

RESOLUTION NO: 1721-19-10-08-0653

**RESOLUTION OF THE CITY OF PFLUGERVILLE, TEXAS AUTHORIZING AN
INTERLOCAL COOPERATION AGREEMENT FOR PUBLIC HEALTH SERVICES
BETWEEN THE CITY OF AUSTIN AND THE CITY OF PFLUGERVILLE**

WHEREAS, since 2012, the City of Pflugerville has utilized a third party (Bureau Veritas) for the regulation of food establishments pursuant to the Texas Food Establishment Rules and inspection of public pools and spas; and

WHEREAS, staff recommends entering into an Interlocal Cooperation Agreement with the City of Austin to perform these services; and

WHEREAS, implementation will provide for greater consistency of administration throughout Austin, unincorporated areas of Travis County and participating cities, such as Bee Cave and Lakeway;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

That City Council hereby authorizes the City Manager to execute the Interlocal Cooperation Agreement, attached hereto as Attachment A, between the City of Pflugerville and the City of Austin for the purpose of Public Health Services.

PASSED AND APPROVED this 8th day of October, 2019.



Victor Gonzales, Mayor

ATTEST:



Karen Thompson, City Secretary

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

This Agreement for Public Health Services (“Agreement”) is made and entered into by and between the City of Austin, a municipal corporation and political subdivision of Texas ("Austin") and the City of Pflugerville, Travis County, a municipal corporation and political subdivision of Texas (“Municipality”), together the “Parties,” and each individually, a “Party.”

RECITALS

Austin and Municipality 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 Local Government Code and other statutes.

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

Municipality has adopted public health ordinances and wishes to purchase certain health inspection services from Austin.

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

Austin and Municipality 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, Municipality and Austin agree as follows:

1.0 DEFINITIONS

1.01 "Austin" means City of Austin, Texas.

1.02 “Custodial Care” means a general environmental health and safety inspection conducted at the request of a facility operator or resident to fulfill the requirements of the state licensing agency for child care, adoption or foster care.

1.03 "Director" means the Director of Austin’s Austin Public Health department (Austin Public Health).

1.04 “Food Enterprise” has the same meaning set forth in the Austin City Code

1.05 "Mayor" means the Mayor of Municipality, or his or her successor.

1.06 "Fiscal Year" means the twelve-month time-period between October 1 and

September 30 of the following year.

1.07 “Swimming Pools and Spas” has the same meaning as established in Title 25, Chapter 265 of the Texas Administrative Code.

2.0 AGREEMENT TERM

Initial Term. This Agreement will be effective for a term beginning January 1, 2020 and ending September 30, 2020, 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. The execution or continuation of this Agreement is dependent upon the availability of funding. The payment obligation of either Party is payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available. The parties will each provide the other Party written notice at least sixty (60) days in advance of their failure to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit a Party to pay its obligations under the Agreement. In the event of non-appropriation or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the Party unable to meet its payment obligation.

Renewal Term(s). This Agreement may be renewed for up to three successive one-year terms beginning October 1, 2020 upon written approval of the parties.

3.0 RESPONSIBILITIES OF AUSTIN

3.01 Austin shall:

3.01.1 Conduct inspections and help administer and enforce state laws and Municipality’s ordinances regulating Food Enterprises, Swimming Pools and Spas, and Custodial Care. More specifically, Austin shall conduct plan review, permit issuance, inspections, and complaint investigations, and shall participate in Municipality’s administrative enforcement as described in Section 3.03.

3.01.2 Prepare and maintain case files of completed inspections, and inform Municipality of the results of such inspections and any recommendations for action by Municipality.

3.01.3 Ensure Austin staff is available for testimony in court proceedings in the event suit is brought regarding the services provided under this Agreement or Municipality’s enforcement actions.

3.01.4 Collect all fees related to inspection, permitting, and plan review activities as provided for in this Agreement from affected businesses based on fee rates set forth in Exhibit A, or as otherwise amended by the Austin City Council.

3.02 Austin shall have no duty to perform the following activities, and Municipality agrees to be fully responsible for the following:

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

3.02.2 Schedule and conduct enforcement hearings.

3.02.3 Assess or collect any penalties, fines, or liens.

3.03 Enforcement of state laws and any applicable ordinances of Municipality shall be limited to on-site investigations, issuance of notices, attempts to secure voluntary compliance, and providing witness testimony and evidence by inspectors in administrative hearings before the Municipality's Council or its designee.

4.0 RESPONSIBILITIES OF MUNICIPALITY

4.01 Municipality shall:

4.01.1 Authorize personnel of Austin Public Health to act as its agents in enforcing state law and any applicable ordinances of Municipality.

4.01.2 Provide Austin certified copies of any Municipal ordinances intended to be enforced in accordance with this Agreement.

4.01.3 Schedule and conduct any required enforcement hearings.

4.01.4 Assess and collect fines and penalties, and enforce liens.

4.01.5 Provide Austin Public Health notification of a new Food Enterprise for which Municipality has received a Food Facility Plan Review as required by the Texas Food Establishment Rules (Title 25 of the Texas Administrative Code, Part 1, Chapter 228).

5.0 MUTUAL RESPONSIBILITIES

Austin and Municipality agree to meet annually to establish and evaluate operating policies and procedures, and make such adjustments or changes as may be of mutual benefit, unless otherwise scheduled by mutual agreement.

6.0 COMPENSATION

In consideration of the services to be provided by Austin under this Agreement, Municipality grants to Austin the exclusive right to bill, collect, and retain all inspection, permit, and other fees from residents and businesses located within the corporate limits of Municipality based on fee rates set forth in Exhibit A, incorporated herein for all purposes, or as otherwise amended by the Austin City Council. By approving this Agreement, Municipality 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 and collecting the related fees as described in this Agreement. 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 primary form of compensation under this Agreement will be the fees it is able to collect, Municipality agrees to promptly take action against a citizen or business that fails to pay a fee in a timely manner.

In consideration of the provision of services described in Section 3.0 of the Agreement, Austin will invoice Municipality in the following amounts for each year of this Agreement and any renewals: \$85,000 for the Initial Term (to be prorated to \$63,750 for the nine-month Initial Term from January 1, 2020 through September 30, 2020); \$65,000 for the first Renewal Year; \$45,000 for the second Renewal Year; and \$25,000 for the third Renewal Year. Municipality will pay Austin the foregoing amounts in one installment by November 30th of each fiscal year during the term of the Agreement, which shall be submitted to Don Hastings, Assistant Director, Environmental Health Services Division, at P.O. Box 142529, Austin Texas 78714.

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 Municipality, shall create and maintain files and records regarding permits, investigations, and enforcement activities undertaken under this Agreement. All original records shall belong to Austin. Municipality 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 later of: a) the completion by Municipality of an audit in conformance with generally accepted accounting principles and procedures for governmental organizations or b) three years after the Agreement term in which the activity occurred. Municipality shall maintain records related to this Agreement in accordance with government records

retention schedules.

- 8.03 **Municipality Access.** Austin shall give Municipality, or its duly authorized representatives, full 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 **Audit by Municipality.** Municipality has the right to conduct an annual financial and compliance audit of Austin's performance of this Agreement. Austin shall permit Municipality, or its duly authorized representatives, to audit Austin's records that relate to this Agreement and to copy, at Municipality's expense, any document, materials or information necessary to facilitate these audits.
- 8.05 **Austin Access.** Municipality shall give Austin, or its duly authorized representatives, access to and the right to examine and copy all books, records, accounts, reports, files, and other papers, things or property belonging to or in use by Municipality pertaining to this Agreement in an accessible location. These rights to access shall continue as long as these records are retained by Municipality. As requested by Austin, Municipality shall certify to Austin those financial records relating to the performance of this Agreement.

9.0 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 Municipality. However, no employee of Austin shall be considered an employee of Municipality for purposes of gaining any rights or benefits due to an employee of Municipality pursuant to Municipality's personnel policies.

10.0 MONITORING

On-Site Monitoring. Municipality 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 responsibility, and fails to cure such breach within thirty days of receipt of written notice from the non-breaching Party. If more than thirty 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 of the Agreement;

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 either Party's governing body fails to approve funding sufficient to meet its obligations under the Agreement during their annual budget planning and adoption process.

11.03 Procedure. In the event of termination under Sections 11.02.2 or 11.02.3 of the Agreement, 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 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 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's fees arising from any negligence or unlawful acts of Municipality or its agents arising from the performance of duties or responsibilities under this Agreement. Municipality 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 Municipality relating to the performance of the obligations under this

Agreement, the Party receiving notice of the claim shall give written notice to the other Party of the claim or other action within three 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 14.0 of the Agreement below. Except as otherwise directed, each Party shall furnish the other with copies of all pertinent papers received by that Party with respect to such 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 paid by certified or registered mail, return receipt requested. Notice shall be deemed effective if sent to the parties and addresses designated below, upon receipt in case of hand delivery, and three days after deposit in the U.S. Mail, in case of mailing.

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

City of Pflugerville
Attn: City Manager
P.O. Box 589
Pflugerville, Texas 78691

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
City Hall
301 West 2nd Street, Third Floor
Austin, Texas 78767

With copies to:
Stephanie Hayden, Director
Austin Public Health
7201 Levander Loop, Building E
Austin, Texas 78702

Don Hastings, Assistant Director
Austin Public Health
P.O. Box 142529
Austin, Texas 78714

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

15.0 LAW AND VENUE

This Agreement is governed by the laws of the State of Texas and all obligations under it 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 Municipality 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 Municipality 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 Municipality 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 Municipality 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. 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, third Party 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.

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 Section 154.023 of the Texas Civil Practice and Remedies Code. 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 Section 154.073 of the Texas Civil Practice and Remedies Code, 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 either Party has declared a holiday for its employees, it 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 ENFORCEMENT OFFICERS

Approval of this Agreement by the City Council of Municipality constitutes Municipality's

designation of its authority to enforce Municipality's ordinances regulating Food Enterprises, Swimming Pools and Spas, and Custodial Care, and to collect related fees, as provided in this Agreement, to qualified personnel of Austin Public Health as Code Enforcement Officers of Municipality.

Executed on this the _____ day of _____, 2019.

CITY OF PFLUGERVILLE

By: _____

Title: _____

CITY OF AUSTIN

By: _____

Title: _____