

Resolution 2024-R-09F

Exhibit A

CITY OF BURNET AND CITY OF MARBLE FALLS INTERLOCAL AGREEMENT FOR THE PROVISION OF CERTAIN DIGITAL FORENSICS SERVICES

This Agreement is made under the authority of the Interlocal Cooperation Act, Texas Government Code chapter 791 (the "Act"), by and between the City of Marble Falls, Texas ("Marble Falls") and the City of Burnet ("Burnet"), to be effective as of October 1, 2024. Burnet and the Marble Falls shall herein be referred to individually as "Party" or collectively as "Parties".

WHEREAS, Burnet and Marble Falls would like to contract with each other to provide certain digital forensic services ("Digital Forensic Services") that would be beneficial to the health, safety and welfare of the residents of the Parties; and

WHEREAS, Burnet has the software and personnel appropriate and sufficient to provide such Digital Forensic Services to other local governmental entities in need of such services to promote and protect the health, safety and welfare of their residents, and is willing to provide such Digital Forensic Services for other local governments or local government departments in the geographical area under the terms and conditions of this Agreement; and

WHEREAS, Marble Falls desires to contract with Burnet to provide Digital Forensic Services under the terms and conditions of this Agreement; and

WHEREAS, Section 791.011 (c) of the Act, provides that governmental entities may contract with each other for the provision of governmental functions or services which each Party to the contract has the authority to perform individually; and

WHEREAS, the Digital Forensic Services are governmental functions within the meaning of Section 791.003(3) of the Act; and

WHEREAS, Burnet and Marble Falls are "local governments" within the meaning of Section 791.003(4) of the Act; and

NOW THEREFORE Burnet and Marble Falls agree as follows:

ARTICLE I PURPOSE

The purpose of this Agreement is to establish the terms and conditions under which Burnet will provide Digital Forensic Services to Marble Falls through the use of Cellebrite InsEYEts software for extracting, reviewing, and analyzing evidence found on mobile devices.

ARTICLE II TERMS

Burnet agrees to provide Digital Forensic Services to Marble Falls through the use of Cellebrite InsEYEts software under the following terms and conditions:

Burnet _____ Marble Falls AK

- 2.1 Burnet personnel will unlock and extract data for up to twenty (20) mobile devices per year for Marble Falls.
- 2.2 Burnet personnel will extract data from phones that are unlocked or have a passcode and provide the extraction to Marble Falls.
- 2.3 Marble Falls acknowledges that due to technology advancements some cellular phones and digital devices may be beyond the abilities of the software to unlock and Burnet may be unable to extract data from such devices.
- 2.4 Marble Falls shall pay an initial annual fee of \$10,000.
- 2.5 The Burnet Police Chief and Marble Falls Police Chief are hereby authorized to develop policies and procedures to effectively administer this Agreement.
- 2.6 The annual fee for subsequent Renewal Terms shall be equal to 50% of the annual maintenance fee as described in Article VI(3) of this Agreement. Additionally, Marble Falls shall pay Burnet an additional Fee of \$1,000 annually to assist with the maintenance, repair, and replacement of all hardware needed to operate the Cellebrite InsEYEts system.
- 2.7 This Agreement shall be subject to the terms and conditions of the software licensing agreement between Burnet and Cellebrite.

**ARTICLE VI.
TERM; RENEWAL**

1. The initial term of this Agreement shall be for twelve months (one year) beginning on October 1, 2024, through September 30, 2025 (“Initial Term”).
2. Thereafter, subject to annual appropriations, this Agreement shall automatically renew for successive one-year renewal terms, commencing on October 1st (“Renewal Term”), unless either Party has given the other Party at least one hundred twenty (120) days prior written notice that it does not wish to renew this Agreement.
3. Burnet shall notify Marble Falls of the annual cost for each Renewal Term within ten (10) business days of receipt of such cost from Cellebrite.

**ARTICLE VII.
TERMINATION**

1. After the Initial Term of this Agreement, either Party to this Agreement may terminate this Agreement at the end of the then current Agreement term, without penalty, with or without cause, by giving written notice to the other Party at least one hundred twenty (120) days prior to the end

of the then current term. If termination occurs pursuant to this provision of the Agreement, each Party shall be responsible to the other Party to complete all obligations of the Agreement until the end of the then current Agreement term.

2. Either Party may terminate this Agreement at any time for cause, by giving written notice to the other Party, together with sufficient detail to describe the breach complained of as the basis for such termination for cause, and providing the other Party ten (10) business days to cure the alleged breach, unless, in the reasonable judgment of the Parties, such breach cannot or will not be cured. Cause for such termination may be, but is not limited to, failure of the Contracting Entity to: e.g., make payments timely and in full when due; maintain appropriate equipment necessary to receive the Digital Forensic Services; adequately staff for services with appropriately trained personnel; cooperate reasonably in effecting the delivery of the Digital Forensic Services, or other failure to cooperate as requested that materially compromises the ability of Burnet to deliver the Digital Forensic Services timely and efficiently; or any acts or omissions of Marble Falls or its personnel that compromise or threaten to compromise the ability of Burnet to deliver Digital Forensic Services to other contracting entities. If Burnet terminates under this provision of the Agreement, Marble Falls shall remain liable to Burnet for the remaining portion of the Annual Fee until the end of the then current Agreement term. If Marble Falls terminates under this provision of this Agreement because of a breach by Burnet, Marble Falls shall not be responsible for the remaining unpaid portion of the Annual Fee.

ARTICLE III DESIGNATED REPRESENTATIVES

- 3.1 Burnet hereby appoints the Burnet Police Chief as its designated representative under this Agreement.
- 3.2 Marble Falls hereby appoints the Marble Falls Police Chief as its designated representative under this Agreement.
- 3.3 Either Party may change its designated representative at any time by providing the other Party with written notice of the change.

ARTICLE X. MISCELLANEOUS

1. Governing law. This Agreement shall be governed by the laws of the State of Texas, without giving effect to its choice of laws principles.
2. Venue. Venue for any actions arising from or related to this Agreement shall be and lie exclusively in the state and county courts of Burnet County, or in the United States District Court for the Western District of Texas, Austin Division.
3. Force Majeure. If either Party is rendered unable, wholly or in part, by force majeure to carry out

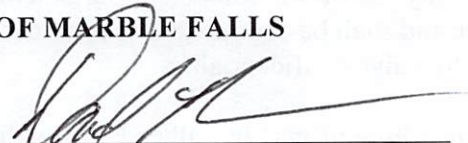
any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that Party to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall mean: acts of God; acts of the public enemy, or war; orders of any kind of any governmental entity or any civil or military authority; acts, orders or delays thereof of any regulatory authorities with jurisdiction over the Parties; insurrections, riots, civil disturbances, explosions, or epidemics; arrests or restraints of government and people ; strikes, lockouts, or other industrial disturbances; landslides, lightning, earthquakes, fires, hurricanes, tsunamis, tornadoes, ice ages, floods, washouts, droughts, or other acts of Nature; breakage of, damage to, or accidents involving necessary machinery or other infrastructure; interruption or other limitation of fuel or other necessary supplies or utilities or utility services; or any other conditions that are not within the reasonable control of the Party claiming force majeure. It is understood and agreed that the settlement of strikes and lockouts affecting a Party hereto shall be entirely within the discretion of that Party, and that the above requirement that any condition of force majeure shall be remedied with all reasonable dispatch shall not, however , require the settlement of strikes, lockouts or other industrial disturbances by acceding to the demand of the opposing third party or parties when such a settlement is determined to be unfavorable or undesirable to the affected Party hereto in the sole judgment of that Party.

4. Duplicate original counterparts; other similar agreements distinct. This Agreement may be executed in duplicate original copies by the Parties. Similar agreements by and between the City and other contracting entities may be made; each such separately executed version of this Agreement is and shall constitute a separate and distinct agreement between the City and the particular other contracting entity but does not create obligations or rights as between the Parties hereto.
5. No third-party beneficiaries. This Agreement is not intended to and does not create rights or remedies in favor of any third parties.
6. Complete agreement; amendment in writing. This Agreement, including all Attachments, is the sole agreement between the Parties concerning the subject matter hereof, and supersedes any and all prior understandings, agreements, representations or undertakings between the Parties concerning that subject matter. This Agreement may be amended or modified only by a writing duly executed by both Parties. No official, employee, agent or representative of either Party has the authority to amend or modify this Agreement without the official approval of that Party's governing body.
7. No exclusivity. This Agreement does not create any exclusive rights with Marble Falls regarding Burnet's provision of Digital Forensic Services; and Burnet may provide such services to other local government entities as may be permitted by law.
8. Alternative Dispute Resolution. It shall be a prerequisite to either Party seeking legal or equitable relief for any disputes arising under or related to this Agreement or the Dispatch Services that mediation be conducted. If they are unable to agree to a mediator and mediation process, the Parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the Texas Civil Practice and Remedies Code, Section 154.023. Unless both Parties are satisfied with the results of any such mediation, it will not constitute a final

ACCEPTED AND APPROVED:

CITY OF MARBLE FALLS

By:


Dave Rhodes, Mayor

Date:

9.17.2024

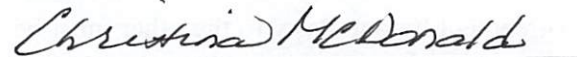
CITY OF BURNET

By:

Gary Wideman, Mayor

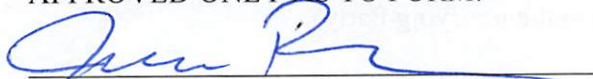
Date:

ATTEST:


Christina McDonald, City Secretary

Maria Gonzales, City Secretary

APPROVED ONLY AS TO FORM:


Josh Brockman-Weber, Marble Falls City Attorney