INTERLOCAL AGREEMENTS: AN OVERVIEW (OR HOW TO KEEP THE SHERIFF FROM HANGING THE LAWYER OVER A "SIMPLE MOU")

JOHN C. GRACE
Assistant City Attorney
City of Lubbock
1625 13th Street
Post Office Box 2000
Lubbock, Texas 79457
806.775.2222
jgrace@mylubbock.us

State Bar of Texas
GOVERNMENT LAW BOOT CAMP
July 27, 2016
Austin

CHAPTER 5

JOHN CHARLES GRACE
Assistant City Attorney
City of Lubbock
1625 13th Street
P.O. Box 2000
Lubbock, Texas 79457-2000
(806) 775-2222
jgrace@mylubbock.us

John Grace was born and raised in Midland, Texas. He received his Bachelor's degree in Journalism, Broadcasting, and Film from Trinity University in 1985, and his law degree from St. Mary's University in 1993. John practiced general law as a solo in San Antonio from 1993 until 2001, when he joined the Civil Division of the Lubbock County Criminal District Attorney's Office. In 2010, John moved to the Lubbock City Attorney's Office where he works in the litigation section, suing and defending on behalf of the City of Lubbock. John also advises the city council, city boards and city staff on various municipal law issues. He is a qualified mediator and he is AV rated by Martindale Hubbell.

John is a Councilmember to the Government Law Section of the State Bar of Texas, and he serves as Secretary for the section. He is a Fellow of the Texas Bar College and serves as the College's Vice Chair. He is also a Fellow of the Texas Bar Foundation. John is the Immediate Past President of the Lubbock Area Bar Association. He is also the President of the West Texas Alumni Chapter of Trinity University.

Outside of the office, John holds a Type 7 federal firearms license and an amateur radio Technician's license (K5JCG). He rebuilds vacuum tube HiFi equipment and collects antique ink wells and old typewriters. He has been married to his college sweetheart, Jill, since 1986, and they have a daughter, Chandler, who graduated in May from their alma mater, Trinity University.

TABLE OF CONTENTS

I. INTRODUCTION 1
A. What is an Interlocal Agreement? 1
B. Governed by Chapter 791 of the Local Government Code 1
1. Very Little Interpretive Caselaw 1
C. Common Types of Interlocal Agreements 1
D. Governmental Entities Authorized to Enter Into Interlocal Agreements 2

II. BASIC REQUIREMENTS FOR AN INTERLOCAL AGREEMENT 2
A. Requirements Imposed by Chapter 791 of the Local Government Code 2
1. Authorized by the Governing Body 2
2. State the Purpose, Terms, Rights, and Duties of the Parties 2
3. Specify That Payments Must Come From Current Revenues 2
B. Other Requirements Imposed by Chapter 791 3
1. Each Party Must be Authorized to Perform the Functions or Services Contemplated by the Agreement 3
2. Payments Must Fairly Compensate the Performing Party 3
C. Considerations When Drafting an Interlocal Agreement 3
1. Dispute Resolution 3
a. Dispute Resolution Agreement 3
b. Termination 4
c. Fully Executed At Outset 4
2. Venue and Choice of Law 4
3. Creation of an Administrative Agency 4
4. General Terms Common to Most Contracts 4
a. No Joint Enterprise 4
b. Preservation of Immunities 5
c. No Indemnification 5
d. Notices 5
e. Termination 5
f. Renewal 5
5. “Evergreen” Clause 5
6. Contractual Renewal Provision 5
7. Renewal by Mutual Written Agreement 5
a. Amendments 5

III. SPECIAL PROVISIONS FOR SPECIFIC TYPES OF INTERLOCAL AGREEMENTS 6

IV. CONCLUSION 6

APPENDIX A 7

INTERLOCAL AGREEMENTS: AN OVERVIEW (OR HOW TO KEEP THE SHERIFF FROM HANGING THE LAWYER OVER A "SIMPLE MOU")

I. INTRODUCTION

From a "doing business" perspective, governmental entities do many of the same things that private entities do. They hire and fire employees. They procure and provide goods and services. They enter into contracts and other agreements with other entities. In most communities, local governmental entities are the largest organizations with the largest workforces…and the largest budgets. But governmental entities are unlike most private entities. They enjoy governmental immunity from most legal actions, including suits for breach of contract in many cases. Governments are not profit-driven. They are rightfully required to operate with a degree of openness and transparency that simply would not work in the private sector. In recognition of the special circumstances which govern the day to day operation of government, local governmental entities in Texas are given special treatment when they enter into contractual agreements with each other.

Officials within a governmental entity may not realize they are proposing an interlocal agreement when they ask for legal guidance, review, or approval. Interlocal agreements are often drafted by appointed officials or department heads, who believe they are simply putting an informal agreement with a counterpart at another governmental agency into writing...which is a good thing. They may believe they are formalizing what was once a "hand shake" agreement, and they may be taken aback when you, as their lawyer, inform them that the agreement will need to go before the city council, Commissioners Court, board of regents, or some other governing body and that it will need to include certain provisions. I am sure many lawyers have been approached by a government client who describes a new project as "just an MOU...it's not a contract." The contemplated single page "MOU" soon begins to look like...a "contract." And the client usually finds this frustrating. And blames the lawyer for making it more complicated than it needs to be.

This paper seeks to make this transformation from "letter agreement" to "interlocal contract" as smooth, painless, and straightforward as possible.

A. What is an Interlocal Agreement?

An interlocal agreement is a contract between a local governmental entity and another local government that complies with the statutory requirements of Chapter 791 of the Local Government Code.

Interlocal agreements can go by many names, including mutual aid agreements, joint operation plans, letters of agreement, memoranda of understanding, cooperative agreements, or any of a number of other titles which make no reference to the word "contract."

If the agreement is between two or more governmental entities, it is an interlocal agreement, subject to the requirements of the Interlocal Cooperation Act.

B. Governed by Chapter 791 of the Local Government Code

In 1971, Texas enacted the "Interlocal Cooperation Act" as Chapter 791 of the Government Code. The purpose of the chapter is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state. *Tex. Gov't Code §791.001 (Vernon 2012)*. The Act is the statutory authority for local governmental entities to enter into contractual agreements with each other, with the State of Texas, with administrative agencies, and with similar entities in other states.

1. Very Little Interpretive Caselaw

The Act has generated very little by way of interpretive caselaw. This is due, in part, to the clear, simple wording of the Act. The Act has also been legislatively stable. The only recent amendments have been to add provisions by moving them into the Act from other Codes. Practically speaking, because agreements under the Act are between governmental entities which enjoy general immunity from breach of contract suits, and because of the cooperati8ve nature of these agreements, parties to an interlocal agreement are not inclined to sue each other over contractual disagreements. Finally, most disputes arising under the Act have been addressed, historically, by opinions from the Texas Attorney General.

C. Common Types of Interlocal Agreements

Common types of Interlocal Agreements include agreements for such government services and functions as:

1) Police protection and detention services;
2) Fire protection;
3) Streets, roads, and drainage;
4) Public health and welfare;
5) Parks and recreation;
6) Library and museum services;
7) Records center services;
8) Waste disposal;
9) Planning;
10) Engineering;

11) Administrative functions (including tax assessment and collection, personnel services, purchasing, records management, data processing, warehousing, equipment repair, and printing)[1];
12) Public funds investment;
13) Comprehensive health care and hospital services; or
14) Other governmental functions in which the contracting parties are mutually interested.

Tex. Gov't Code §791.003(3)(A-N) (Vernon 2012).

D. Governmental Entities Authorized to Enter Into Interlocal Agreements

Local governments authorized to enter into interlocal agreements include:

1) County, municipality, special district, junior college district, or other political subdivision of this state or another state;
2) Local government corporations;
3) Political subdivision corporations;
4) Local workforce development boards; or
5) Combination of two or more entities described above.

Tex. Gov't Code §791.003(4)(A-E) (Vernon 2012).

II. BASIC REQUIREMENTS FOR AN INTERLOCAL AGREEMENT

A. Requirements Imposed by Chapter 791 of the Local Government Code

Chapter 791 includes three mandatory requirements for all interlocal agreements. An interlocal agreement must:

1) Be authorized by the governing body of each party to the contract;
2) State the purpose, terms, rights, and duties of the contracting parties; and
3) Specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

Tex. Gov't Code §791.011(d)(1-3) (Vernon 2012).

1. Authorized by the Governing Body

An interlocal agreement must be authorized by the governing body of each party. The delegated authority to enter into a contract is not sufficient. An interlocal agreement, to comply with the Act, must be approved by the governing body of each party (*i.e.*, the city council, Commissioners Court, etc.), even if the subject matter of the agreement is within the delegated authority of the Purchasing Manager, City Manager, Chief of Police, Sheriff, etc. In *Anderson v. Wood*, 152 S.W.2d 1084 (Tex. 1941), the Texas Supreme Court held, for example, that the Commissioners Court of a county is the:

> "general business and contracting agency of the county, and it alone has authority to make contracts binding on the county, unless otherwise specifically provided by statute."

For cities, this authority rests with the city council.

An example of ineffective authority is discussed in Attorney General Opinion JM-892, which addressed whether a county commissioner acting as ex officio road commissioner could enter into an interlocal agreement with a municipality to perform road construction. The Attorney General found the interlocal agreement to have been improperly executed because it was not authorized by the county Commissioners Court. *Op. Tex. Att'y Gen. No. JM-892 (1988)*. The agreement would have been permissible, as an interlocal agreement, if it had been properly authorized by the Commissioners Court.

One common error in governmental contracts, including interlocal agreements, is a failure to name the governmental entity as the contracting party. Departments, elected officials and agencies are not proper parties to a government contract. The proper party should always be the governmental entity itself. If necessary to make the client "happy" it is not improper to note that the party is entering into the contract:

> "on behalf of its _____ department."

(e.g., "*The City of Lubbock, Texas, on behalf of its Police Department.*")

2. State the Purpose, Terms, Rights, and Duties of the Parties

When drafting an interlocal agreement, avoid broad delegations of authority or references to an agreement to be made later. Besides being sloppy, doing so runs afoul of the requirement of §791.011(d)(1) that the agreement be authorized by the governing body.

3. Specify That Payments Must Come From Current Revenues

An interlocal agreement may not confer authority that neither party to the contract has otherwise. This statutory requirement is in keeping with the rule that a governing body may only commit to an expenditure of

[1] *Tex. Gov't Code §791.003(1) (Vernon 2012).*

current revenue and avoids an unconstitutional lending of the governmental entity's credit. *Tex. Const. Art XI, §3*.

B. Other Requirements Imposed by Chapter 791

1. Each Party Must be Authorized to Perform the Functions or Services Contemplated by the Agreement

It is not uncommon for two governmental entities to contemplate an agreement which would, in effect, allow one of the parties to perform a governmental function or service which it cannot otherwise perform (or to delegate to the other party a function or service the other party is not authorized to perform.) This is one of the few areas with guidance from both caselaw and attorney general opinions.

Attorney General John Hill addressed the issue in 1973, when his office was asked to opine on the authority of a water conservation and reclamation district to contract for fire protection with a volunteer fire department. *Op. Tex. Att'y Gen. No. H-28 (1973)*. The district desired to operate a fire department under an interlocal agreement with a rural volunteer fire department. Attorney General Hill first noted that a water conservation and reclamation district has no authority to engage in firefighting activities. He rejected the district's argument that putting out fires was a "useful purpose" for the water that the district was conserving and reclaiming. (Nice try.) The opinion cites *Deason v. Orange County Water Control and Improvement District*, 244 S.W. 2d 981 (Tex. 1952), which held that the purpose of providing fire protection was outside the subject matter of the district's authority. As such, the Attorney General held that because the district lacked the authority to provide fire protection services, it could not enter into an interlocal agreement for those services.

More recently, Attorney General Greg Abbott advised the Texas Department of Public Safety that it could not contract with a county tax assessor-collector to issue driver's licenses. *Op. Tex. Att'y Gen. No. GA-0917 (2012)*. The Attorney General found that DPS...and only DPS...is authorized to issue driver's licenses, and that county tax assessor-collectors are similarly not authorized to issue them. Because the authority to issue driver's licenses did not rest with each party to the contemplated interlocal agreement, the interlocal agreement was not authorized by Chapter 791.

One important "take away" from this requirement is that even though an agreement between two governmental entities might make sense, from a practical standpoint, it does not mean that the two entities can enter into an interlocal agreement to achieve that practical result.

2. Payments Must Fairly Compensate the Performing Party

Section 791.011(e) of the Act requires that payments under an interlocal agreement must fairly compensate the performing party. This statutory requirement fits within the context of the constitutional prohibition against governmental entities making gifts of public funds or resources. *Tex. Const. Art III, §51 and 52*. Care should be taken in drafting interlocal agreements to make sure that the consideration for the agreement, and the value for the functions or services received, can be justified from an accounting standpoint. An interlocal agreement may, however, take into account the value given and received by the two entities. If there is additional consideration given by the paying party, it should be spelled out in the agreement and not recited merely as "other good and valuable consideration." Likewise, if there is some valid reason for a discount or devaluation on the part of the performing party, that, too, should be included with specificity.

C. Considerations When Drafting an Interlocal Agreement

1. Dispute Resolution

Given how regularly governmental entities enter into interlocal agreements, the amount of resulting litigation is very small. Litigation between two governmental entities is often precluded by mutual immunities and, when allowed, it is cumbersome and often not worth the time or expense. Disputes between governmental entities, unless of a significant nature, are often resolved informally. It can be helpful to make provisions for alternative dispute resolution within the agreement itself.

a. Dispute Resolution Agreement

Section 791.015 provides for the submission of disputes arising under the contract to be submitted to the alternative dispute resolution (ADR) procedures authorized by Chapter 2009 of the Government Code[2], which itself authorizes governmental entities to engage in the various forms of ADR described in the Civil Practices & Remedies Code[3]. These forms of ADR include[4]:

---

[2] *Tex. Gov't Code Chapter 2009 (Vernon 2012).*

[3] *Tex. Civil Practices & Remedies Code Chapter 154 (Vernon 2012).*

[4] Chapter 154 also provides for "Mediation Following Application for Expedited Foreclosure," however this type of specialized alternative dispute resolution is not readily applicable in the context of interlocal agreements, and is therefore not included in the foregoing list. *Tex. Gov't Code §154.028 (Vernon 2012).*

1) Mediation, pursuant to §154.023;
2) Mini-trial, pursuant to §154.024;
3) Moderated Settlement Conference, pursuant to §154.025;
4) Summary Jury Trial, pursuant to §154.026; and
5) Arbitration (binding or non-binding), pursuant to §154.027.

Mediation and arbitration are the most familiar forms of dispute resolution, but the other procedures are authorized and may make sense given the nature of a specific interlocal agreement.

If the result of a mediation or arbitration is a modification of the substantive terms of the agreement, §791.011(d)(1) (approval by the governing bodies) requires that the modification of the agreement be authorized by the governing bodies of the contracting parties. *Tex. Gov't Code §791.011(d)(1) (Vernon 2012).*

b. Termination

One way to resolve many disputes that arise under an interlocal agreement is to allow for termination of the agreement, without cause, on short notice (*i.e.*, 30 days or, if appropriate, less.) The existence of an "early out" clause can provide incentive for both parties to work together to resolve any disagreements or uncertainties which might arise.

c. Fully Executed At Outset

Another way to avoid disputes altogether (at least for your client) is to make the agreement fully performed at the time of execution (or very shortly thereafter.) If your client has received the benefit of its bargain, there is little for your client to subsequently dispute.

2. Venue and Choice of Law

Parties to an interlocal agreement may provide for choice of law (which in the case of virtually all agreements will be Texas law, given that the vast majority of these agreements will concern two entities within the State of Texas) and choice of venue. *Tex. Gov't Code §791.012 (Vernon 2012).* Note that the statutory authorization for parties to choose the law that will govern the interlocal agreement does not imply a waiver of governmental immunity. *Tex. Political Subdivisions Prop./Cas. Joint Self-Ins. Fund v. Ben Bolt-Palito Blanco Cosol. Indep. Sch. Dist.*, 163 S.W.3d 172, (Tex. App. – San Antonio 2005, pet. granted), reh'g denied, No. 04-04-00658-CV (Tex. App. San Antonio 2005), rev'd, 212 S.W.3d 320 (Tex. 2006), reh'g denied. Any immunities available to the parties are preserved.

3. Creation of an Administrative Agency

Parties to an interlocal agreement may create an administrative agency to supervise the performance under the contract. *Tex. Gov't Code §791.013(a)(1) (Vernon 2012).* The agreement may also designate an existing local government to supervise the agreement. *§791.013(a)(2).* The parties may also contract with a tax-exempt organization that provides services on behalf of political subdivisions and derives at least 50% of its income from governmental sources. *§791.013(a)(3).* Third parties who administer interlocal agreements may employ personnel, perform administrative activities, and provide administrative service necessary to perform the interlocal contract. *§791.013(b).* All property held by the administrative agency is exempt from taxation as if it was held by the governmental parties to the interlocal agreement. *§791.013(c).* The administrative agency retains any intellectual property it develops. *§791.013(d).*

Risk pools are an example of this type of third-party administrative agency, created expressly to act as a neutral third party for a group of governmental entities who join together by way of interlocal agreements.

4. General Terms Common to Most Contracts

As with any other contract to which a governmental entity is a party, there are several provisions which are good practice in any contract, even those in which the other party is also a governmental entity.

a. No Joint Enterprise

Even since the Texas Supreme Court's decision in *Texas DOT v. Able*, 35 S.W.3d 608 (Tex. 2000), which waived immunity for governmental agencies engaged in a "joint enterprise," it has been a common practice to disclaim any such "joint enterprise" in any agreement between two or more governmental agencies (assuming the intent of the contract is not to form a joint enterprise.) Care should be taken to avoid inadvertently creating a joint enterprise by eliminating one or more of the required elements, to wit:

1) An express or implied agreement among the members of the group,
2) A common purpose to be carried out by the group,
3) A community of pecuniary interest among the members of the group, and
4) An equal right to voice in the management of the joint enterprise that gives each party an equal right of control.

Able, 35 S.W.3d at 613.

Of the four required elements, the first three would be hard to avoid in an interlocal agreement. The

fourth element (*e.g.*, an equal right to voice in the management of the enterprise) can be eliminated by giving one party dominant control over the subject matter of the interlocal agreement.

b. Preservation of Immunities

> "While both the Act and subsequent caselaw preserve the parties' immunities in an interlocal agreement, it is prudent to include a statement that nothing in the agreement is intended to waive any party's immunities."

c. No Indemnification

Lawyers representing governmental entities are, no doubt, familiar with the prohibition against contractual indemnifications (as an improper form of indebtedness):

> "...unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two percent, thereon."

Tex. Const. Art XI, §5 and *Op. Tex. Att'y Gen. No. GA-0176 (2012)*. Nevertheless, it is common for proposed interlocal agreements to contain indemnification language. When the drafter is aware of the Constitutional prohibition against indemnification, the contractual provision may be prefaced with:

> "To the extent allowed by law..."

or something similar. While there is no caselaw on this point, and while this language may defeat a governmental obligation to indemnify, it could be argued that this prefatory language only requires the indemnifying governmental party to assess and collect revenue and to create a sinking fund to satisfy the indemnification obligation, because these actions are "allowed by law" and would thus give force and effect to the otherwise improper indemnification requirement. When an indemnification clause in an interlocal agreement is prefaced with:

> "to the extent allowed by law,"

it is prudent to request that the provision be struck in its entirety. If the other party refuses, then the provision should be revised, adding that:

> "[n]othing in this provision requires that funds be assessed or collected or that a sinking fund be created."

d. Notices

If the parties anticipate giving notices to each other, the notices should go to the office for each party charged with acting as the legal agent for service of process, with copies to the person or office actually administering the interlocal agreement. For example, if one party to the agreement is a municipality, notices to the municipality should be given to the City Secretary. If the interlocal is being administered by the Chief of Police, then the contract may specify that notices should be copied to the Chief of Police.

e. Termination

As discussed above, with regard to Dispute Resolution, one way to encourage the parties to resolve any conflict is to provide for termination of the agreement without cause, on short notice.

f. Renewal

Interlocal agreements may also provide for renewal of the agreement at the end of the contractual term. This can be accomplished in one of several different ways.

5. <u>"Evergreen" Clause</u>

The original contract may provide that the interlocal agreement will automatically renew at the end of each term unless notice is given by one of the parties of a desire to allow the agreement to expire. No action is required by either party for the agreement to renew if automatic renewal was authorized by the governing bodies of the contracting parties at the time the agreement was initially executed.

6. <u>Contractual Renewal Provision</u>

The original contract may provide that the interlocal agreement is subject to X number of renewals at the conclusion of the original term. The contract may provide for these renewals on the approval of a delegated party, if so authorized by the governing bodies of the contracting parties at the time the agreement was initially executed.

7. <u>Renewal by Mutual Written Agreement</u>

If the original interlocal agreement does not provide for renewals, any such renewal must be authorized by the governing bodies of the contracting parties.

a. Amendments

An amendment to an interlocal agreement that makes a substantive change to the agreement must be authorized by the governing bodies of the contracting parties, in the same way that the original agreement was authorized.

III. SPECIAL PROVISIONS FOR SPECIFIC TYPES OF INTERLOCAL AGREEMENTS

The Act makes special provisions for certain types of specialized agreements[5]:

- §791.006 Liability in Fire Protection Contract for Provision of Law Enforcement Services
- §791.021 Regional Correction Facilities
- §791.022 Regional Jail Facilities
- §791.023 State Criminal Justice Facilities
- §791.024 Community Corrections Facilities
- §791.025 Purchases
- §791.026 Water Supply and Waste Water Treatment Facilities
- §791.027 Emergency Assistance
- §791.028 Joint Payment of Road Construction and Improvements
- §791.029 Regional Records Centers
- §791.030 Health Care and Hospital Services
- §791.031 Transportation Infrastructure
- §791.032 Construction, Improvement, and Repair of Streets in Municipalities
- §791.033 Construction, Operation or Maintenance of Facilities on State Highway System
- §791.034 Relief Highway Route Around Certain Municipalities
- §791.035 Contracts with Institutions of Higher Education or University Systems
- §791.036 Regulation of Traffic in Special Districts

If you are drafting or reviewing an interlocal agreement concerning any of these special situations, you should review the corresponding section of Chapter 791 for specific requirements and guidance.

IV. CONCLUSION

The interlocal Cooperation Act, codified in Chapter 791 of the Texas Government Code, provides a roadmap for drafting clear, concise agreements designed to achieve the stated purpose of the Act: to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state.

[5] *Tex. Gov't Code Chapter 791, Sub-chapters A and C (Vernon 2012).*

APPENDIX A

This "Amendment to Agreement" may be used with contracts which were not drafted by you or your client, to add provisions required by law or by the policies of your client. The underlying agreement should have a notation inserted that, "This Agreement is modified and amended by the provisions set forth in the attached Amendment to Agreement, which is incorporated herein by reference and supersedes any conflicting provision in the Agreement to which it is attached."

AMENDMENT TO AGREEMENT
Contract No. _____

THE AGREEMENT(S) TO WHICH THIS AMENDMENT IS ATTACHED IS/ARE HEREBY AMENDED TO INCORPORATE THE FOLLOWING TERMS, CONDITIONS AND PROVISIONS AND ANY CONFLICTING TERMS, CONDITIONS OR PROVISIONS IN THE FORGOING ATTACHED AGREEMENT ARE NULL AND VOID AND OF NO EFFECT, IN FAVOR OF THE FOLLOWING:

Parties

The contracting party is the City of _____, Texas, _____, and any and all legal notices to the City shall be sent to the City Secretary at that address. The parties acknowledge and affirm that no department of the City has the legal authority to enter into any contract of any type or nature in the name of the department or to accept any legal notice on behalf of the City.

Funding

The Parties understand and acknowledge that the funding of this Agreement is contained in each Party's annual budget and is subject to the approval of each Party in each fiscal year. The Parties further agree that should the governing body of any of the Parties fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the governing body of any of the Parties fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to that Party and the Party shall then have no further obligation to the any other Party. When the funds budgeted or certified during any fiscal year by a Party to discharge its obligations under this Agreement are expended, any other Party's *sole and exclusive remedy* shall be to terminate this Agreement. If this agreement is between governmental entities, as defined by Chapter 791 of the Texas Government Code, each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

Venue and Applicable Law

This Agreement is subject to all present and future valid laws, orders, rules and ordinances and/or regulations of the United States of America, the State of Texas and the Parties, and any other regulatory body having jurisdiction. This Agreement shall be construed and governed according to the laws of the State of Texas. The sole venue for any action, controversy, dispute or claim arising under this Agreement shall be in a court of appropriate jurisdiction in _____ County, Texas ***exclusively***.

Public Information

This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Tex. Gov't. Code Ann. Chapter 552 et seq., as amended (the "Texas Public Information Act") the same shall be of no force and effect.

No Third-Party Beneficiaries

This Agreement is entered solely by and between, and may be enforced only by and among the Parties. Except as set forth above, this Agreement shall not be deemed to create any rights in or obligations to any third parties.

No Personal Liability

Nothing in this Agreement is construed as creating any personal liability on the part of any employee, officer or agent of any public body that may be a party to this Agreement.

No Joint Enterprise

This Agreement is not intended to, and shall not be construed to create any joint enterprise between or among the parties.

No Indemnification by City

The parties expressly acknowledge that the City's authority to indemnify and/or hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution and any provision which purports to require indemnification by the City is invalid. Nothing in this Agreement requires that funds be assessed or collected or that a sinking fund be created.

Sovereign Immunity Acknowledged and Retained

THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY ANY PARTY OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT A PARTY MAY HAVE BY OPERATION OF LAW. THE CITY OF LUBBOCK RETAINS ALL GOVERNMENTAL IMMUNITIES.

AGREED:

FOR _____:

_____

_____

Name and Title

Date: _____

ATTEST:

_____

_____

Name and Title

APPROVED AS TO FORM:

_____

_____

Name and Title

APPROVED AS TO FORM:

_____

_____

Name and Title

FOR _____:

_____

_____

Name and Title

Date: _____

ATTEST:

_____

_____

Name and Title

APPROVED AS TO FORM:

_____

_____

Name and Title

APPROVED AS TO FORM:

_____

_____

Name and Title