INTERLOCAL COOPERATION AGREEMENT
FOR PUBLIC HEALTH SERVICES BETWEEN
THE CITY OF AUSTIN AND CITY OF VOLENTE

This agreement for public health services ("Agreement") is made and entered into by and between the City of Austin, Travis County, a municipal corporation and political subdivision of Texas ("Austin") and the City of Volente, Travis County, a municipal corporation and political subdivision of Texas ("Volente").

RECITALS

Austin and Volente have the authority to provide for the enactment and enforcement of ordinances for the general welfare and health of local citizens under Chapter 51 of the Texas Local Government Code and other statutes.

Austin has established a health department to provide for and promote the public health through the enforcement of laws and ordinances governing activities affecting the public health.

Volente desires that certain laws intended to secure and protect the general welfare of its citizens be enforced.

Austin has experienced and trained personnel that can provide inspection services to Volente in a way that would be more efficient than efforts by Volente to provide those services directly.

Austin and Volente have the authority to enter into this Agreement under Chapter 791 of the Texas Government Code, and Chapter 121 of the Health and Safety Code.

NOW, THEREFORE, in consideration of the Agreements and consideration set forth below, the amount and sufficiency of which are acknowledged, Volente and Austin agree as follows:

1.0 DEFINITIONS

1.01 "Austin " means City of Austin, Texas.

1.02 "Director" means the Director of the City of Austin Health and Human Services Department.

1.03 "Food Enterprise" has the same meaning set forth in the Austin City Code.

1.04 "Mayor" means the Mayor of Volente or his successor.

1.05 "Fiscal Year" means the twelve (12) month time period between October 1 and September 30 of the following year.

2.0 AGREEMENT TERM

Initial Term. This Agreement will be effective for a term beginning October 1, 2008 and ending September 30, 2009, unless sooner terminated under the terms of this Agreement. It is understood and agreed that in no event shall any provision of this Agreement or any contract entered into under the terms of this Agreement be interpreted to obligate either party to provide funding or services beyond the revenues currently available to the party.

Renewal Term(s). This Agreement may be renewed for up to four (4) successive one-year terms upon written approval of the parties.

3.0 RESPONSIBILITIES OF AUSTIN

3.01 Austin shall:

3.01.1 Conduct inspections and administer and enforce state laws and Volente's ordinances regulating Food Enterprises. More specifically, Austin shall conduct plan review, permit issuance, inspections, and complaint investigations.

3.01.2 Conduct inspections and administer and enforce state law and Volente's ordinances, if any, regulating public swimming pools.

3.01.3 Conduct environmental inspections of child care centers, foster and adoptive homes as requested.

3.01.4 Prepare and maintain case files on inspections made and inform Volente of the result of such inspections and any recommendations for action by Volente.

3.01. 5 Make staff available for testimony in court proceedings in the event suit is brought regarding the services provided under this Agreement or Volente's enforcement actions.

3.02 Austin shall have no duty to:

3.02.1 Initiate or prosecute any civil or criminal suit on any complaint or case investigated under this Agreement.

3.02.2 Schedule or conduct enforcement hearings.

3.02.3 Assess or collect any penalties, fines or liens.

3.03 Enforcement of state law and any applicable Volente ordinances shall include on-

site investigations, issuance of notices, attempts to secure voluntary compliance and the presentation of testimony and evidence in administrative hearings before the Volente's Council or its designee.

4.0 RESPONSIBILITIES OF VOLENTE

4.01 Volente shall:

4.01.1 Authorize personnel of the City of Austin Health and Human Services Department to act as its agents in enforcing state law and any applicable ordinances of Volente.

4.01.2 Provide Austin with certified copies of any Volente ordinances intended to be enforced through this Agreement.

4.01.3 Schedule and conduct any enforcement hearings.

4.01.4 Assess and collect fines and penalties and enforce liens.

5.0 MUTUAL RESPONSIBILITIES

Austin and Volente agree to meet annually to establish and evaluate operating policies and procedures and to make such adjustments or changes as may be of mutual benefit.

6.0 COMPENSATION

In consideration of the services to be provided by Austin under this Agreement, Volente grants to Austin the exclusive right to bill, collect and retain all inspection, permit and other fees listed on **Exhibit A** from residents and businesses located within the corporate limits of Volente. By approving this Agreement, Volente hereby adopts the fees described on **Exhibit A**, waives all rights to these fees and designates Austin as its exclusive agent for purposes of providing the services described in this Agreement and collecting the fees listed on Exhibit A, which is incorporated herein for all purposes. The parties agree that Austin shall bill and collect fees in accordance with Austin policies and procedures.

In recognition of the fact that Austin's only compensation under this Agreement will be the fees it is able to collect, Volente agrees to promptly take action against a citizen or business that fails to pay a fee in a timely manner.

7.0 ENTIRE AGREEMENT

Entire Agreement. All oral and written agreements between the parties relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

8.0 RETENTION, ACCESSIBILITY AND AUDIT OF RECORDS AND REPORTS

8.01 Austin, on behalf of Volente, shall create and maintain files and records regarding permits, investigations and enforcement activities undertaken under this Agreement. All original records shall belong to Austin. Volente shall be entitled to make and retain such copies as may be necessary to document its work.

8.02 Record Retention. Austin shall maintain the original of all routine fiscal and performance records and documentation of its activities performed under this Agreement in a readily available state and location until the conclusion of the records retention period required by the Texas Government Code or ~~earlier of: a)~~ the completion by Volente of an audit in conformance with generally accepted accounting principals and procedures for governmental organizations, whichever occurs later.

8.03 Volente Access. Austin shall give Volente, or its duly authorized representatives, full and reasonable access to and the right to examine all books, records, accounts, reports, files, and other papers, things or property belonging to or in use by Austin pertaining to this Agreement in an accessible location at reasonable times and for reasonable periods. These rights to access shall continue as long as these records are retained by Austin.

8.04 Volente Audit. Volente has the right to conduct an annual financial and compliance audit of Austin's performance under this Agreement. Austin shall permit Volente, or its duly authorized representatives, to audit Austin's records that relate to this Agreement and to copy, at Volente's expense, any document, materials or information necessary to facilitate these audits.

8.06 Austin Access. Volente shall give Austin, or its duly authorized representatives, full and reasonable access to and the right to examine all books, records, accounts, reports, files, and other papers, things or property belonging to or in use by Volente pertaining to this Agreement in an accessible location at reasonable times and for reasonable periods. These rights to access shall continue as long as these records are retained by Volente. As requested by Austin, Volente shall certify to Austin those financial records relating to the performance of this Agreement.

9.0 AGENCY

Agency. The parties expressly acknowledge and agree that the actions of Austin personnel while in the performance of duties authorized by this Agreement shall be deemed to be the actions of Volente. However, no employee of Austin shall be considered an employee of Volente for purposes of gaining any rights or benefits due to an employee of Volente pursuant to Volente's personnel policies.

10.0 MONITORING

On-Site Monitoring. Volente has the right to perform periodic on-site monitoring of Austin's compliance with the provisions of this Agreement and of the adequacy and timeliness of Austin's performance under this Agreement.

11.0 TERMINATION AND REMEDIES, CANCELLATION

11.01 Breach. Either party may terminate this Agreement if the other is in breach of an obligation and fails to cure such breach within thirty (30) days of receipt of written notice from the non-breaching party. If more than thirty (30) days are required to cure such default or breach, a reasonable time in excess of said days may be established, provided both parties agree in writing as to the time period to be substituted.

11.02 Termination. Either party has the right to terminate this Agreement, in whole or in part, as follows:

11.02.1 The other party has failed to comply with any term or condition of this Agreement and failed to cure the breach in accordance with Section 11.01;

11.02.2 The party is unable to conform to changes required by federal, state or local laws or regulations; or

11.02.3 If, during the budget planning and adoption process, Volente or Austin City Council fails to provide funding sufficient to meet its obligations under for this Agreement for that entity's fiscal year.

11.03 Procedure. In the event of termination under Section 11.02.2 or 11.02.3 above, the party desiring to terminate shall notify the other party in compliance with the Notice provisions of this Agreement of the decision to terminate and specify an effective date of termination that is at least thirty (30) days after that notice and, in the case of partial termination, the portion of the Agreement to be terminated.

11.04 Without Cause Termination. Either party may terminate this Agreement at any time, in whole or in part, without cause, upon providing at least sixty (60) days written notice to the other party.

11.05 Rights Surviving Termination. City’s right to bill and collect any fee that became due during the term of this Agreement shall survive the termination of this Agreement.

12.0 AMENDMENTS

This Agreement may be amended only in a writing approved by each party’s governing body and signed by an authorized representative of each party.

13.0 LIABILITIES, CLAIMS

13.01 Liability. Austin shall not be liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of Volente or its agents arising from the performance of duties or responsibilities under this Agreement. Volente shall not be liable for any claims, damages or attorney's fees arising from acts of Austin or its employees conducted outside the scope of this Agreement.

13.02 Claims. If any claim or other action, including proceedings before an administrative agency, is made or brought by a person, firm, corporation or other entity against Austin or Volente relating to the performance of the obligations under this Agreement, the party receiving notice shall give written notice to the other party of the claim or other action within three (3) working days after being notified of it or the threat of it, such notice to include: the name and address of the person, firm, corporation or other entity that made or threatened to make a claim, or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action or proceeding; the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice shall be given in the manner described in Section 14. Except as otherwise directed, each party shall furnish the other with copies of all pertinent papers received by that party with respect to these claims or actions.

14.0 NOTICES

14.01 Written Notice. Unless otherwise specified, all notices to be given to either party under this Agreement shall be in writing, and may be delivered by courier or sent postage pre-paid by certified or registered mail, return receipt requested. Notice shall be deemed effective if sent to the parties and addresses designated herein, upon receipt in case of hand delivery, and three (3) days after deposit in the U.S. Mail, in case of mailing.

14.02 Volente Address. The address of the Volente for all notices under the Agreement shall be:

City Manager
City of Volente
15403 Hill St.
Volente, Texas 78641

With a copy to:

14.03 Austin Address. The address of Austin for all purposes under this Agreement and for all notices hereunder shall be:

City of Austin
Office of the City Manager
P. O. Box 1088
Austin, Texas 78767

With a copy to: City of Austin
Health and Human Services Department
Office of the Director
P.O. Box 1088
Austin, Texas 78767

14.04 Change of Address. Each party may change the address for notice to it by giving notice of the change in compliance with 14.01.

15.0 LAW AND VENUE

This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement are performable in Travis County, Texas. It is expressly understood that venue for any lawsuit or dispute arising out of or relating to this Agreement will be in Travis County.

16.0 COMPLIANCE WITH LAWS

Austin and Volente shall observe and comply with the Constitutions of the United States and the State of Texas, and all applicable federal, state, City of Austin and Volente laws, rules, ordinances and regulations affecting the conduct and performance of all obligations undertaken pursuant to this Agreement.

17.0 RESERVATION OF RIGHTS AND REMEDIES, NON-WAIVER; NO JOINT VENTURE

17.01 Rights and Remedies. If either party breaches this Agreement, the other party shall be entitled to any and all rights and remedies provided for by Texas law and any applicable Federal laws or regulations. All rights of Volente and Austin, respectively, under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right under this Agreement. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

17.02 Non-Waiver. One or more acts of forbearance by either party to enforce any provision of this Agreement or any payment, act or omission by either party shall not constitute or be construed as a modification of this Agreement or a waiver of any

breach or default of the other party which then exists or may subsequently exist.

17.03 Immunity or Defense. It is expressly understood and agreed that, in the execution of this Agreement, neither Austin nor Volente waives nor shall be deemed to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its governmental powers and functions.

17.04 No Joint Venture or Joint Enterprise/No Third Party Beneficiaries. This Agreement shall not be construed to establish a joint venture or joint enterprise by the parties, nor shall this Agreement be construed to create or grant rights, contractual or otherwise, to any other person, or entity not a party to this Agreement.

18.0 ASSIGNABILITY

Neither party may assign any of the rights or duties created by this Agreement without the prior written approval of the other party. It is acknowledged by both parties that no officer, agent, employee or representative of either party has any authority to assign any part of this Agreement unless expressly granted that authority by the party's governing body.

19.0 BINDING CONTRACT

Subject to Section 18.0, this Agreement shall be binding upon the successors, assigns, administrators, and legal representatives of the parties to this Agreement.

20.0 SEVERABILITY

If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of it shall be construed as if that portion were not included in the Agreement and shall remain valid and binding.

21.0 MEDIATION

When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use the Dispute Resolution Center of Austin, Texas, for mediation as described in the Texas Civil Practice and Remedies Code, Section 154.023. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Texas Civil Practice and Remedies Code, Section 154.073, unless both parties agree, in writing, to waive the confidentiality.

22.0 INTERPRETATIONAL GUIDELINES

22.01 Computation of Time. 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. If the last day of any period falls on a Saturday, Sunday or a day that Volente has declared a holiday for its employees these days shall be omitted from the computation.

22.02 Headings. The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Agreement.

23.0 DESIGNATION OF CODE ENFOREMENT OFFICERS

Approval of this Agreement by the City Council of Volente constitutes Volente' designation of qualified personnel of the City of Austin Health and Human Services Department as Code Enforcement Officers of Volente to enforce Volente's ordinances as provided in this Agreement and to collect fees listed on **Exhibit A.**

Executed on this the _____ day of _____, 2008.

CITY OF VOLENTE

By: _____

Title:_____

CITY OF AUSTIN, A Texas Home Rule Municipality

By:_____

Title:_____