

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF AUSTIN AND TRAVIS COUNTY
FOR EMERGENCY RESPONSE PURCHASES AND OTHER PURCHASES**

This agreement is entered into by the following parties: City of Austin ("City") and County of Travis, a corporate and political subdivision of Texas ("County"), together the "Parties."

RECITALS

Local governments in Texas may realize substantial savings and economies of scale by cooperatively procuring materials, supplies, goods, services or equipment. Recently City has realized the economies of scale in the purchase of personal protective equipment: 400 Tyvek suits. Both City and County can benefit by County purchasing half of these Tyvek Suits. In addition, they can benefit by being prepared to share if another opportunity arises.

Section 271.102 of the Texas Local Gov't Code authorizes local governments to participate in a cooperative purchasing program with another local government. The Parties are local governments as defined in Section 271.101(2) of the Texas Local Gov't Code. This Agreement is authorized by Chapter 791 of the Texas Gov't Code and Subchapter F of Chapter 271.

A local government that purchases materials, supplies, goods, services or equipment pursuant to a cooperative purchasing program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods or services.

The Parties want to enter into a cooperative purchasing program to purchase materials, supplies, goods, services or equipment pursuant to Subchapter F of Chapter 271.

1. Creation of Cooperative Purchasing Program

City and County establish a cooperative purchasing program between them. This cooperative purchasing program allows them to realize savings when purchasing materials, supplies, goods, services or equipment, and facilitates their ability to satisfy the competitive solicitation requirements of Texas law.

This Agreement is not intended to create, and should not be interpreted as creating a partnership, association, joint venture, or trust.

2. Term of the Agreement.

This Agreement begins on the date on which both Parties have executed it. This Agreement renews annually and remains in effect unless superseded by a supplemental agreement or terminated as provided in this Agreement.

3. Operation of Program.

Each Party must designate a person to act on its behalf in all matters relating to the cooperative purchasing program.

The Parties, at their discretion, may purchase through this Agreement to the extent permitted by law by purchasing or selling a portion of items obtained through a large purchase directly from the other Party.

4. Procedures for Purchases

When making a purchase, the following procedures apply:

- 4.1 If the purchase amount is less than \$50,000, the purchasing Party sends a purchase order to the selling Party. The purchase order must state the items, quantity and prices.
- 4.2 If the purchase amount is \$50,000 or more, the Parties amend this Agreement to state the items, quantity, prices and any other provisions relevant to that purchase.
- 4.3 The purchasing Party is responsible for ordering, inspecting, and accepting the items from the selling Party.
- 4.4 The purchasing Party arranges for pick up or delivery of the items with the selling Party.
- 4.5 The selling Party sends an invoice to the purchasing Party.
- 4.6 The purchasing Party pays the selling Party within 30 days after the later of receipt of the items or services or receipt of the invoice.

5. Invoicing and Payment Method.

- 5.1 **IRS Form W-9.**
County shall provide City and City shall provide County with an Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations.
- 5.2 **Amounts Payable by City.**
City shall pay by electronic funds transfer the amount on the monthly billing statement, if correctly stated, no later than 21 days after receipt of a billing statement prepared in compliance with 6.4.
- 5.3 **Amounts Payable by County.**

County shall pay by electronic funds transfer the amount on the billing statement, if correctly stated, no later than 21 days after receipt of a billing statement prepared in compliance with 6.4.

5.4 Billing Instruction.

No later than the 1st of the month, the selling Party shall submit a billing statement to the purchasing Party County for the amount of the purchase price applicable to the supplies, materials, equipment, and services purchased during the most recent month. For County sales, the County office or department requesting the sale is responsible for sending the billing statement. The billing statement shall include the description and purchase price of the supplies, materials, equipment, and services being purchased and the total amount due.

6. Current Revenue

The Parties represent that they shall pay all payments, expenditures, and disbursements, if any, required of them under this Agreement or required by any other documents approved pursuant to this Agreement, including any associated document, from current revenues available to the paying Party.

The Parties warrant that the only debts created by this Agreement are those created by the purchase in section 7 and other purchases created through amendments.

7. Purchase of Personal Protective Equipment: Tyvek Suits

County offers to purchase 175 Dupont Tyvek Suits 400D size L, and 25 Dupont Tyvek Suits 400D size XL, both with the commercial code # 2001985, web eoc 4973575 & 9570636, in quantities for 25 for a unit cost of \$340.00, delivery to Travis County Expo Center, 7311 Decker Lane, Austin, Texas 78724 included from City's purchase from Clean Earth of Alabama, Inc. for \$340.00 each with a total cost of \$68,000 to the County. City accepts this offer. County has inspected a sample of the Tyvek Suits and the product is acceptable. County shall take delivery of the Tyvek Suits from City at the Travis County Expo Center. City shall send County an invoice for the number of Tyvek Suits actually delivered at the per Suit price of \$340.00. County shall pay City within 30 days after the later of receipt of the Tyvek Suits or receipt of the invoice for the number of Tyvek Suits delivered.

8. Changes to Agreement.

Changes may be made to this agreement and any attachment to it, only if the governing bodies of City and County expressly agree to in writing to that specific change and incorporate it into this agreement. It is acknowledged that no officer, agent, employee or representative of County or City has any authority to change the provisions of this Agreement or any attachments to it unless expressly granted that specific authority by the Commissioners Court or City Council, as applicable.

9. Assignment.

Neither Party may assign any of its rights or responsibilities under this Agreement without the prior written consent of the other. It is acknowledged by each Party that no official, agent, employee or representative of the other Party has any authority to grant such assignment unless expressly granted that specific authority by the Party's governing body.

10. Notices.

10.1 Procedure for Notice.

All notices required under this agreement shall be in writing. The notice is effective immediately if delivered in person to the person. The notice shall be deemed to have been given to the Party on the third day following mailing if placed in the United State Mail, postage prepaid, by registered or by certified mail, with return receipt requested. Each Party may change its address for notice by giving notice of the change in compliance with the requirements of this section 10.1 and delivering the notice to the County Clerk for attachment to this agreement no later than ten (10) days after the effective date of the notice.

10.2 Address of County.

The address of County for all purposes under this agreement is:

If by Mail

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

If by Personal Delivery

Bonnie S. Floyd, MBA, CPPO, CPPB
(or her successor)
Purchasing Agent, Travis County
700 Lavaca, Suite 800
Austin, Texas 78701

And to:

Charles Brotherton (or his successor)
County Executive
Emergency Services
Travis County
P.O. Box 1748
Austin, Texas 78767

Charles Brotherton (or his successor)
County Executive,
Emergency Services
Travis County
700 Lavaca, Suite 2.500
Austin, Texas 78751

10.3 Address of City.

The address of City for all purposes under this agreement is:

If by Mail

If by Personal Delivery

City Manager (or his successor)
City of Austin
P.O. Box 1088
Austin, Texas 78767

City Manager (or his successor)
City of Austin
301 West 2nd Street
Austin, Texas 78701

With copies to (registered or certified mail is not required):

If by Mail:

Anne Morgan, City Attorney
(or her successor)
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767

If by Personal Delivery:

Anne Morgan, City Attorney
(or her successor)
City of Austin Law Department
301 West 2nd Street
Austin, Texas 78701

10.4 Change of Address.

The parties may change their address for notice by sending notice of the change in compliance with section 10.1.

11. Termination, Procedures for Breach.

11.1 Termination of Agreement

Either Party may withdraw its participation from this Agreement by providing thirty (30) days prior written notice to the other Party. However, termination of this Agreement by a Party shall not terminate an existing purchase under this Agreement, and the existing terms related to these purchases may not be revised after withdrawal has occurred.

11.2 Notice to Cure.

Before exercising any rights under this section 11, the non-breaching Party shall provide written notice to the breaching Party in compliance with section 10.1. Upon receipt of this notice, the Party in breach has thirty (30) days to cure the breach.

11.3 Termination for Failure to Cure Breach.

The non-breaching Party may terminate the purchase if the breaching Party fails to cure the within thirty (30) days after notice. Failure to correct a breach or give an explanation satisfactory to the non-breaching Party within that thirty (30) days results in an automatic termination of the purchase and this agreement at the end of the thirty (30) days; however liability for any payments due survive this termination.

12. Terms & Conditions.

12.1 Federal and State Laws, Rules and Ordinances.

Parties shall comply with all applicable federal and state constitutions, statutes, rules and regulations in the performance of this agreement.

12.2 Applicable Law and Venue.

This agreement is governed by and interpreted in accordance with the laws of the United States of America and of Texas. All obligations under this agreement are performable in Travis County, Texas.

12.3 Severability.

If any provision of this agreement is held to be unenforceable, illegal or invalid by a court of competent jurisdiction, the remainder continues in effect and is not impaired or invalidated in any way by that holding.

12.4 Immunity Not Waived.

The Parties, individually and jointly, expressly agree that they do not intend that any provision of this agreement in any way constitutes waiver of any immunity from suit or liability which that Party may have by operation of law.

12.5 Non-Waiver of Breach.

Any omission to enforce any provision of this agreement by either Party and any payment made in compliance with this agreement shall not be interpreted 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 the right or privilege. Exercise of any right or remedy shall not impair, prejudice, or preclude the exercise of any other right or remedy under this agreement.

13. Entire Agreement.

This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. Any agreement, covenant or understanding that is not included in this document has been superseded by this agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement. No agent, official, employee or representative of Travis County has the authority to amend or assign this Agreement unless expressly granted authority by the Travis County Commissioners Court.

14. Duplicate Originals.

This agreement may be executed in duplicate originals.

CITY OF AUSTIN
A Home Rule Municipality

COUNTY OF TRAVIS
A Political Subdivision of Texas

By: _____
Assistant City Manager

By: _____
Samuel T. Biscoe
County Judge

Date

Date

DRAFT