

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU" or "Agreement") is between Travis County (the "County"), a political subdivision of the State of Texas, and the City of Austin (the "City"), a municipal corporation and political subdivision of the State of Texas, together, the "Parties."

Recitals

- (1) On October 1, 2013, the City and County entered into an interlocal cooperation agreement to provide public health services through the collaborative use of City and County staff and other resources, and that interlocal cooperation agreement, as amended since its effective date, is referred to herein as the "Public Health Services Interlocal."
- (2) Among other things, the Public Health Services Interlocal sets forth the terms and conditions under which the Austin Public Health Department's Environmental Health Services Division ("EHSD") provides food safety inspection services for the County with respect to food establishments that operate in the unincorporated areas of the County.
- (3) In this Agreement, "Unrestricted Mobile Food Vendor" means a Mobile Food Establishment that is an unrestricted unit, as defined in City of Austin Code Section 10-3-1(b), and is intended to be operated in an unincorporated area of the County.
- (4) The Public Health Services Interlocal does not address fire safety inspections of Unrestricted Mobile Food Vendors.
- (5) The purpose of this MOU is to identify and define the responsibilities of the County and the City with respect to fire safety inspections of Unrestricted Mobile Food Vendors and the collection of fees therefor.

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

SECTION 1. EHSD AGREES TO PERFORM AS FOLLOWS:

- (A) Collect and process applications for Unrestricted Mobile Food Vendors and schedule fire safety inspections of Unrestricted Mobile Food Vendors, using the process outlined in Exhibit A (which is attached and incorporated herein for all purposes) or a similar process agreed upon by EHSD and the Travis County Fire Marshal's Office, for Tuesdays and Thursdays, from the hours of 8:00 AM – 12:00 PM, and providing space for the Travis County Fire Marshal's Office to conduct those inspections;
- (B) Collect fire safety inspection fees on behalf of the County for Travis County Fire Marshal's Office inspections of Unrestricted Mobile Food Vendors and remit those fire safety inspection fees to the County in accordance with EHSD budget procedures and Section 3 of this Agreement;
- (C) Issue an EHSD decal to Unrestricted Mobile Food Vendors that have passed:

- (1) health code inspections conducted by EHSD staff in accordance with the Public Health Services Interlocal and
 - (2) fire safety inspections conducted by the Travis County Fire Marshal's Office; and
- (D) On each Friday or, if a Friday falls on a City holiday, on the first business day before that Friday, provide to the Travis County Fire Marshal's Office, via email or other method of electronic communication agreed upon by the Travis County Fire Marshal and the Director of Austin Public Health, a schedule of the Unrestricted Mobile Food Vendor fire safety inspections that EHSD has coordinated for the following Tuesday and Thursday; and
- (E) Provide advance notice pursuant to Section 5(H) of this Agreement of at least one week, when possible, that EHSD offices will be closed.

SECTION 2. THE TRAVIS COUNTY FIRE MARSHAL'S OFFICE WILL:

- (A) Provide County staff to conduct fire safety inspections of Unrestricted Mobile Food Vendors on Tuesdays and Thursdays, at the appointment times set by EHSD and about which EHSD has notified the Travis County Fire Marshal's Office, until fire safety inspections of Unrestricted Mobile Food Vendors scheduled for that day are completed;
- (B) Provide advance notice pursuant to Section 5(H). of at least one week, when possible, that County staff will not be available; and
- (C) Provide a single point of contact for all customer concerns/questions regarding fire safety inspections of Unrestricted Mobile Food Vendors.

SECTION 3. COLLECTION AND REMISSION OF FEES AND RECORDKEEPING

(A) Collection of Fire Safety Inspection Fees.

- (1) EHSD may accept fire safety inspection fees in the form of cash, checks, and money orders.
- (2) EHSD must require that all Unrestricted Mobile Food Vendors who pay for fire safety inspection fees by check or money order to make those instruments payable to the order of the Travis County Fire Marshal's Office.
- (3) EHSD must maintain all funds collected for fire safety inspection fees pursuant to this Agreement separately from all other funds the City or EHSD maintains or collects.
- (4) EHSD will remit fire safety inspection fees to a designated County account once a week or another fixed, regularly recurring period of time mutually agreed to by the Parties.

- (B) Maintenance of Records. EHSD must maintain records regarding each fire safety inspection fee collected and make these available for inspection and copying by County staff and their duly authorized representatives for at least four years after the fee is

collected by EHSD, and **NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, THE CITY'S DUTY TO MAINTAIN THESE RECORDS AND MAKE THEM AVAILABLE TO THE COUNTY WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.** For each fire safety inspection fee collected, EHSD's records must include the following information:

- (1) A copy of the receipt provided to the payor;
- (2) The permit number associated with each receipt;
- (3) Payor information and vendor information (including name and address of the payor and vendor and, if provided by the payor, a phone number for the payor and vendor);
- (4) Information as to whether the fee was made by cash, check, or money order;
- (5) The amount received;
- (6) The amount applied;
- (7) A copy of the check or money order if the fee was paid by check or money order;
- (8) The amount deposited;
- (9) A copy of the deposit slip; and
- (10) Any other information required to be maintained by County Auditor about which the County has provided EHSD notice.

- (C) Changes in County Fees. EHSD understands and agrees that any changes in the County's fire safety inspection fee must be processed according to County policies and procedures and applicable laws, including public hearings and Commissioner Court approval. No change in any County fire safety inspection fee will be made without written notice from the County of the completion of such process and the identification of the change in the fee.

SECTION 4. LIABILITY

- (A) To the extent allowed by Texas law, the City and the County agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions.
- (B) Neither City nor the County guarantees or has any obligation to ensure that mobile food operator equipment meets fire safety codes.
- (C) City shall assume no liability of injuries to mobile food operators or County staff caused by the conditions inside mobile food units.
- (D) Jurisdiction and Venue. This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The courts of Texas shall have jurisdiction of any dispute arising out of or concerning this Agreement, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County, Texas.

SECTION 5. MISCELLANEOUS

- (A) The Parties agree that no fire safety inspections will be scheduled for or be conducted on any official City or County holidays.
- (B) Completion of the terms of this Agreement by either party shall be contingent upon annual authorized funding by the City and the Travis County Commissioners Court.
- (C) Any and all costs incurred in the discharge of the respective obligations of the Parties shall be paid from current revenues.
- (D) This MOU shall be of no force or effect should either body fail to fund the obligations assumed hereunder.
- (E) This MOU supersedes all other agreements, either oral or in writing, between the parties to this MOU, with respect to the subject matter of this MOU. This MOU contains the entire understanding of the parties and of the covenants and agreements between the parties and all of the covenants and agreements between the parties with respect to the subject matter of the MOU. The Recitals and all terms defined therein are incorporated into this MOU for all purposes. No official, representative, agent, or employee of Travis County, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners Court of Travis County, Texas.
- (F) This Agreement may be terminated by either party by giving 30 days written notice of termination to the other party without the necessity of determining default or giving cause.
- (G) Force Majeure. In the event that the performance by the County or the City or any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.
- (H) Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

COUNTY: Tony Callaway (or successor)
Travis County Fire Marshal
P.O. Box 1748
Austin, Texas 78767

With copies to (registered or certified mail with return receipt requested not required): David Escamilla (or successor)
Travis County Attorney
P.O. Box 1748

Austin, Texas 78767
Attention: File Number 330.44

And to: Bonnie S. Floyd, MBA, CPPO, CPPB (or successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

CITY: Elaine Hart
Interim City Manager
P.O. Box 1088
Austin, Texas 78767

With copies to (registered or certified mail with return receipt requested not required): Stephanie Y. Hayden
Austin Public Health Interim Director
P.O. Box 1088
Austin, Texas 78767

And to: City Attorney
301 West Second Street, Fourth Floor
Austin, Texas 78701

Don Hastings, Assistant Director
Environmental Health Services Division
P.O. Box 1088
Austin, Texas 78767

- (I) Third Party Rights Not Created. This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and the Parties are not waiving any defense or immunity to which they are entitled against any person or legal entity that is not a party to this Agreement.
- (J) Term. This Agreement may be executed (by original or facsimile) by the Parties in one or more counterparts, each of which shall be considered one and the same agreement. The initial twelve-month term of this Agreement begins on the date the Agreement is signed by the last of the parties (the "Effective Date") and will be renewed automatically for four successive 12-month terms, unless amended or terminated in accordance with other provisions of this Agreement.

Each of the signatories to this Agreement represents and warrants that he or she is duly authorized to sign this in the capacity indicated.

[Signatures on following page]

TRAVIS COUNTY, TEXAS

AUG 29 2017

DATE


Sarah Eckhardt, Travis County Judge

CITY

DATE

Sara Hensley, Assistant City Manager

AUSTIN PUBLIC HEALTH

DATE

Stephanie Y. Hayden, Interim Director

Exhibit A

Mobile Unit Inspection Scheduling Example

Segment	Time	City of Austin		Travis County	
Health & Fire	8:00 – 8:30	MV – F,H	MV – F,H	MV – F,H	MV – F,H
	8:30 – 9:00	MV – F,H	MV – F,H	MV – F,H	MV – F,H
	9:00 – 9:30	MV – F,H	MV – F,H	MV – F,H	MV – F,H
	9:30 – 10:00	MV – F,H	MV – F	MV – F,H	MV – F,H
	10:00 – 10:30	MV – F	MV – F	MV – F	MV – F
Health Only	10:30 – 11:00	MV – H	MV – H		
	11:00 – 11:30	MV – H	MV – H		
	11:30 – 12:00	MV – H	MV – H		
	12:00 – 12:30	MV – H	MV – H		

Procedure for Scheduling Mobile Unit Inspections

Mobile Vending inspections occur Tuesdays and Thursdays during a four and a half hour time block (8:00 AM – 12:30 PM). The inspection time block is broken into two time segments: Health & Fire (8:00 AM – 10:30 AM) and Health Only (10:30 – 12:00 PM). Each segment is broken into thirty minute appointment windows. Appointments windows overlap in time, but are limited in the number of inspections allowed.

EHSD will schedule appointments for the first available day and time, whenever possible. Schedule appointments during each time window. Do not begin scheduling in the next time window until previous time window is completely full. (*See Example*)

For mobile units requiring only a health inspection: Schedule inspections during the 'Health Only' time segment. Schedule beginning at the 12:00 – 12:30 appointment window and advance upwards in time after appointment window is full. Do not schedule more than two appointments per time window. For mobile units requiring health only inspections the operational area does not factor into the schedule.

For mobile units requiring only fire or a health and fire inspection: Schedule inspections during the 'Health & Fire' time segment. Schedule beginning at the 8:00 – 8:30 appointment window and advance downwards in time after appointment window is full. Do not schedule more than two appointments for City of Austin inspections per time window. Do not schedule more than two appointments for Travis County inspections per time window.

Additional Notes

On each Friday or, if a Friday falls on a City holiday, on the first business day before that Friday, the Customer Service Representative Senior will provide to the Travis County Fire Marshal's Office, via email or other method of electronic communication agreed upon by the Travis County Fire Marshal and the Director of Austin Public Health, a schedule of the Unrestricted Mobile Food Vendor fire safety inspections that EHSD has coordinated for the following Tuesday and Thursday.