

## INTERLOCAL COOPERATION AGREEMENT FOR COOPERATIVE PURCHASING

This **Interlocal Cooperation Agreement for Cooperative Purchasing**, ("**Agreement**"), is made by and between the **City of Midlothian** ("**Midlothian**"), a Texas home rule municipality located in Ellis County, and the **City of Farmers Branch** ("**Farmers Branch**"), a Texas home rule municipality located in Dallas County, acting by and through their authorized officers. Midlothian and Farmers Branch are collectively referred to herein as "**Parties**" and individually as "**Party**."

### RECITALS:

**WHEREAS**, the Parties have each determined a need for a cooperative agreement to purchase like goods and services to avoid duplication of procurement efforts and to obtain the benefits of volume purchasing; and

**WHEREAS**, this Agreement establishing a cooperative purchasing agreement between the Parties is authorized by Chapter 791 of the Texas Government Code (the "Interlocal Cooperation Act" or "**the Act**") and Subchapter F, Chapter 271 of the Texas Local Government Code; and

**WHEREAS**, TEX. LOC. GOV'T CODE §271.102 and TEX. GOV'T CODE §791.025 authorize local governments (as defined in the Act) to participate in cooperative purchasing programs with other local governments or local cooperative organizations; and

**WHEREAS**, a local government that purchases goods and services pursuant to a cooperative purchasing program with another local government satisfies the purchasing local government's requirement to seek competitive bids for the purchase of goods and materials pursuant to TEX. LOC. GOV'T CODE §271.102(c) and TEX. GOV'T CODE §791.025(c); and

**WHEREAS**, the Parties, each being a "local government" as defined in the Act, desire to enter into a cooperative purchasing program which will allow each Party to purchase goods and services under the other Party's competitively bid contracts pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV'T CODE and TEX. GOV'T CODE §791.025.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

### ARTICLE I PURPOSE

The purpose of this Agreement is to establish a cooperative purchasing agreement between the Parties that will allow each Party to purchase goods and services under the other Party's competitively bid contracts pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV'T CODE and TEX. GOV'T CODE §791.025.

### ARTICLE II TERM

The term of this Agreement shall be for a period of one (1) year commencing on the Effective Date. Thereafter, unless sooner terminated as provided herein, the term of this Agreement shall automatically renew for successive periods of one (1) year each pursuant to of the TEX. GOV'T CODE §791.011(f), each renewal period being under the same terms and conditions of this Agreement,.

### **ARTICLE III TERMINATION**

Either Party may terminate this Agreement by providing written notice to the other Party not later than thirty (30) days prior to the desired date of termination.

### **ARTICLE IV PURCHASING**

**4.1 City Manager Authority:** The City Manager or designee for each Party is authorized to act on behalf of the respective Party in all matters relating to this Agreement.

**4.2 Vendor Consent to Cooperative Purchasing:** Each Party that enters into a contract with a vendor for goods and/or services shall attempt to obtain the vendor's agreement to offer those goods and services to the other Party and other local governments for the same price and on the same terms and conditions as have been offered to the first purchasing Party. If the vendor so agrees, and if the second purchasing Party is agreeable to such terms and conditions, the second purchasing Party may enter its own separate contract with the vendor for the purchase of such goods or services. Execution of this Agreement does not obligate either Party to make any purchase, to pay any membership fee, or to otherwise in any manner incur a cost or obligation.

**4.3 Responsibility for Payments:** Unless otherwise agreed between each Party's designated representative, payments for a purchase made by the second purchasing Party shall be paid directly to the vendor and not by the first purchasing Party. The second purchasing Party shall have the responsibility of determining whether the vendor has complied with provisions in its contract with vendor, including, but not limited to, those relating to the quality of items and terms of delivery, and shall be responsible for enforcement of its contract against the vendor, including all cost of enforcement.

**4.4 Current Funds:** Each Party paying for the performance of governmental functions or services shall make such payments from current revenues available to the paying Party and shall be in amount that fairly compensates a vendor for their services or functions performed under a contract entered into pursuant to this Agreement.

**4.5 Exclusions:** Pursuant to TEX. GOV'T CODE §791.011(j), neither Party may purchase construction-related goods or services pursuant to this Agreement in an amount greater than \$50,000 unless a person designated by either Party certifies in writing that:

- (a) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051 of the Texas Occupations Code; or
- (b) the plans and specifications required under Chapters 1001 and 1051 of the Texas Occupations Code, have been prepared.

**4.6 Freedom to Contract:** Nothing in this Agreement shall prevent a Party from advertising for and awarding contracts for goods or services separate and apart from this Agreement, nor shall either Party be obligated to purchase goods or services from a contract awarded pursuant to this Agreement.

**ARTICLE V  
MISCELLANEOUS**

**5.1     Relationship of Parties:** This Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture or trust between the Parties.

**5.2     Notice:** Any notice required or permitted to be delivered hereunder shall be deemed received (i) on the third business day after being deposited in with the United States Postal Service, Postage Prepaid, Certified Mail, Return Receipt Requested, or (ii) upon delivery when sent by hand-delivered or overnight courier, addressed to the respective Party at the address set forth below the signature of the Party's authorized representative.

**5.3     Amendments:** This Agreement may be amended only by written agreement signed by both Parties.

**5.4     Compliance with Federal, State, and Local Laws:** This Agreement shall be subject to all applicable federal, state, and local laws, ordinances, rules, and regulations.

**5.5     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.

**5.6     Governing Law; Venue:** 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; and venue for any action concerning this Agreement shall be in the State District Court of Ellis County, Texas.

**5.7     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.

**5.8     Recitals:** The recitals to this Agreement are incorporated herein.

**5.9     Counterparts:** This Agreement may be signed in any number of identical counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**5.10    Approval by Governing Bodies:** This Agreement has been duly passed and approved by an ordinance or resolution of the governing bodies of the Parties.

**5.11    Effective Date:** This Agreement shall be Effective on the date it bears the signatures of authorized representatives of both Parties, whether appearing on the same document or on identical counterparts as authorized herein.

*Signatures on Following Page*

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF MIDLOTHIAN, TEXAS**

By: \_\_\_\_\_

Chris Dick, City Manager  
104 W. Avenue E  
Midlothian, Texas 76065

**ATTEST:**

\_\_\_\_\_  
Tammy Varner, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Joseph J. Gorfida, Jr., City Attorney

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF FARMERS BRANCH, TEXAS**

By: \_\_\_\_\_

John Land, Interim City Manager  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

**ATTEST:**

\_\_\_\_\_  
Stacy Henderson, City Secretary

**APPROVED AS TO FORM**  
**Peter G. Smith, City Attorney**

By: \_\_\_\_\_