

**INTERLOCAL AGREEMENT BETWEEN GALVESTON COUNTY AND
CITY OF TEXAS CITY, TEXAS**

This Interlocal Agreement (the “Agreement”) is made and entered by and between Galveston County, Texas (“Galveston County”), a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court and the City of Texas City, Texas (the “City”), and pursuant to the Interlocal Cooperation Act, TEX. GOV’T CODE §§ 791.001 – 791.030. Galveston County and the City are referred to herein collectively as “Parties” and individually as a “Party.”

Recitals

The City desires Galveston County’s assistance in maintaining its generator(s). Galveston County desires the City’s assistance in maintaining its generator(s).

Galveston County and the City currently purchase these services from various businesses (“Vendors”) under executed Galveston County and City of Texas City, Texas contracts.

Galveston County agrees to allow the City to utilize its current contracts, and the City agrees to allow Galveston County to utilize its current contracts in order to increase the efficiency and effectiveness of government.

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271 of the Texas Local Government Code; and

WHEREAS, the Parties are local governments as that term is defined in Section 271.101(2) of the Texas Local Government Code; and

WHEREAS, Section 271.102 of the Texas Local Government Code authorizes local governments to participate in a cooperative purchasing program with another local government or local cooperative organization; and

WHEREAS, 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; and

WHEREAS, local governments in the State of Texas have the ability to realize substantial savings and economies of scale by cooperatively procuring materials, supplies, goods, services, or equipment; and

WHEREAS, the Parties desire to enter into a cooperative purchasing program that will allow Parties to purchase materials, supplies, goods, services, or equipment pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code; and

WHEREAS, the Parties, acting by and through their respective governing bodies, adopt the foregoing premises as findings of said governing bodies; and

NOW THEREFORE, in consideration of the mutual promises, inducements, covenants, agreements, conditions and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE I - TERM

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

ARTICLE II - TERMINATION

2. A 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 contract between a Party and a vendor, although the terms of the existing contract may not be revised once the withdrawal has occurred.

ARTICLE III - PURCHASING

3. Each Party will designate a person to act on their behalf in all matters relating to the cooperative purchasing program. All purchases will be affected by a purchase order from the purchasing party and directed to the vendor(s). The Parties will make payments directly to vendors under the contracts made under Chapter 271, Subchapter F, Texas Local Government Code. The purchasing Party shall be responsible for its own ordering, inspections, and acceptance of goods and services. The purchasing Party will be responsible for the vendors’ compliance with provisions relating to the quality of items and terms of delivery. The originating contracting Party is not responsible or liable for the performance of any vendor used by the purchasing Party as a result of this Agreement.

ARTICLE IV - CURRENT REVENUE

4. 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 this Agreement creates no debt and that any debt created through a purchase shall be the sole obligation of the Purchasing Party and no obligation or Interlocal Purchase Agreement Between Texas City Independent School District and the City of Texas City liability for such debt shall be a liability or obligation of the other Party.

ARTICLE V - FISCAL FUNDING

5. 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

6A. Notice: Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective Party at the address set forth opposite the signature of the Party.

6B. Amendment: This Agreement may be amended by the mutual written agreement of the Parties.

6C. 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.

6D. 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 Galveston County, Texas.

6E. 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.

6F. Recitals: The recitals to this Agreement are incorporated herein.

6G. 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.

6H. No Assignment: The Parties may not assign or transfer their rights under this Agreement.

6I. Compliance with Law: Each Party is responsible for complying with any additional or varying laws and regulations regarding purchases.

6J. 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.

Terms

1. Each Party agrees to supply the other Party with information concerning contracts each Party currently utilizes or will utilize in the future with various Vendors. This Agreement shall apply only to those materials, goods, or services for which the Party currently has, or will have in the future, under an executed contract with a Vendor. Nothing herein shall obligate a Party to purchase any materials, goods, or services from any particular Vendor. A Party shall not, under any circumstances, be obligated to procure any materials, goods, or services for the other Party nor to include the other Party in any procurement effort. Each Party reserves the right, in its sole discretion, to terminate any or all of its contracts with any Vendor(s) without the prior written notice or approval of the other Party. Neither Party owes the other Party any obligation whatsoever for the use of its contracts. Neither Party owes compensation to the other Party for the use of its current executed contracts. Neither Party shall enter into any contract allowing any third party including, but not limited to other municipalities, agencies, departments, counties, cooperative purchasing organizations or other governmental entities, the use of the other Party's contracts through the utilization of this Agreement.

2. Each Party requesting Vendor to supply materials, goods, or services (the "Requesting Party") under an executed contract from the other Party ("Contracting Party") will enter into a contract with the Vendor. Each Vendor, in its own discretion, must agree to allow the Requesting Party to purchase materials, goods, or services under the contract between the Vendor and the Contracting Party. The following language shall be included in each contract the Requesting Party enters into with a Vendor.

The materials, goods, or services subject to this contract are being procured using an executed contract between Vendor and Galveston County, subject to the following.

Vendor has the right to refuse the City of Texas City request to use the Galveston County executed contract;

If Vendor agrees to contract with City of Texas City using its executed contract with Galveston County then all materials, goods, or services purchased under the Agreement between City of Texas City and Vendor shall be in accordance with the current terms and conditions of the Galveston County executed contract;

City of Texas City shall have no authority whatsoever to change any terms, conditions, or pricing in any Galveston County contract;

In the event that the contract was procured using a Request For Proposals or any other procurement process that allows for negotiation, the City of Texas City may negotiate pricing and terms that would apply to City of Texas City only;

Vendor shall bill City of Texas City directly for any and all materials, goods, or services purchased by City of Texas City under the Galveston County executed contract;

Vendor shall look only to City of Texas City for any and all compensation owed for purchases made by City of Texas City utilizing the executed Galveston County contract; and

Vendor shall settle any and all disputes with City of Texas City concerning any purchases made by City of Texas City. Galveston County shall not be a party to any dispute between Vendor and City of Texas City nor be responsible in any way for the acts or omissions of City of Texas City

3. Each Party understands that all the materials, goods, or services procured using the other Party's executed contracts shall be procured by the Party in accordance with all applicable federal, state, and local laws, rules, regulations, or ordinances, including but not limited to the County Purchasing Act TEX. LOC. GOV'T CODE §§ 262.021, *et. seq* as amended and the Purchasing and Contracting Authority of Municipalities TEX. LOC. GOV'T CODE §§ 252.001, *et. seq.*, as amended.

4. Each Party shall be responsible to a Vendor only for the materials, goods, or services ordered and received by the Party and shall not, by the execution of this Agreement, assume any liability or waive any rights under the applicable contract or as provided by law. Any and all disputes arising between Vendor and the Requesting Party shall be handled between the Requesting Party and Vendor. Vendors shall bill the Requesting Party directly for all materials, goods, or services ordered by it. The Requesting Party understands and agrees it shall make all payments to Vendors in accordance with all applicable laws including, but not limited to Tex. Gov't Code Ann. §§ 101.021, *et. seq.*, as amended.

5. EACH PARTY SHALL BE RESPONSIBLE FOR ALL CLAIMS AND LIABILITY DUE TO THE ACTIVITIES OF THE PARTY'S EMPLOYEES, OFFICIALS, AGENTS OR SUBCONTRACTORS ARISING OUT OF OR UNDER THIS AGREEMENT AND WHICH RESULT FROM ANY ACT, ERROR, OR OMISSION; INTENTIONAL TORT; INTELLECTUAL PROPERTY INFRINGEMENT; OR FAILURE TO PAY A VENDOR; COMMITTED BY THE PARTY OR ITS EMPLOYEES, OFFICIALS, AGENTS, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH IT EXERCISES CONTROL.

6. This Agreement is subject to the federal, state, and local laws, orders, rules, ordinances, and regulations relating to the Agreement and funded by state or federal funds, or of applicable conditions of participation in Medicaid or Medicare program(s). Each Party shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations concerning the performance of this Agreement.

7. This Agreement is governed by the laws of the State of Texas. The forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Galveston County, Texas.

13 Any provision of this Agreement that by its plain meaning is intended to survive the expiration or earlier termination of this Agreement, including without limitation the indemnification provisions herein, shall survive such expiration or earlier termination. If an ambiguity exists as to survival of any provision, the provision shall be deemed to survive.

EXECUTION. Multiple Counterparts: The Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

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

CITY OF TEXAS CITY, TEXAS

GALVESTON COUNTY

By: _____
Dedrick D. Johnson, Jr., Mayor

By: _____