

**INTERLOCAL COOPERATION AGREEMENT
FOR THE SALE OF MOTOR FUEL
BETWEEN THE
CITY OF AUSTIN AND TRAVIS COUNTY EMERGENCY SERVICES DISTRICT #3**

RECITALS

This interlocal cooperation agreement (“Agreement”) is between the City of Austin, a Texas home-rule and municipal corporation (“City”), and Travis County Emergency Services District #3, a political subdivision of the State of Texas (“TCESD#3”), acting by and through their respective signature authorities, pursuant to and under authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271 of the Texas Local Government Code, for the purpose of participating in a cooperative agreement for the sale of motor fuel. The undersigned Local Governments may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

Recognizing that the TCESD#3 needs a reliable source for motor fuel for vehicles and equipment owned or utilized exclusively by the TCESD#3 and the City is able and willing to provide the facilities and the supplies necessary to provide motor fuel to meet the TCESD#3’s needs. The Parties desire to enter into a cooperative agreement which will allow the City to provide motor fuel.

NOW THEREFORE, the Parties agree as follows:

**ARTICLE I
SCOPE OF SERVICES**

1. The City, through the Fleet Services Department, shall provide fueling facilities and supplies necessary to provide motor fuel for the Party’s vehicles and equipment.
 - a. The TCESD#3 shall have access to all the City’s fueling locations.
 - b. The TCESD#3 shall provide transportation for its vehicles and equipment to a City of Austin Fleet Services fueling site to receive motor fuel under this Agreement.
 - c. The City shall provide access for motor fueling during normal operating hours for the individual Service Centers or other City fueling sites for the sole purpose of fueling TCESD#3 vehicles. A list of available fueling sites and their operating hours will be provided to the TCESD#3.
 - d. All fuel purchased from the City shall be for the TCESD#3’s exclusive use and may not be resold to another Party.
2. City shall provide TCESD#3 with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations before any Contract funds are payable.

ARTICLE II COMPENSATION

3. The City shall be reimbursed for any direct cost for all motor fuel pumped for vehicles and equipment.
 - a. The TCESD#3 shall pay the City's average monthly cost per gallon for each fuel type purchased plus the fuel program overhead and the Fleet administration overhead rates. The overhead rates are approved annually with the City's budget. The TCESD#3 will receive notice of rates as provided in Article VI (a).
 - b. The City will bill the TCESD#3 on a monthly basis for motor fuel pumped during the previous calendar month. The TCESD#3 shall pay the City at the address shown on its invoice the amount due within thirty calendar (30) days after receipt of the invoice.

ARTICLE III TERM

4. The term of this Agreement shall commence on the date on which all Parties have executed this Agreement ("Effective Date") and shall renew automatically annually. This Agreement shall remain in full force and effect unless superseded by a supplemental agreement or terminated as provided in this Agreement.

ARTICLE IV TERMINATION

5. Either Party may terminate this Agreement in whole or in part. The terminating Party shall provide notice to the other Party as described in Article VI (a) of the decision to terminate this Agreement at least thirty (30) calendar days before the effective date of termination.
 - a. In the event that the City notifies the TCESD#3 of a change in rates that is not acceptable to the TCESD#3, the TCESD#3 shall notify City and provide at least thirty (30) calendar days' notice of the effective date of termination.
 - b. Either Party may terminate this Agreement in whole or in part if the other Party fails to comply with any term or condition of the Agreement. The terminating Party shall notify the other Party of the decision to terminate this Agreement at least thirty (30) calendar days before the effective date of termination, and in the case of a partial termination, the portion of the Agreement to be terminated. The other Party may avoid termination by correcting the reasons for termination prior to the effective date of termination stated in the notice to the satisfaction of the terminating Party.
 - c. If either Party terminates this Agreement, the City has the right to receive payment for all motor fuel provided before the effective date of termination.

- d. City may deny TCESD#3 access to fueling stations and terminate agreement immediately if TCESD#3 usage increases beyond the capacity of City's fuel infrastructure to provide fuel to TCESD#3 and still meet fueling needs of City.

ARTICLE V CURRENT REVENUE

6. The Parties warrant that all payments, expenditures, contributions, fees, costs, and disbursements, if any, required of it hereunder or required by any other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, addendum or associated document, shall be paid from current revenues available to the paying Party. The Parties hereby warrant that no debt is created by this Agreement.
7. The financial obligations of the Parties, if any, under this Agreement are contingent upon the availability and appropriation of sufficient funding. Any Party may withdraw from this Agreement without penalty in the event funds are not available or appropriated. However, no Party will be entitled to a refund of amounts previously contributed in the event of withdrawal for lack of funding.

ARTICLE VI MISCELLANEOUS

8. The Parties agree to the following provision
- a. **Notice:** All notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Party shall be addressed as follows:

To the City		To the TCESD#3
City of Austin		Travis County ESD #3
Fleet Services Department		Jeffrey J. Wittig
Attn: Division Manager, Finance and Contracts		Attn: Fire Chief, TCESD#3
1190 Hargrave Street		4111 Barton Creek Blvd
Austin, Texas 78702		Austin, TX 78735

- b. **Amendment:** This Agreement may be amended by the mutual written agreement of the Parties.

- c. **Severability**: In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- d. **Governing Law**: The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas. Venue for any action concerning this Agreement shall lie in Travis County, Texas.
- e. **Entire Agreement**: This Agreement represents the entire agreement between the Parties with respect to the subject matter covered 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. City acknowledges that no officer, agent, employee, or representative of TCESD#3 has any authority to change this Contract, to approve assignment of any part of it, or to waive any provision of it unless expressly granted that specific authority by the TCESD#3 Commissioners.
- f. **Recitals**: The recitals to this Agreement are incorporated herein.
- g. **Counterparts**: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original constituting one and the same instrument.
- h. **No Assignment**: The Parties may not assign or transfer their rights under this Agreement.
- i. **Compliance with Law**: Each Party is responsible for complying with any additional or varying laws and regulations regarding purchases.
- j. **Certifications**: The signers of this Agreement certify that they possess the right, power, legal capacity and full legal authority to execute this Agreement on behalf of their respective Parties and to bind their respective Parties to the terms and conditions set forth herein.
- k. **No Waiver of Rights**: Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or equity to a Party, including the defense of sovereign immunity, nor to create any legal rights or claims on behalf of a person not a party to this Agreement.
- l. **Mediation**: When mediation is acceptable to both parties, the parties may use a mutually acceptable mediator, or a mediator appointed by a court of competent jurisdiction. Mediation is conducted in compliance with Chapter 154 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the mediated resolution, the mediation is not a final and binding resolution of the dispute. All

communications within the scope of the mediation must remain confidential in compliance with section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree in writing to waive confidentiality.

This Interlocal Agreement is executed to be effective the date of the last party to sign.

Travis County Emergency Services District #3

By:

Date:

Name: Jeffrey J. Wittig, CFO

Title: Fire Chief

Address: 4111 Barton Creek Blvd.
Austin, TX 78735

FOR TCESD#3, APPROVED AS TO LEGAL FORM:

By: N/A

Date:

Name:

Title:

CITY OF AUSTIN, TEXAS

By:

Date:

Name: Gerry Calk

Title: City of Austin Fleet Officer

Address: 1190 Hargrave Street
Austin, Texas 78702

FOR CITY, APPROVED AS TO LEGAL FORM:

By:

Date:

Name: Robert Davis

Title: Assistant City Attorney