

INTERLOCAL FUNDING AGREEMENT

This Interlocal Funding Agreement (the "Agreement") is hereby executed this the ____ day of November, 2017, by and between the City of Kyle, Texas ("City"), and Hays County, Texas ("the County"), each a political subdivision of the State of Texas (collectively, the "Parties"), related to the newly created Planner position within the Hays County Office of Emergency Services Department ("OES").

RECITALS

WHEREAS, the City and County as participating political subdivisions are authorized by the Interlocal Cooperation Act, Texas Government Code Chapter 791 (the "Act"), to enter into cooperative agreements among themselves for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, and programs; and

WHEREAS, the services made the subject of this Agreement are a governmental function and the City and County desire to contract in a manner to require each entity to, respectively, provide the services set forth in this Agreement; and

WHEREAS, the Parties have identified the need for a dedicated full-time Planner to serve the needs of both the City and the County within the OES; and

WHEREAS, the County created a new full-time position for the OES department during and FY 2018 budget process contingent on partial funding from the City of Kyle; and

WHEREAS, the City has agreed to partially fund the new full-time position within the Hays County OES department; and

WHEREAS, the Parties and their citizens would benefit from this cost sharing agreement; and

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and obligations of the Parties in this Agreement, the County and City agree as follows:

ARTICLE 1 PURPOSE

1.1 The purpose of this Agreement is to set forth the terms and conditions under which 1) the City will provide partially funding in an amount not to exceed fourteen thousand nine hundred ninety-nine dollars (\$14,999.00 USD) to the County in Fiscal Year 2018 for one-half of the salary of a full-time Emergency Planner position within the Hays County Office of Emergency Services department.

ARTICLE 2 OBLIGATIONS AND RIGHTS OF THE CITY

2.1 The City hereby agrees to pay to the County funds in the amount of fourteen thousand nine hundred ninety-nine dollars (\$14,999.00 USD) on or before December 1, 2017, ~~2018~~.

2.2 The City hereby agrees that the County shall serve as the employer of the person(s) hired to fill the position of Emergency Planner within the Hays County Office of Emergency Services department and have any and all rights as an employer under the law of the State of Texas.

ARTICLE 3 OBLIGATIONS OF THE COUNTY

3.1 The County hereby agrees to provide the remaining funding, leave and benefits for the full-time position as approved by the Commissioners Court during the FY 2018 budget process and outlined in **Exhibit "A"** attached hereto. The employee hired to fill the position of Emergency Planner will receive the same benefits and leave available to other Hays County civilian employees.

3.2 The County hereby agrees it will be responsible for administering this Agreement and shall have exclusive control, supervision and policy-making authority for employee under this Agreement. The contact person and representative for the County is the Director of Emergency Management, or her designee, and the contact person and City's representative City for the purposes of this Agreement is the City Manager.

3.3 The County hereby agrees to provide the employee with all required equipment necessary to perform the job requirements stated in employee's job description.

ARTICLE 4 TERM AND TIME OF PERFORMANCE

4.1 The effective date of this agreement shall be the date last executed by the Parties, below (the "Effective Date"). The term of the Agreement shall continue from the Effective Date until September 30, 2018, or until the Parties have fulfilled all obligations under this Agreement.

4.2 The Planner shall serve as a liaison between the County and the City's Emergency Operations Manager, participate in County and/or regional emergency management meetings and represent the City's interest, apply for and manage Homeland Security grants on behalf of the City.

ARTICLE 5 NOTICE

5.1 Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications related to non-compliance issues required or permitted

hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the County:

Hays County
Attn: County Judge
111 E. San Antonio, Suite 300
San Marcos, Texas 78666

If to the City:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

**ARTICLE 6
DISPUTE RESOLUTION**

6.1 Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Contract. If a controversy or claim should arise, the Parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any Party may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The Parties shall, within ten (10) days after the Effective Date of this Contract, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes. Each of the Parties may change the designation of its Representative, but shall maintain at all times during the term of this Contract a designated Representative and shall ensure that the other Parties are notified of any change in the designation of its Representative.

6.2 Mediation. If the dispute has not been resolved within sixty (60) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. The Parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

6.3 Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon), any of the Parties may commence litigation to resolve the dispute in any Texas state court located in Hays County, or in the United States District Court for the Western District of Texas to the extent said Court shall have jurisdiction over the matter.

6.4 Liability. It is understood and agreed between the parties that each party hereto shall be responsible for its own acts of omissions, including the acts of omissions of its employees, officers, trustees, and agents. Where injury or property damage result from the joint or concurring negligence of both parties, liability, if any, shall be shared by each party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity.

6.5 Government Immunity. Nothing in this Agreement shall be constructed to waive, modify or amend any legal defense available to the County, the City, or any past or present officer, elected official, agent, or employee of the participating political subdivisions including, but not limited to governmental immunity from suit as provided by law.

ARTICLE 7 MISCELLANEOUS

7.1 Not-to-Exceed; Current Funds. Under no circumstances shall the City's obligation exceed the escrow amount cited in Section 2.1, above, unless otherwise agreed in writing by the Parties. Pursuant to §791.011(d)(3) of the Texas Government Code, the Parties agree that the funds being committed by the County and the City under this Agreement shall be paid from current revenues available the County and the City, respectively.

7.2 Entire Agreement. This Agreement represents the entire and integrated agreement between the County and the City and supersedes all prior negotiations, representations or arguments either written or oral.

7.3 Lawful Authority. The execution and performance of this Agreement by the County and the City have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the County and the City in accordance with its terms.

7.4 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly approved by the governing bodies and executed by the parties hereto.

7.5 Independent Parties. It is understood and agreed between the Parties that the County and the City, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture.

7.6 Construction. The captions and headings contained in this Agreement are solely for convenient reference and will not be deemed to affect the meaning or interpretation of any provision or paragraph hereof. All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. For the purposes of this Agreement, the term "will" is mandatory. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

7.7 Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, ordinance or administrative executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have not legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

7.8 No Waiver. No waiver by a Party of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

7.9 Public Information Act. City and County are governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under this Act.

7.10 Additional Documents. The City and the County covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

7.11 Compliance with Laws. In performing this Agreement, the City will comply with all local, state and federal laws.

7.12 Counterparts. This Agreement has been executed by the parties in multiple originals or counterparts each having full force and effect.

This Interlocal Funding Agreement is hereby EXECUTED on this ____ day of November, 2017.

County of Hays:

By: _____

Judge Bert Cobb, M.D.
Hays County Judge

ATTEST:

Liz Q. Gonzalez, Hays County Clerk

The City of Kyle

By: _____

Scott Sellers
City Manager

ATTEST:

Jennifer Vetrano, City Secretary

DRAFT

EXHIBIT “A”

**Planner Position
Office of Emergency Services
Fiscal Year 2018 Salary Costs**

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