

INTERLOCAL COOPERATION AGREEMENT FOR JAIL SERVICES

This **Interlocal Cooperation Agreement for Jail Services** (“**Agreement**”) is entered into as of the Effective Date by and between the **City of Everman** (“**Everman**”), a Texas home-rule municipality, the **City of Mansfield** (“**Mansfield**”), a Texas home-rule municipality, and the **City of Forest Hill** (“**Forest Hill**”), a Texas home-rule municipality, by and through their authorized representatives. Everman, Mansfield, and Forest Hill are at times each referred to herein as a “**Party**” or collectively as the “**Parties.**”

RECITALS:

WHEREAS, Mansfield is currently demolishing and replacing its jail facility and, during that period of demolition and construction, which is estimated to be eighteen (18) months, Mansfield desires to use the Everman Jail Facility located at 404 West Enon Avenue, Everman, Texas (“**Facility**”) for the handling, processing, housing and detention of persons arrested by Mansfield Police Department personnel (“**Mansfield Police**”) as well as for the handling, processing, housing, and detention of persons arrested by the City of Kennedale, the City of Burleson, the Mansfield Independent School District, and other state and federal agencies for whom Mansfield currently provides such services (collectively the “**Mansfield Affiliates**” and each individually a “**Mansfield Affiliate**”); and

WHEREAS, during Mansfield’s use and occupancy of the Facility, Everman and Mansfield desire that Mansfield provide the handling, processing, housing and detention of persons arrested by Everman Police Department personnel (“**Everman Police**”); and

WHEREAS, Forest Hill desires, on the terms set forth herein, to use the Facility for the handling, processing, housing and detention of persons arrested by Forest Hill Police Department personnel (“**Forest Hill Police**”) with Mansfield to provide the jail services of handling, processing, housing and detention of persons arrested by Forest Hill Police for so long as Mansfield occupies the Facility and, thereafter, with Everman to provide those services; and

WHEREAS, the City of Everman desires to allow Mansfield to use the Facility for the handling, processing, housing, and detention of persons arrested by the Mansfield Police, a Mansfield Affiliate, the Forest Hill Police, and/or the Everman Police; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791, Texas Government Code authorizes units of government to contract with one or more units of local government to perform governmental functions and services; and

WHEREAS, the Parties desire to enter into an agreement authorizing Mansfield, the Mansfield Affiliates, and Forest Hill to use the Facility and setting forth the terms and conditions by which Mansfield will initially provide Jail Services (as defined below) for Mansfield, Mansfield Affiliates, Everman, and Forest Hill, and upon Mansfield’s removal from the Facility, Everman will, agree to provide the Jail Services (as defined below) to Everman and Forest Hill; and

WHEREAS, the Parties find it is mutually advantageous to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Everman, Mansfield, and Forest Hill hereby agree as follows:

Article I Purpose; Term

1.1 The purpose of this Agreement is to provide the terms and conditions under which persons arrested by the Forest Hill Police, Mansfield Police, a Mansfield Affiliate, or Everman Police may be detained and housed at the Facility as well as the respective responsibilities of the Parties relating to the provision of Jail Services. Further, the Recitals set forth above are true and correct and incorporated herein.

1.2 The initial term of this Agreement during which Jail Services will be provided as described herein shall commence on December 28, 2022, as to Mansfield (including the Mansfield Affiliates) and Everman (the “Commencement Date”) and on January 17, 2023, as to Forest Hill (the “Forest Hill Commencement Date”), and shall terminate on September 30, 2024 (“**Primary Term**”), unless terminated earlier or extended in accordance with this Agreement. Upon the completion of the Primary Term, if construction is not completed on Mansfield’s new jail facility, the Primary Term of this Agreement may be extended, by mutual written agreement of the Parties, for one additional term of six (6) months (“**Primary Term Extension**”). At the conclusion of the Primary Term or, if applicable, the Primary Term Extension, this Agreement shall terminate as to Mansfield (including all Mansfield Affiliates) and shall renew as between Everman and Forest Hill only for one (1) additional period which shall have an expiration date of September 30, 2034 (the “**Renewal Term**”) unless terminated earlier in accordance with this Agreement. The Primary Term, any Primary Term Extension, and Renewal Term are collectively referred to herein as the “**Term**” or “**the Term of this Agreement.**”

Article II Termination

2.1 This Agreement may be terminated by any Party providing the other Parties written notice of termination not less than sixty (60) days prior to the anticipated date of termination. Upon any such termination, any Party who has previously paid a Services Fee to another Party shall be entitled to a refund from that Party of the portion of the Services Fee previously paid, pro-rated with respect to the number of calendar months remaining as of the date of Termination.

2.2 A Party (the “**Non-Defaulting Party**”) may terminate this Agreement by providing written notice of termination to the other Party (the “**Defaulting Party**”) if the Defaulting Party fails to cure any default or non-compliance with one or more provisions of this Agreement on or before sixty (60) days after delivery of written notice by the Non-Defaulting Party to the Defaulting Party describing the nature of the default or non-compliance. Upon any such termination, any Non-Defaulting Party who has previously paid a Services Fee to another Party shall be entitled to a refund from that Party of the portion of the Services Fee previously paid, pro-rated with respect to the number of calendar months remaining as of the date of Termination.

2.3 Receipt of payment, refund, and/or reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

Article III
Obligation of Everman to Provide Jail Facility

During the Term of this Agreement, Everman shall provide the Everman Jail Facility located at 404 West Enon Avenue, Everman, Texas (“**Facility**”) for use of the Parties as provided herein and shall, during the time that Mansfield serves as Jail Services Provider, as described herein, cooperate with Mansfield to facilitate and not hinder the provision of Jail Services. Mansfield agrees and acknowledges that Everman’s provision of the Facility serves as good and adequate consideration, the receipt and sufficiency of which is further hereby acknowledged, for Mansfield’s promises and agreements set forth in this Agreement. Forest Hill agrees and acknowledges that Everman’s provision of the Facility and, as may be applicable, Everman’s service in the capacity of Jail Services Provider, serves as good and adequate consideration, the receipt and sufficiency of which is further hereby acknowledged, for Forest Hill’s promises and agreements set forth in this Agreement.

Article IV
Obligation of Party Serving as Jail Services Provider

4.1 The Party providing Jail Services, as described herein, at the Facility and to the other Parties (the “Jail Services Provider”):

- A. during the Primary Term and any Primary Term Extension, shall be Mansfield; and
- B. during the Renewal Term or at any other time for which, for any reason, Mansfield is no longer providing those services, shall be Everman.

During the time that Mansfield serves as Jail Services Provider, it shall provide Jail Services at the Facility to the Mansfield Affiliates. During the time that Everman serves as Jail Services Provider, should any Mansfield Affiliate desire to continue to receive Jail Services at the Facility, that Mansfield Affiliate will be required to enter into a separate agreement for jail services with Everman. Everman and Forest Hill agree and acknowledge that Mansfield’s provision of services as Jail Services Provider serves as good and adequate consideration, the receipt and sufficiency of which is hereby acknowledged, for their promises and agreements set forth in this Agreement.

4.2 The Party serving as Jail Services Provider shall provide the following services (collectively “**Jail Services**”) to the other Parties in accordance with Everman Police Department policies and procedures and applicable federal and state laws and regulations:

- (a) Intake of prisoners brought to the Facility by Forest Hill (each a “**Forest Hill Prisoner**”);
- (b) Intake of prisoners brought to the Facility by Everman (each a “**Everman Prisoner**”);

- (c) During the time that Mansfield serves as Jail Services Provider, intake of prisoners brought to the Facility by Mansfield or a Mansfield Affiliate (each a “**Mansfield Prisoner**”);
- (d) Complete inventory and storage of each Forest Hill Prisoner’s property, each Everman Prisoner’s property, and, as may be applicable, each Mansfield Prisoner’s property;
- (e) Create and maintain a standardized medical and personal history statement, including next of kin contact information for each Forest Hill Prisoner, for each Everman Prisoner, and, as may be applicable, each Mansfield Prisoner;
- (f) Photograph and fingerprint each Forest Hill Prisoner, each Everman Prisoner, and, as may be applicable, each Mansfield Prisoner;
- (g) House and detain each Forest Hill Prisoner, each Everman Prisoner, and, as may be applicable, each Mansfield Prisoner in the Facility until transferred to another jail facility, or released on bond or by other lawful means;
- (h) Feed and temporarily clothe each Forest Hill Prisoner, each Everman Prisoner, and, as may be applicable, each Mansfield Prisoner to the same extent as provided to Jail Service Provider’s prisoners;
- (i) Operate and maintain the Facility in accordance with applicable Federal, State and Local Laws and regulations;
- (j) Transfer bond funds received with respect to Forest Hill Prisoners and Everman Prisoners not later than seven (7) days after receipt thereof; and
- (k) Transport, or arrange for the transportation of, Forest Hill Prisoners and Everman Prisoners to the Tarrant County Corrections Center for incarceration. Whenever Jail Services Provider does not have available personnel or equipment for such transport, this obligation shall be to notify the Chief of Police of the arresting Party (in the case of a Mansfield Affiliate, the notification shall be to Mansfield Chief of Police) and the arresting City Party shall then be responsible for providing such transportation.

4.3 Everman shall provide adequate space and utility connections for a work area within the Facility for the purpose of prisoner booking and other documentation processes by Forest Hill Police, Mansfield Police, and any arresting officers of a Mansfield Affiliate.

4.4 Everman shall provide a secure room within the Facility for the purpose of prisoner interviews/interrogations to be conducted by Forest Hill Police, Mansfield Police, and officers of a Mansfield Affiliate.

4.5 The Jail Services Provider shall issue Forest Hill Prisoners, Everman Prisoners, and, as may be applicable, Mansfield Prisoners a blanket and mattress for use during the detention,

and assign a holding cell number in accordance with standard operating procedures, which shall be documented in appropriate Prisoner Log (Forest Hill Prisoner Log for Forest Hill Prisoners, Everman Prisoner Log for Everman Prisoners, and, Mansfield Prisoner Log for Mansfield Prisoners). Forest Hill Prisoners, Everman Prisoners, and, as may be applicable, Mansfield Prisoners shall be allowed to place local telephone calls within four hours of arriving in the Facility as long as they are not a danger to themselves or any Forest Hill, Everman, or Mansfield personnel at the Facility. In such event, such Forest Hill Prisoners, Everman Prisoners, and/or Mansfield Prisoners will be allowed to use of the telephone as soon as such persons are cooperative and no longer deemed dangerous. Telephone usage and numbers shall be documented by Jail Services Provider on the applicable prisoner status log.

4.6 The Jail Services Provider may, in its sole discretion, refuse to accept for processing into the Facility any Forest Hill Prisoner, Everman Prisoner, or Mansfield Prisoner that appears to need medical treatment or medical services.

4.7 Neither Everman, Forest Hill, nor Mansfield may consent to medical treatment of a prisoner nor admit or sign a prisoner into a hospital or medical facility, or otherwise assume the financial responsibility therefor.

4.8 Forest Hill Prisoners, Everman Prisoners, and Mansfield Prisoners detained for a misdemeanor offense may be released from the Facility by the Jail Services Provider if the arresting City or its Police Department cannot provide transport services for such prisoner under the following conditions:

- (a) Charges are pending;
- (b) Reactivation of the warrant(s) for which the prisoner is being held;
- (c) Charges filed at large; or
- (d) Charges not filed.

4.9 Forest Hill, Everman, and Mansfield shall be solely responsible for escorting and guarding, respectively, Forest Hill Prisoners, Everman Prisoners and Mansfield Prisoners, to medical facilities for medical treatment; provided, however, the Everman Fire Department, accompanied by Police officers from the arresting city, if in accordance with adopted protocol, will transport a the prisoner to a medical facility for medical treatment if such prisoner presents as requiring emergency medical treatment upon or after arrival at the Facility.

Article V

Parties' Obligations to Jail Services Provider

5.1 Each Party shall provide the Jail Services Provider property bond materials, including, but not limited to, a receipt book and bond money handling instructions.

5.2 Each Party authorizes the Jail Services Provider to accept, document and secure prisoner bond money until such time as an authorized representative of the Party arranges for the transfer of said bond money to the Party.

5.3 Each Party authorizes the Jail Services Provider to release the prisoners arrested by that Party's police as required by law, at the discretion of the Jail Services Provider.

5.4 To provide for the safety of prisoners being booked into the Facility, the Jail Services Provider shall have the right to require treatment and deny services for any prisoner deemed unsafe to proceed with being booked into the Facility or deemed not medically fit by certified jail personnel of the Jail Service Provider during the intake procedure

5.5 If a Forest Hill Prisoner, Everman Prisoner, or Mansfield Prisoner arrives at the Facility with a medical emergency that requires said prisoner to be transferred to an emergency room or other medical facility prior to book-in, the Forest Hill Police officer, Everman Police officer, or Mansfield Police Officer, respectively, will be responsible for accompanying said prisoner for transfer.

5.6 The Facility intake booking detention officers reserve the right to refuse the booking of any prisoner when, in the opinion of the jail supervisor, said prisoner poses a safety threat to themselves or others.

Article VI

Forest Hill's Fee for Jail Services

6.1 For purposes of this Agreement, "**Contract Year**" means the period beginning on October 1 of each calendar year and ending on September 30 of the immediately following calendar year.

6.2 During the term of this Agreement, Forest Hill agrees to pay a fee as consideration for the provision of the Facility and the Jail Services to Forest Hill (the "**Services Fee**"). Forest Hill shall always submit the Services Fee to Everman. For any period during which Mansfield served as Jail Services Provider under this Agreement, Everman shall transmit to Mansfield, on at least an annual basis, a pro-rated payment equal to one-half of the Services Fee paid by Forest Hill for each month during which Mansfield served as Jail Services Provider. By way of example, if Forest Hill submits a payment of \$1200.00 in Services Fee to Everman for a period during which Mansfield served 9 months as Jail Services Provider, Everman shall transmit, on behalf of Forest Hill, \$450.00 of the Services Fee to Mansfield. Everman and Mansfield agree and acknowledge that Forest Hill's payment of the Services Fee as set forth in this Article VI serves as adequate and sufficient consideration in support of their promises set forth in this Agreement.

6.3 The amount of the Services Fee shall be determined as follows:

(a) For the period beginning January 17, 2023, and ending September 30, 2023, the Services Fee shall be \$900.00;

(b) For the Contract Year beginning October 1, 2023, and ending September 30, 2024), the Services Fee shall be \$1200.00;

(c) For the Contract Year beginning on October 1, 2024, and each Contract Year thereafter, the Parties shall negotiate and agree upon the amount of the Services Fee and set forth that amount in an Amendment to this Agreement. Should the Parties fail to execute such Amendment to this Agreement on or before the commencement of the Contract Year, the Services Fee for that Contract Year shall be the same as for the preceding Contract Year.

6.4 Forest Hill shall pay the Services Fee for the period described in Section 6.3(a) within thirty (30) days of the January 17, 2023. For each Contract Year, beginning with the first Contract Year, Forest Hill shall pay one-half of the Services Fee due for the Contract Year on October 1st and the other one-half of the Services Fee due for the Contract Year on April 1st. Forest Hill shall make such payments without Everman being required to invoice Forest Hill or otherwise deliver a written request for payment to Forest Hill.

6.5 The Jail Services Provider shall, not later than the fifth (5th) calendar day of each calendar month, provide Forest Hill with a written report containing the number of Forest Hill Prisoners processed into the Facility during the immediately preceding three month period ("**Prisoner Report**").

6.6 Notwithstanding the foregoing provisions of this Agreement, if Everman and/or the Jail Services Provider is unable to accept and house any Forest Hill Prisoners as provided by this Agreement for any reason (including an event of Force Majeure), Everman will, at the election of Everman, either (i) provide equivalent access and services to Forest Hill through an alternate facility, or (ii) provide Forest Hill a credit against the amount of the next installment of the Services Fee due and payable in an amount equal to 1/365th of the amount of the then current annual Services Fee multiplied by the total number of days Everman or the Jail Services Provider was unable to accept and house Forest Hill Prisoners (a "**Fee Credit**"). If this Agreement has been terminated such that no future payment of Services Fee against which a Fee Credit may be applied will be paid, Everman agrees to pay the amount of such Fee Credit to Forest Hill not later than thirty (30) days after the date of termination of this Agreement, which obligation shall survive the termination of this Agreement. Provision of the Fee Credit does not negate any other available remedies Forest Hill may have for a breach of this Agreement.

Article VII

Prisoner Magistration/Arraignment

7.1 Each Party shall provide one or more magistrates to arraign that City's prisoners housed at the Facility, either in-person or by video conference applications ("virtually"), on a 24/7 basis. Each Party shall cause each of that city's prisoners to be arraigned within 24 hours after detention at the Facility. Mansfield agrees that it will cause Mansfield Affiliates' prisoners to be arraigned within 24 hours after detention at the Facility. Written confirmation shall be provided to the Jail Services Provider and to Everman as each prisoner is arraigned. All prisoners shall be transferred from custody of the Facility in conformance with applicable Everman Police Department transfer procedures (generally within 48 hours after their arrival).

7.2 The Forest Hill magistrates and Mansfield magistrates (which shall include any magistrates of the Mansfield Affiliates) shall follow the Standard Operating Procedures and the Facility Rules in regard to the safety and security of the Facility and the prisoners when arraigning, respectively, Forest Hill Prisoners and Mansfield Prisoners, in-person. No magistrate providing magistration or arraignment services for any city or entity shall not interfere with or direct Everman personnel or the Jail Services Provider's personnel at any time.

Article VIII Availability of Revenue

Each Party paying for the performance of governmental functions or services pursuant to this Agreement shall make those payments from current revenues available to the paying Party. The Parties represent and agree that the payments required by this Agreement by the paying Party will fairly compensate the performing Party for the services or functions performed under this Agreement.

Article IX Liability/Immunity/Insurance

9.1 Each Party agrees to the extent authorized under the Constitution and the laws of the State of Texas, to be fully responsible for any and all claims for damages, costs, and expenses to person or persons and property that may arise out of or be occasioned by its actions or inactions under this Agreement, including but not limited to its acts of negligence or omission in the arrest, book-in and detention for their respective prisoners. Each Party, to the extent allowed by law and without waiving any rights, defenses or protections provided therein, agrees to be responsible for its own acts of negligence. Mansfield agrees that it shall obtain similar agreements regarding responsibility from all Mansfield Affiliates to cover all times during which Mansfield serves as Jail Services Provider at the Facility.

9.2 In the event of joint or concurrent negligence of the Parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity or defense available to any Party individually under Texas law. Everman shall be responsible for its sole negligence. Forest Hill shall be responsible for its sole negligence. Mansfield shall be responsible for its sole negligence. Mansfield agrees that it shall obtain similar agreements regarding responsibility and apportionment from all Mansfield Affiliates to cover all times during which Mansfield serves as Jail Services Provider at the Facility. The provisions of this section are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

9.3 It is expressly understood and agreed that, in the execution of this Agreement and in particular sections 9.1 and 9.2 hereof, no Party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this

Agreement shall not create any rights in Parties not signatories hereto. To the extent authorized under the Constitution and laws of the State of Texas, and without waiving sovereign immunity, each Party shall be responsible for any and all claims, demands, suits, actions, damages, and causes for action related to or arising out of or in any way connected with its own actions, and the actions of its personnel rendered or performed pursuant to the terms and conditions of this Agreement. Each Party agrees to obtain general liability, public official's liability, if applicable, or maintain a comparable self-insurance program.

9.4 Each Party shall, during the term of this Agreement, obtain and maintain adequate insurance, self-insurance, or municipal risk pool coverage to effectively protect against the risks associated with the provision of services and the transactions contemplated herein. Mansfield agrees that it will obtain a similar agreement regarding obtaining and maintaining adequate coverage from all Mansfield Affiliates to cover the time that Mansfield serves as Jail Services Provider at the Facility.

Article X Miscellaneous Provisions

10.1 **Consideration.** This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties.

10.2 **Notice.** All notices required by this Agreement shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving Party from time to time in accordance with this section). All notices shall be delivered by (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees pre-paid), or (d) e-mail of a PDF document containing the notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. For purposes of notification, the addresses of the Parties shall be as follows:

If to Forest Hill, to:

City of Forest Hill
Attn: City Manager
3219 E. California Pkwy
Forest Hill, Texas 76119
E: vwehle@foresthilltx.org

With a Copy to:

City of Forest Hill
Attn: Chief of Police
3336 Horton Rd.
Forest Hill, Texas 75119
E: eburns@foresthilltx.org

If to Everman, to:

City of Everman
Attn: City Manager
212 N. Race Street
Everman, Texas 76140
E:cspencer@evermantx.net

If to Mansfield, to:

City of Mansfield
Attn: City Manager

10.3 **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both Parties.

10.4 **Venue and Governing Law.** This Agreement and any of its terms or 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 suit between the Parties arising from or related to this Agreement shall be in Tarrant County, Texas.

10.5 **Authority to Execute.** The individuals signing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other Parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

10.6 **Severability**. The provisions of this Agreement are severable. In the event that any paragraph, section, subdivision, sentence, clause or phrase of this Agreement shall be found to be contrary to the law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, either Party may terminate this Agreement by giving the other Party fifteen (15) days written notice of its intent to terminate.

10.7 **Amendments**. This Agreement may only be amended by a written instrument signed by authorized representatives of all Parties to the Agreement at the time of such amendment.

10.8 **Counterparts**. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other Party.

10.9 **Assignment**. This Agreement may not be assigned by any Party hereto without the prior written consent of the other Party.

10.10 **Force Majeure**. No Party shall be liable to the other Party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the Party's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, a government restriction, quarantine, or mandatory closure order enacted in response to a pandemic or other public health crises, or any other circumstance for which a Party is not legally responsible or which is not reasonably within its power to control (each an event of "**Force Majeure**"). The Party asserting Force Majeure shall give prompt notice to the other Party of the prevention of performance as soon as the asserting Party is reasonably aware of such prevention and has the burden of demonstrating (i) how and why their performance was so prevented, (ii) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the Party used reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

10.11 **Representations**. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that each Party has had an opportunity to confer with counsel, on the matters contained herein.

10.12 **Drafting Provisions**. This Agreement shall be deemed to have been drafted equally by all Parties. The language of all parts of this Agreement shall be constructed as a whole according to its fair and common meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this Agreement.

10.13 **Independent Contractor**. Except as otherwise expressly provided herein, Forest Hill, Everman, and Mansfield agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and

for those of its agents or employees in conjunction with the performance of services covered under this Agreement.

10.14 **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

10.15 **Business Day.** For purposes of this Agreement, the phrase “business day” means a day that is not a Saturday, a Sunday, a federally recognized holiday, the Friday after Thanksgiving Day, or such other day the Everman City Council has determined by resolution or ordinance that Everman City Hall will not be open to the public for general city business.

10.16 **Effective Date.** When signed by the authorized representatives of Everman and Mansfield, whether on the same document or on identical but separately signed counterparts, the Agreement shall be effective and enforceable, retroactive to the Commencement Date and thus shall have an Effective Date of December 28, 2022 (the “**Effective Date**”). As to Forest Hill, when signed by the authorized representative of Forest Hill, whether on the same document or on identical but separately signed counterparts, the Agreement shall be effective and enforceable, retroactive to the Forest Hill Commencement Date and thus shall have an Effective Date, with regard to all rights and obligations of Forest Hill, of January 17, 2023.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY –
SIGNATURES ON FOLLOWING PAGE(S)]

SIGNED AND AGREED this ____ day of January, 2023.

CITY OF EVERMAN, TEXAS

By: _____
Craig W. Spencer, City Manager

ATTEST

Mindi Parks, City Secretary

APPROVED AS TO FORM

Hunter W. Mattocks, Asst. City Attorney

SIGNED AND AGREED this _____ day of January, 2023.

CITY OF FOREST HILL, TEXAS

By: _____
Venus Wehle, City Manager

ATTEST:

Amy Anderson, City Secretary

APPROVED AS TO FORM:

Courtney Goodman-Morris, Asst. City Attorney

SIGNED AND AGREED this _____ day of January, 2023.

CITY OF MANSFIELD, TEXAS

By: _____
Joe Smolinski, City Manager

ATTEST:

Susana Marin, City Secretary

APPROVED AS TO FORM:

City Attorney