive any immunity or defense that would be otherwise available to a party against third-party claims arising from activities performed under this Agreement.
- 6.7 This Agreement is not intended to confer any rights upon any private person, firm, corporation or other entity not a party to it, and any such person or entity shall not have any cause of action under this Agreement. This Agreement is not intended to and does not authorize expenditure or reimbursement of any funds. This Agreement shall not be interpreted as limiting, superseding, or otherwise affecting any party's normal operations or decisions in carrying out its statutory or regulatory duties. This Agreement does not limit or restrict the City or County from participating in similar activities or agreements with other entities.
- 6.8 The terms and conditions set forth in this Agreement constitute the entire agreement between the parties and any oral representations on the part of either party, its representatives or assigns, shall have no force or effect whatsoever.
- 6.9 Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing. Notices shall be considered delivered three (3) business days after postmarked if sent, postage prepaid, by U.S. Postal Service Certified or Registered Mail, addressed to the person designated for receipt of notice, and Return Receipt requested. Notices delivered by facsimile or courier shall be considered delivered upon receipt of a successful facsimile or courier confirmation report; provided the notice is specifically addressed to the attention of the person designated for notice. A party may change its information under this Section by providing notice of the change. The parties may make routine communications by first class mail, fax, or other commercially accepted means. Notices to the City and County shall be addressed as follows:

County: Cyd Grimes (or successor)
 Purchasing Agent
 P. O. Box 1748
 Austin, Texas 78767-1748
 Phone: 512-854-9700
 Facsimile: 512-854-9185

City: Jeff Dilbert (or successor)
 Corporate Purchasing Manager
 124 W. 8th St, Ste 308
 Austin, TX 78701
 Phone: 512-974-2021
 Facsimile: 512-974-2388

- 6.10 This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the parties to it. However, any consent, waiver, approval or authorization shall be effective, if signed by the party granting or making such consent, waiver, approval, or authorization.
- 6.11 No official, representative, agent, or employee of Travis County, Texas, has any authority to modify, discharge, or change this Agreement or give any consent, waiver, approval or authorization under it, unless expressly granted that specific authority by the Travis County Commissioners Court by separate action of the Commissioners Court.
- 6.12 No official, representative, agent, or employee of the City of Austin, Texas, has any authority to modify this Agreement, unless expressly granted that specific authority by the Austin City Council by separate action of the City Council.
- 6.13 The parties agree to execute other and further instruments and documents as are or may become necessary or convenient to carry out the purposes of this Agreement.
- 6.14 Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- 6.15 Any act of forbearance by either party to enforce any provision of this Agreement shall not be construed as a modification of this Agreement or as a waiver of any breach or default of the other party which then exists or may subsequently exist. The failure of either party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.
- 6.16 When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of the period. Saturdays, Sundays, and County or City holidays shall be omitted from the computation.

EXECUTED AS OF THE LATER DATE SET FORTH BELOW.

CITY OF AUSTIN

TRAVIS COUNTY, TEXAS

By: _____
Name: Michael C. McDonald
Title: Deputy City Manager

By: _____
Samuel T. Biscoe
County Judge

Date: _____, 2013

Date: _____, 2013

CITY:

APPROVED AS TO FORM:

Assistant City Attorney

COUNTY:

APPROVED AS TO FORM:

County Attorney

AVAILABILITY OF FUNDS CONFIRMED:

Nicki Riley, Travis County Auditor

Date: _____

COMPLIANCE WITH LAW AND POLICY CONFIRMED AND APPROVED:

Cyd V. Grimes, Travis County Purchasing Agent

Date: _____