

INTERLOCAL AGREEMENT FOR THE ALLOCATION OF SALES USE TAX REVENUE FOR THE DEVELOPMENT OF INFRASTRUCTURE BY THE CITY OF WILLOW PARK, TEXAS AND PARKER COUNTY EMERGENCY SERVICE DISTRICT NO. 1

STATE OF TEXAS §
 §
COUNTY OF PARKER §

THIS AGREEMENT is made and entered into this the ___ day of _____ 2024 (“Effective Date”) by and between THE CITY OF WILLOW PARK, TEXAS ("City"), a body politic and corporate and municipal corporation of the State of Texas, and PARKER COUNTY EMERGENCY SERVICES DISTRICT No.1 ("District”), a political subdivision of the State of Texas, to be effective only as set forth herein.

RECITALS

WHEREAS, the City has been created, established, organized and exists as a Type A General-Law Municipality under the laws of the State of Texas; and

WHEREAS, the District exists and operates under the authority of Article III, Section 48-e of the Texas Constitution and Chapter 775, Texas Health & Safety Code; and

WHEREAS the City has, among its powers, the power of annexation provided to a Type A General Law municipality and the imposing of a local sales and use tax within its jurisdiction, subject to all applicable provisions of the Texas Tax Code and other applicable laws; and

WHEREAS, the District has, among its powers, the power of annexation and the imposing of a local sales and use tax within its jurisdiction, subject to all applicable provisions of the Texas Tax Code, Chapter 775, Texas Health and Safety Code, and other applicable laws; and

WHEREAS, the City, pursuant to the Constitution and statutes of Texas has the power to undertake improvement projects separately or jointly with other persons or entities, to pay all or part of the costs of capital improvement projects, including capital improvement projects that improve, enhance, or support, among other matters, road construction, building development, water supply, sanitary sewer service, and other public infrastructure and facilities; and to provide for the adoption and enforcement of building and fire regulations; and to provide for safety and security of the public, including law enforcement in the City; and

WHEREAS, the District pursuant to the Constitution and statutes of Texas has the power, among others, to enter into and perform necessary contracts, impose and collect taxes as

provided by Chapter 775, Texas Health & Safety Code, provide emergency services, including fire protection and emergency medical services, contract with other entities, including other districts or municipalities for reciprocal operation or services and facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to the District, and perform other acts to carry out the intent of Chapter 775, Texas Health & Safety Code; and

WHEREAS, the City and the District have overlapping boundaries and jurisdictions and the City is located wholly within the boundary of the District; and

WHEREAS, the County of Parker has imposed a local sales and use tax of one-half percent, which is applicable throughout the County; and

WHEREAS, the City has imposed a local sales and use tax of one and one-half percent, which is applicable throughout the City's corporate limits as said limits existed as of the date of this Agreement; and

WHEREAS, pursuant to Section 775.0752, on May 10, 2021 ("Adoption Date"), the District conducted a special election whereat the District adopted local sales and use tax of one and one-half percent which was approved by the voters of the unincorporated portion of the District, per applicable law; and

WHEREAS, pursuant to the results of the special election the District adopted a local sales and use tax of one and one-half percent in the area of its jurisdiction that does not include the City's corporate limits as of the Adoption Date; and

WHEREAS, on November 8, 2022, the District annexed the City and adjacent areas into the District by a vote of the registered voters of each entity; and

WHEREAS, pursuant to Chapter 321 of the Texas Tax Code Sec. 321.102, when a municipality annexes for full purposes territory contained within an emergency services district that had theretofore imposed a local sales and use tax and where the local sales and use tax in the annexed area is at the two percent maximum rate for local sales and use tax, the local sales and use tax imposed by the emergency services district remains allocated to the emergency services district and is not allocated by the Texas Comptroller to the municipality; and

WHEREAS, as authorized by the Constitution and Statutes of Texas, including Texas Local Government Code Chapter 43, the City may by petition annex other land within its extra-territorial jurisdiction and within the territorial limits of the District, which collectively shall be referenced herein as the "Future Annexation Area"; and

WHEREAS, consequently, whenever the City shall annex the Future Annexation Area after the effective date of this Agreement, the local sales and use tax within such annexed area would already be at the two percent maximum rate for local sales and use tax and would be

allocated by the Texas Comptroller: one-half of one percent to the County and one and one-half percent to the District; thereby, prohibiting the City from collecting additional sales and use tax in the Future Annexation Area and precluding the future development of the City and the District through tax abatements, tax increment reinvestment zones, or other development agreements of said area in the Future Annexation Area; and

WHEREAS, the Parties hereby find and determine that the City would require additional sales tax revenue from the Future Annexation Area upon full purpose annexation by the City to provide services and foster development to such area and to assist with construction of capital improvement projects and to provide funding for street and drainage repair and maintenance, water supply, health and safety inspections and enforcement of municipal building and fire codes; and

WHEREAS, the Parties find that the any future capital improvement projects, economic development and regulatory enforcement within Future Annexation Area will be benefit to the District, in terms of (a) providing additional revenue and (b) enhancing the capability of delivering emergency services by the District to the Future Annexed Area by virtue of the municipal services to be provided by the City, including but not limited to additional revenue (both ad valorem and sales tax revenues), via the creation of economic development, road improvements and other capital improvement projects (including water supply), police protection, enforcement of municipal building and fire codes, and the provision other services and projects; and

WHEREAS, the parties find that due to the provisions of the Texas Tax Code (Sec. 321.102), that upon annexation the City will not have authority to impose its sales tax or to receive any sales tax revenue from any areas contained within the Future Annexation Area; and

WHEREAS, the parties find that it is in the best interests of and for the benefit of the City and the District if the City and District enter into this Agreement to provide upon the effective date of any annexation by the City that the District shall: (i) allocate to the City two-thirds (2/3), or one percent, of the sales and use tax derived from the such land annexed out of the Future Annexation Area; and (ii) with the District retaining one-third (1/3), or one-half of one percent, of the sales and use tax so derived; and

WHEREAS, the parties find that the Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Interlocal Act"), as well as Section 775.0754, Texas Health & Safety Code, provides authorization for any local government to contract with one or more other local governments to perform governmental functions and services under the terms of the Interlocal Act, and funding thereunder; and

WHEREAS, the City and the District jointly find that each are local governments and taxing units as provided under the Interlocal Act and other applicable law, and the agreements and provisions herein relate to the respective government functions of each; and

WHEREAS, Texas Health and Safety Code Section 775.0754 provides that a municipality and a district may, before or after annexation, agree on an allocation between the municipality and the district of revenue from the sales and use tax imposed in the annexed area under policies and procedures that the State Comptroller considers reasonable, and the comptroller shall pay the amounts agreed to between the municipality and the district; and

WHEREAS, the City and the District jointly find and determine that the allocation of the one and one-half percent local sales and use tax of the District contemplated under this agreement is an expenditure for the District's support and purposes authorized by Chapter 775 of the Texas Health & Safety Code by virtue of the City's provision of services including but not limited to additional revenue (both ad valorem and sales tax revenues), via the creation of economic development, road improvements and other capital improvement projects (including water supply), police protection, enforcement of municipal building and fire codes and the provision other services and projects; and

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and legal sufficiency is acknowledged, the City and the District agree as follows:

SECTION 1. The foregoing recitals are hereby found to be true and correct and are hereby adopted as findings of fact and conclusions of law by the Board of Emergency Services Commissioners of Parker County Emergency Service District No. 1 and the City Council of the City of Willow Park, Texas, and made a part hereof for all purposes. In this Agreement the following terms shall have the meanings set out below:

- (a) Annexed Property shall mean any land annexed out of the Future Annexation Area into the City's corporate limits for full purposes at any time after the effective date of this Agreement, and before the expiration of the term of this Agreement.
- (b) Future Annexation Area shall mean and include any land the City may annex for full purposes as set forth above.

SECTION 2. That upon the effective date of any full purpose annexation of Annexed Property from the Future Annexation Area into the City's corporate limits that has occurred or may occur after the effective date of this Agreement, the District and the City agree that the District shall allocate to the City half, or three quarters one percent, of the local one and one-half percent Sales and Use Tax revenue derived by the District from the Annexed Property. It is the intent of the Parties hereto that Parker County shall receive one-half of one percent of the maximum allowed two percent of the local sales and use tax derived from Annexed Property; the District shall receive three quarters of one percent of the maximum allowed two percent of the local sales and use tax derived from Annexed Property (the "District's Allocation"); and the City shall receive three quarters of one percent of the maximum allowed two percent of the local sales and use tax derived from Annexed Property

(the “City’s Allocation”).

SECTION 3. This Section shall set out how the City is to receive the City Allocation.

- (a) It is the understanding and agreement of the Parties that the Texas Comptroller of Public Accounts (“Comptroller”) shall upon being provided with a copy of this Agreement and notification of an annexation by the City allocate the District’s Allocation and City’s Allocation for the Annexed Property in accordance with Section 2 above. So long as the Comptroller continues to so allocate the sales and use tax for the Annexed Property the District and City shall receive their respective sales and use tax allocations derived from the Annexed Property pursuant to the schedule set by the State Comptroller.
- (b) In the event the Comptroller shall not agree to make, or discontinues making, the distribution of the District’s and City’s Allocations as provided in Section 2, the distribution by the District of the City Allocations shall be controlled by this subsection (b). In such event the City’s Allocation shall be paid monthly by the District to the City as soon as possible, but in no event later than 30 days after actual receipt of said funds by the District paid in hand from the Texas Comptroller; and the City agrees the City shall pay to the District any and all costs of the determination, accounting, allocation, collection, payment and receipt of said sales and use tax increase and amounts to be paid to City as the City Allocation and such amounts shall be deducted from any payments made by the District to the City under this subsection (b). The District may request, and the City shall grant, an extension for any payments due hereunder by fifteen 15 days from the dates set forth above if necessary to allow the District to make a proper accounting of such amounts so due. The payments by the District may be made via a wire or ACH transfer of funds or by a bank draft or check drawn on the District’s account. The obligation of the District to make any payments hereunder shall accrue 30 days after the date of written notice to the District from the City as set forth in Section 4, below, of any annexation in the Future Annexed Area and inclusion of the Annexed Property in the City.

SECTION 4. The City shall notify the District and the Comptroller in writing of the annexation of any Annexed Property in the Future Annexed Area, and in this written notification, the City shall provide the District and Comptroller with written findings by the City that the payments to be made hereunder by the District to the City shall be used by the City for expenditures for the District’s support and purposes authorized by Chapter 775, Texas Health & Safety Code, by virtue of the City’s provision of services, including, but not limited to, additional revenue (both ad valorem and sales and use tax revenues) for the District and the City via the creation of economic development, road improvements and other capital improvement projects (including water supply), police protection, enforcement of municipal building and fire codes, and the provision of other service and projects in any area of the City that overlaps with the District’s jurisdiction.

It is agreed and understood that the District shall have no duty or obligation to pay to the City any funds set forth in this Agreement until such time as this written notice of annexation and findings by the City has been received by the District and the Comptroller.

SECTION 5. To the extent permitted by law, the term of this Agreement shall be for ten (10) years from the effective date hereof, and, except as specifically provided herein, at the termination of this Agreement neither of the Parties shall have any further obligation or liability to the other party herein. Upon the expiration of said twenty (20) year term set forth above, this Agreement shall automatically renew for new, consecutive twenty (20) year terms unless otherwise terminated by either the District or the City. A party desiring to terminate this Agreement shall provide written notice of termination of this Agreement to the other party at least one year prior to the effective date of the termination hereunder. The City and District may, by addendum hereto, agree to extend the term of this Agreement. This Agreement is subject to all applicable law, including, but not limited to those laws related to unconstitutional debt and non-appropriation of funds.

SECTION 6. This Agreement is intended for the benefit of the named Parties only, and is in no way intended to benefit any other person, either directly or indirectly, including members of the public. Nothing in the Agreement shall or shall be construed to create a partnership or other type of joint enterprise, the sole intent being to create a contractual relationship between the Parties. By entering into this Agreement, and pursuant to the provisions of Section 791.011(d)(3), the District and the City agree that each party paying for the performance of governmental functions or services hereunder must make the payments called for herein from current revenues available to the paying party

SECTION 7. Nothing in this Agreement is intended to expand any liability that any Party to this Agreement may have to any other person other than a named Party to this Agreement.

SECTION 8. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Texas.

SECTION 9. Any suit brought to enforce, interpret, or receive damages under any provision of this Agreement shall be brought in Parker County, Texas.

SECTION 10. Neither this Agreement nor any term or provision of this Agreement, may be changed, waived, discharged, amended, or modified orally, or in any other manner than by an instrument in writing signed by all the Parties.

SECTION 11. This Agreement is not assignable by any Party without the written consent of the other Party.

SECTION 12. Notwithstanding the provisions of the Texas Government Code, the Texas Local Government Code, or other applicable statute, law, rule, or regulation, and unless prohibited by Texas law, each Party shall defend, indemnify, and hold harmless the other Parties and its officers, agents, employees and representatives from any and all losses,

liability, damages, claims, suits, actions and administrative proceedings, and demands and all expenditures and cost relating to acts or omissions of the indemnitor, its officers, agents or employees arising out of or incidental to the performance of any of the provisions of this Agreement. . No Party assumes liability for the acts or omissions of persons other than each Party's respective officers, agents or employees. This indemnification clause shall survive this Agreement.

SECTION 13. By entering into this Agreement, neither Party waives any of the rights, immunities, or defenses provided by the Texas Constitution, state statutes or the common law.

SECTION 14. All notices hereunder shall be sent certified mail, return receipt requested to the addresses set forth below the signatures of the Parties to the Agreement. Notices are deemed given and completed upon deposit in the United States Mail. Either Party may change its address by providing ten (10) days written notice of such change to the other Party in the manner provided for above. A party hereto may change the addresses set forth below for notices upon written notice as provided for herein.

SECTION 15. This Agreement shall be effective as of the date set out above.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above set forth to be effective as set forth herein.

Approved by the Board of Emergency Services Commissioners of Parker County Emergency Services District No. 1 in its meeting held on the ____ day of _____ 2024 and executed by its authorized representative.

PARKER COUNTY EMERGENCY SERVICES DISTRICT NO. 1

By: _____
Mark Jack, President
315 Morrow Road
Springtown, Texas 76082

ATTEST:

Shawn Scott, Secretary

Approved by the City Council of the City of Willow Park, Texas in its meeting held on the ____ day of _____ 2024 and executed by its authorized representative.

CITY OF WILLOW PARK, TEXAS

By: _____
Doyle Moss, Mayor
120 El Chico, Suite A
Willow Park, Texas 76087

ATTEST:

Antonette A. Fisher, Interim City Secretary