

INTERLOCAL AGREEMENT FOR ANIMAL CONTROL OFFICER SERVICES

THIS INTERLOCAL AGREEMENT FOR ANIMAL CONTROL OFFICER SERVICES (“Agreement”) is made and entered into by the City of Everman, Texas (“Everman”) and the City of Forest Hill, Texas (“Forest Hill”), both Texas home rule municipalities. (Everman and Forest Hill may hereafter be referred to collectively as “the Parties” or individually as “the Party”.)

RECITALS:

WHEREAS, Forest Hill is desirous of obtaining animal control officer services; and

WHEREAS, EVERMAN is desirous of furnishing these desired additional resources to Forest Hill, and

WHEREAS, the Parties hereto desire to enter into this Agreement to provide said resources at the highest level possible to Forest Hill in accordance with the terms and conditions set forth herein, and

WHEREAS, the Parties have concluded that this Agreement fairly compensates the performing Party for the services being provided hereunder, and is in the best interest of each Party.

NOW THEREFORE, in consideration of the mutual promises and consideration provided for herein, the receipt and sufficiency of which are hereby confirmed, the Parties agree to the following:

Section 1. Term: This Agreement shall be for a term commencing on July 11, 2023, and ending September 30, 2023, unless extended by agreement of the Parties or terminated earlier as provided herein.

Section 2. Scope of Services: Everman hereby agrees to provide Forest Hill the following services & personnel:

- a. **Daily Patrol Services:** Monday through Friday during the hours of 8:00 a.m. to 5:00 p.m., Everman will provide daily Animal Control Officer (ACO) patrol service to Forest Hill. Everman shall have the ability to utilize the Forest Hill-designated Animal Control Vehicle and all related equipment as needed.
- b. **On-Call Services:** Everman will provide on-call Animal Control Officer (“ACO”) services to address non-routine matters such as aggressive animals and injured animals. All service calls shall be dispatched through Forest Hill’s Police Department directly to Everman. The Everman ACO shall respond to any such call from Forest Hill within 45 minutes.

- c. **Monthly Reports:** Everman will deliver a written report to Forest Hill's Police Department no later than 12:00 p.m. on the 1st Monday of each month. The report shall summarize all activity within Forest Hill performed or observed by the Everman ACO during the previous on-call period.

- d. **Impoundment and Boarding:** The Everman ACO is authorized to capture and impound any animal in accordance with applicable state law and local ordinances which the Everman ACO believes to be in violation of any provision of the Forest Hill Code of Ordinances or state law. The boarding of all animals impounded for Forest Hill shall occur pursuant to Forest Hill's contract with the City of Everman relating to use of City of Everman Animal Services Facilities and shall be subject to the following:
 - (1) If, by identification tag, the owner of an impounded animal can be identified, the Everman ACO will make a reasonable attempt to return the animal to its home and notify the owner of any violations witnessed by the Everman ACO; and

 - (2) Any animal, whether licensed or unlicensed, which in the professional judgment of Everman and its employees, is in great pain and suffering due to injury from which the animal probably will not recover, which appears to have rabies, and/or which is at large and posing an imminent danger to human beings or to other animals, may be destroyed by the Everman ACO on scene in a humane manner.

Section 3. Forest Hill's Fees: Forest Hill agrees to pay the following fees for Everman's services provided under this Agreement:

- a. **Daily Patrol Service Charges:** For daily patrol services, Forest Hill agrees to pay one-thousand four hundred (\$1,400.00) weekly for the period from July 12, 2023, through September 30, 2023.

Section 4. Termination:

- a. **Termination at Will:** This Agreement may be terminated at any time by either Party by giving written notice to the other Party not less than thirty (30) days prior to the proposed date of termination. In the event of termination pursuant to this Section 4.a., Everman will be compensated for all services performed up to the termination date, together with any payments then due and as authorized by this Agreement.

- b. **Termination for Non-Payment:** If Forest Hill fails to make payment to Everman within thirty (30) days after the receipt of invoice for amounts due pursuant to this Agreement, Everman may suspend services to Forest Hill on a date identified in a written notice delivered to the Forest Hill City Manager and Chief of Police, which date shall not be earlier than the fifth (5th) day following delivery of said notice.

- c. **Termination for Everman Non-Performance:** Forest Hill's recourse for failure of Everman to furnish any services under this Agreement will be the right to make a mutually agreed upon, proportionate reduction in the fee to be paid or to terminate this Agreement by giving notice not later than five (5) days prior to the date of termination established by Forest Hill in the notice.

Section 5. Notices and Payments: All written notices, payments, or refunds shall be sent to the following addresses:

If to Everman:

Everman City Manager
212 N. Race Street
Everman, Texas 76140

If to Forest Hill:

Forest Hill Manager
3219 E. California Parkway
Forest Hill, Texas 76140

Section 6. Jurisdiction: Forest Hill grants full and complete authorization and jurisdiction to Everman for all services provided by Everman pursuant to this Agreement. Said jurisdiction shall apply to Forest Hill's incorporated limits.

Section 7. Governing Law; Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any legal dispute arising between the Parties pursuant to this Agreement shall be in a state court in Tarrant County, Texas. Without waiving any immunities or other legal defenses, the Parties agree to submit to the subject matter and personal jurisdiction of said court(s).

Section 8. Supervision/Certification: At all times during the term of this Agreement, the Everman ACO shall be under the supervision and control of a representative of Everman. Everman warrants, represents, and agrees that the Everman ACO shall be certified and/or licensed as required by applicable State law in the ACO's areas of expertise to carry out the ACO's duties.

Section 9. Independent Contractor. It is understood and agreed by and between the Parties that Everman, in performing the services and other obligations pursuant to this Agreement, is acting independently, and that Forest Hill assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Everman and its officers and employees pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of Forest Hill. In supervising the performance of its employees, Everman shall at all times have exclusive control of the manner and means by which the services provided pursuant to this Agreement are to be performed.

Section 10. Indemnification: To the extent allowed by law, Everman agrees to indemnify and hold harmless Forest Hill and its Officers, employees and agents from and against any and all claims for damages, personal injury and/or death that may be asserted against Forest Hill arising from the intentional or negligent acts of omissions of Everman, its officers, employees, and agents, save and except the extent such damages, injury, or death are the result of acts or omissions of Forest Hill, its officers, or employees. The foregoing notwithstanding, the Parties reserve the right to all available legal defenses and all protections and limitations of liability provided by the Texas Tort Claims Act and the Texas Constitution relative to the Parties. The provisions of this indemnification agreement are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Section 11. Insurance:

A. Everman shall during the term of this Agreement maintain in full force and effect the following insurance:

(i) A commercial general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Everman's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage;

(ii) An automobile liability insurance policy covering any vehicles owned and/or operated by Everman, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; and

(iii) Statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all Everman's employees, if any, involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00.

B. All insurance and certificate(s) of insurance shall contain the following provisions:

(i) Name Forest Hill, its officers, and employees as additional insureds as to all applicable coverage (not including the Workers Compensation Insurance);

(ii) Provide for at least thirty (30) days prior written notice to Forest Hill for cancellation or non-renewal of the insurance or reduction in coverage limits; and

(iii) Provide for a waiver of subrogation against Forest Hill for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance (not including the Professional Liability Insurance).

C. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.

D. A certificate of insurance evidencing the required insurance and all endorsements shall be delivered to Forest Hill prior to commencement of services.

Section 12. Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

Section 13. Assignment. Neither Party may assign this Agreement in whole or in part without the prior written consent of the other Party. In the event of an assignment by one Party to which the other Party has consented, the assignee shall agree in writing to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

Section 14. Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

Section 15. Amendments. This Agreement may be amended only by the mutual written agreement of the Parties.

Section 16. 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 any other provision, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 17. Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties.

Section 18. Force Majeure. The performance of a Party shall be subject to any event of Force Majeure, but only for so long as the event reasonably prevents the Party’s performance, and then only if the Party not performing as a result of the event of Force Majeure provides written notice to the other Party not later than two (2) business days after the onset of the event. For purposes of this Agreement, “Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such Party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials and labor.

Section 19. Attorney Fees. The Parties expressly covenant and agree that in the event of any litigation arising between the Parties to this Agreement, that each Party shall be solely responsible for payment of its attorneys and that in no event shall either Party be responsible for the other Party's attorney's fees regardless of the outcome of the litigation.

Section 20. Effective Date. This Agreement shall be effective on the date it is signed by authorized representatives by the Parties.

(Signatures on Following Page)

SIGNED AND AGREED this _____ day of _____, 2023.

City of Everman, Texas

By: _____
Craig Spencer, City Manager

ATTEST:

Mindi Parks, City Secretary

APPROVED:

John D. Oliver, Asst. City Attorney

SIGNED AND AGREED this _____ day of _____, 2023.

City of Forest Hill, Texas

By: _____
Venus Wehle, Interim City Manager

ATTEST:

Amy Anderson, City Secretary

APPROVED:

Courtney Goodman-Morris, Asst. City Attorney