

**INTERLOCAL AGREEMENT
BETWEEN CITY OF SUNSET VALLEY AND CITY OF AUSTIN
FOR FIRE SERVICES**

THIS AGREEMENT is entered into by and between the following parties: the City of Austin, a Texas home rule municipality ("Austin") and the City of Sunset Valley, a Texas general law municipality ("Sunset Valley")(sometimes collectively referred to as the "parties" or individually as "party").

WHEREAS, Austin and Sunset Valley have determined it would be mutually beneficial for Austin to provide fire protection services to areas or locations within Sunset Valley and Sunset Valley's Extra Territorial Jurisdiction (ETJ); and

WHEREAS, Austin wishes to provide firefighting services and first responder medical services to Sunset Valley and Sunset Valley's ETJ in exchange for the compensation described herein; and

WHEREAS, Austin and Sunset Valley are authorized to enter into this agreement by Chapter 791 of the Texas Government Code;

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sunset Valley and Austin agree as follows:

1.0 Term and Termination

1.1 Term. The Term of this Agreement is one year, beginning on October 1, 2019, and ending on September 30, 2020.

1.2 Renewal. This Agreement shall automatically renew for a one-year period on October 1st of each of the four (4) years after the initial term unless terminated as outlined below.

1.3 Termination.

1.3.1 Termination Without Cause. A party may terminate its participation in this Agreement at any time, with or without cause, by providing not less than 180 days written notice to the other party.

1.3.2 Termination With Cause. If either party breaches an obligation under this Agreement, the other party may terminate the Agreement by sending written notice of termination, to be effective thirty (30) days after the date of the

notice, unless the breach is cured to the non-breaching party's reasonable satisfaction within the thirty (30) day period. The parties may agree in writing to extend the period permitted for cure of the breach.

- 1.3.3 Payment if Terminated Prior to Expiration. If this Agreement is terminated for any reason prior to expiration of the then current term or extended term, Sunset Valley shall pay Austin for services rendered through the termination date, and, if not already then paid, such pro-rated payment shall be submitted to Austin no later than thirty (30) days following the effective date of termination. If Sunset Valley has pre-paid for such services, Austin shall refund to Sunset Valley amounts paid by Sunset Valley that exceed the prorated amount owing for services up to the date of termination. Proration shall be based on a 365 day fiscal year and rounded to the nearest dollar.

2.0 Scope of Services. Austin will provide the following services:

- 2.1 All equipment used by Austin in carrying out this Agreement will be owned by or under contract with Austin.
- 2.2 All personnel acting for Austin under this Agreement will be employees of Austin.
- 2.3 Austin will make Fire Fighting and Fire Fighter EMS First Response Services ("Services") available within the corporate limits of Sunset Valley and the Sunset Valley ETJ ("the Service Area") 24 hours a day, 7 days a week.
- 2.4 Austin will dispatch appropriate equipment and personnel for firefighting operations, rescue operations, emergency medical first response, hazardous materials response, and other emergency responses upon notification either by Sunset Valley or from the public of a need for services within the Service Area. Austin will dispatch fire fighter medical first response personnel to begin emergency medical care upon notification either by Sunset Valley or from the public of a need for services within the Service Area. Calls for emergency medical first response, hazardous materials response, and other emergency responses (other than calls regarding criminal and other conduct for which a police response alone is appropriate) that are made through the 9-1-1 system shall continue to be directed through the 9-1-1 system for dispatch of the closest fire unit. Austin and Sunset Valley shall cooperate and take reasonable steps, as necessary, to ensure all 9-1-1 calls for such service in the Service Area shall result in dispatch of the appropriate unit.
- 2.5 It is agreed that the Austin Fire Department's ("AFD") strategic and tactical guidelines will be used when making responses in the Service Area. Austin will provide a copy of the AFD's strategic and tactical guidelines to Sunset Valley. All updates to the strategic and tactical guidelines will be provided to Sunset Valley upon adoption by AFD.

- 2.6 AFD shall -maintain a seven (7) minute or less average annual response time to emergency calls in the Service Area. The response time shall be defined as the elapsed time from AFD dispatch of the units to the arrival of the first AFD unit at the scene of the emergency. The calculation of the average response time will include only calls that result in the first AFD unit arriving at the emergency scene under Code 3 (lights and sirens).
- 2.7 AFD shall coordinate with Sunset Valley Police, Public Works, Administration, Finance municipal departments in relation to fire protection services, firefighting, medical emergencies, and rescue calls. Sunset Valley municipal departments shall adhere to the incident command protocols as described in the National Incident Command System.
- 2.8 Austin fire fighters dispatched for firefighting operations under this Agreement will respond wearing protective firefighting clothing.
- 2.9 With the exception of hazardous materials alarms, AFD shall not use any subcontractor to provide Services without prior written approval of the Sunset Valley City Council or prior verbal approval of the Sunset Valley Mayor or designee. The AFD hazardous materials alarm response service shall provide only stabilization of a life safety threat, not hazardous materials clean-up or site restoration. AFD's on-scene commander at a hazardous materials alarm may determine that a qualified contractor is required to clean up the hazardous materials. Sunset Valley shall be solely responsible for paying for any clean-up costs associated with a hazardous materials alarm, and Austin shall have no financial responsibility for any such clean-up costs. Nothing in this subsection shall be construed to prevent Sunset Valley from imposing any fine against or seeking the recovery of any costs associated with a clean-up from any persons who cause or are responsible for the hazardous materials incident, excluding the City of Austin, the City's employees, and agents during the course and scope of their employment.
- 2.10 Upon request from Sunset Valley, AFD shall provide technical assistance to Sunset Valley in developing a wildfire protection plan, water rescue plan, water system planning for fire protection, training, maintenance of emergency equipment, and involvement in community programs.

3.0 Consideration

- 3.1 In consideration of the services provided under this agreement, Sunset Valley shall pay Austin for fiscal year 2019-20 (commencing October 1, 2019) the amount of \$522,641.00, which is calculated based on the assessed valuation of real property in the Service Area as set out in the attached Exhibit A. For each subsequent fiscal year beginning on October 1st of calendar years 2020-2023, the amount payable shall be increased by 3% over the amount payable for the prior fiscal year, rounded to the nearest whole dollar.

3.2 The amount due each fiscal year shall be paid in equal quarterly installments. The first payment is due within 30 days after the end of the first quarter, by February 1, and subsequent payments are due on the first day of May, August and November. Annual amounts payable for each fiscal year are as follows:

FY2019-2020:	\$522,641
FY2020-2021:	\$538,320
FY2021-2022:	\$554,470
FY2022-2023:	\$571,104
FY2023- 2024:	\$588,237

4.0 Codes and Inspections

4.1 Sunset Valley has agreed to adopt the current International Fire and Building Codes, the current International Residential Code and all applicable local amendments to these codes adopted by Austin as of the commencement of this agreement. Austin shall provide written notice to Sunset Valley of any changes in Fire, Building, or Residential Codes and local amendments thereto adopted by Austin from time to time. A failure by Sunset Valley to adopt any such changes in Codes and applicable local amendments not later than 90 days after written notice of a change is provided by Austin to Sunset Valley is considered a breach of this agreement. In addition, Sunset Valley shall use its best efforts to arrange for any appropriate authority to adopt such Codes and local amendments in all parts of the Service Area that are located in the extraterritorial jurisdiction of Sunset Valley.

4.2 AFD shall provide maintenance and technical inspections and permitting inspections associated with fire prevention and fire cause determination within the Service Area and AFD and Sunset Valley shall mutually develop investigative protocols. Sunset Valley shall grant jurisdiction to AFD Arson Investigators, to the full extent allowed by law, at fire events in the Service Area to determine fire origin and cause. In the event that criminal activity is suspected, AFD Arson Investigators shall, to the extent allowed by law and as applicable, remit jurisdiction to Sunset Valley PD, the Travis County Fire Marshal's Office, and any emergency services district for territory included in such emergency services district as the lead agency in the Service Area. AFD Arson Investigators may, at their discretion, and to the extent allowed by law, continue to provide support, as requested by the lead agency. Austin and AFD shall not be responsible for any costs associated with services provided by Sunset Valley, county, state, emergency service district, and/or federal resources.

4.3 AFD shall provide plan review service for all commercial buildings and site plans within Sunset Valley in accordance with Codes adopted by the City of Sunset Valley in compliance with the terms of this agreement. Services will be provided at a comparable level to those provided within the City of Austin.

- 4.4 Special Events. When regulations adopted by Sunset Valley require permitting for compliance with safety regulations applicable to special events, Sunset Valley may arrange for a permit applicant to apply and pay the requisite fee for the permit directly to Austin, for provision of safety and protection services to be provided by Austin.

5.0 Training

- 5.1 AFD will comply with the training and reporting requirements of the Texas Commission on Fire Protection, the Texas Department of Health, the Texas Commission on Environmental Quality, the United States Occupational Safety and Health Act, and the Environmental Protection Agency for paid firefighters. Copies of written training reports produced by AFD for a certifying agency will be available to Sunset Valley upon request.
- 5.2 All AFD personnel providing service as medical first responders will operate in a manner consistent with the "Standards of Care" promulgated by the Medical Director of the Austin/Travis County Emergency Medical Services System.
- 5.3 Austin will provide training to employees of Sunset Valley on the Incident Command System and Hazardous Materials recognition at a location determined by Sunset Valley.

6.0 Liability and Insurance

- 6.1 Sunset Valley and Austin agree that the provision of fire protection services is at the discretion of a municipality and is not a governmental service required of a municipality. Section 791.006 (Liability in Fire Protection Contract) of the Texas Government Code (the "TGC") relating to Interlocal Cooperation Contracts provides that civil liability remains with the governmental unit that would have been responsible for providing the services in the absence of the contract, unless otherwise agreed by the parties. Sunset Valley and Austin agree that civil liability that arises from the services provided by Austin pursuant to this Agreement shall, pursuant to TGC Section 791.006, be assigned to Austin. Austin and Sunset Valley intend that such assignment of liability is different than otherwise assigned by subsection (a) of TGC Section 791.006.
- 6.2 [Intentionally left blank]
- 6.3 All liability to third parties arising out of the provision of Services by Austin shall be the responsibility of Austin. Notwithstanding the foregoing, it is not intended that Austin shall assume any liability for acts of Austin's agents or employees to the extent limited by common law or by the Texas Tort Claims Act.
- 6.4 Throughout the term of this Agreement, Sunset Valley shall provide and maintain:
 - 6.4.1 Commercial General Liability Insurance with a minimum bodily injury and property damage of \$1,000,000 per occurrence, including contractual liability

coverage.

- 6.4.2 Business Automobile Liability Insurance on all owned, non-owned or hired vehicular equipment of at least \$1,000,000 combined single limit (CSL) per occurrence for bodily injury and property damage.
- 6.5 The policies shall include endorsements in favor of Austin: waiver of subrogation, thirty days' notice of cancellation and Austin listed as an additional insured.
- 6.6 Sunset Valley shall provide AFD a certificate of coverage issued by the insurer(s). Sunset Valley shall not permit cause any insurance to be cancelled nor permit any insurance to lapse during the term of this Agreement.

7.0 Immunity or Defense

It is expressly understood that Sunset Valley and Austin do not waive, and shall not be deemed to waive, any immunity or defense that would otherwise be available to them against claims arising in the exercise of their governmental powers and functions. Nothing in this Agreement, including but not limited to Sections 6.1 - 6.3, shall be construed to create a right or a ground of recovery for any third party, or an obligation, responsibility or liability where applicable immunity would bar recovery.

8.0 Records and Reports

Austin shall make and keep records for each incident response made under this Agreement, and the following information for a specific incident response will be provided to an authorized representative of Sunset Valley upon request: the time of (1) the receipt of the notification of the emergency, (2) the dispatch of the call, and (3) the arrival of the responding units at the emergency scene. Austin shall provide quarterly incident response report to Sunset Valley. Upon request, a representative of AFD will attend public meetings of the Sunset Valley City Council to present information on any emergency call within the Service Area. The parties agree that information that is confidential by law, including patient information, will not be presented. With respect to responses made by AFD within the Service Area, AFD shall prepare and submit all reports required by law, including reports required by the State Fire Marshal, and the Texas Department of Health. The parties will meet upon the request of either party to discuss the services provided under this Agreement.

9.0 Entire Agreement

All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement are contained in this Agreement. The parties acknowledge that this Agreement can only be amended in a writing executed by an authorized representative of each party.

10.0 Severability

If any provision of this Agreement is held invalid by a court of competent jurisdiction, that holding (1) shall not invalidate the remainder of this Agreement, (2) shall be limited to the specific parts of this Agreement described in that holding, and (3) shall not affect the validity of this Agreement in any other way or in any other instance.

11.0 Governing Law

This Agreement shall be governed by all applicable federal, state, and municipal laws including the provisions of the Texas Constitution, Art. 11, Sec. 5, and both parties agree to comply with all applicable laws in performing obligations under this Agreement. Where there is conflict between regulations or policies of Sunset Valley and Austin, Austin's regulations or policies shall prevail. Venue for any dispute arising under this Agreement shall be in Travis County, Texas.

12.0 Availability of Funding

The parties agree that Sunset Valley's payments under this Agreement must be made from current revenues available to Sunset Valley. Failure to appropriate sufficient funds to pay for services shall not be deemed a default, but Sunset Valley agrees to notify Austin within (2) business days if its governing body does not appropriate sufficient funds to pay for a renewal term when it approves its annual budget, and this Agreement shall terminate on the last day for which funds were appropriated for this Agreement. The parties further agree that this Agreement imposes no financial obligations upon Austin.

13.0 Notice

13.1 All notices sent pursuant to this Agreement shall be in writing and may be hand delivered, or sent by registered or certified mail, postage prepaid, return receipt requested.

13.2 Notices sent to Sunset Valley pursuant to this Agreement shall be delivered or sent to:

Sunset Valley City Administrator
3205 Jones Road
Sunset Valley, Texas 78745

And to:
Mayor
3205 Jones Road
Sunset Valley, Texas 78745

13.3 Notices sent to City pursuant to this Agreement shall be delivered or sent to:

Joel G. Baker (or successor)
Fire Chief, Austin Fire Department
4201 Ed Bluestein Blvd.
Austin, TX 78721

And to:
Robert Menchaca (or successor)
Chief Administrative Officer, Austin Fire Department
4201 Ed Bluestein Blvd.
Austin, TX 78721

With a copy to:
Anne Morgan (or successor)
City Attorney, City of Austin
P.O. Box 1088
Austin, TX 78767

- 13.3.1 When notices sent are hand delivered, notice shall be deemed effective upon delivery. When notices are mailed by registered or certified mail, notice shall be deemed effective three (3) days after deposit in a U.S. mail box or at a U.S. post office.
- 13.3.2 Either party may change its address for notice under this Agreement by providing a notice of the change in compliance with this paragraph and all other parties.

14.0 Parties Bound

This Agreement shall be binding upon and inure to the benefit of the parties to it and their respective legal representatives, successors and assigns where permitted by this Agreement. Each party confirms that its respective governing body has duly authorized this Agreement.

15.0 No Conferring of Third Party Rights

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.

Executed on the date or dates indicated below.

CITY OF AUSTIN

CITY OF SUNSET VALLEY

By: _____
Spencer Cronk
City Manager
Date:

By: _____
Rose Cardona
Mayor
Date:

AUSTIN FIRE CHIEF

By: _____
Joel G. Baker

Date:

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**Exhibit A Sunset Valley
Fire Protection
Calculations**

AFD BUDGET	\$195,712,834
Austin ASSESSED VALUE	\$176,452,919,053
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FIRE PROTECTION TAX RATE	0.111%
FY '18 Sunset Valley ASSESSED VALUE	\$471,208,843
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ANNUAL AMOUNT FIRE PROTECTION	\$522,641

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