

RESOLUTION NO. R-2021-106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING AN INTERLOCAL AGREEMENT FOR OPERATION AND MAINTENANCE OF BASTROP COUNTY HOUSEHOLD HAZARDOUS WASTE FACILITY BETWEEN THE CITY OF BASTROP AND BASTROP COUNTY, AS ATTACHED AS EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City Council has appointed the City Manager as the Chief Administrative Officer of the City; and

WHEREAS, The City Manager is responsible for the proper administration of all affairs of the City; and

WHEREAS, The City of Bastrop has an interest in participating in the Bastrop County Household Hazardous Waste Facility; and

WHEREAS, pursuant to Chapter 791, Texas Government Code, and the general and special laws of the State of Texas, the City of Bastrop is authorized to enter into this Agreement providing for the undertaking, administration and implementation of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: That the City Manager is hereby authorized to execute an Interlocal Agreement for Operation and Maintenance of Bastrop County Household Hazardous Waste Facility between City of Bastrop and Bastrop County, as attached as Exhibit A.

Section 2: All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 9th day of November, 2021.

APPROVED:



Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

INTERLOCAL AGREEMENT FOR OPERATION AND MAINTENANCE OF
BASTROP COUNTY HOUSEHOLD HAZARDOUS WASTE FACILITY
BETWEEN THE CITY OF BASTROP AND BASTROP COUNTY

This Operation and Maintenance Agreement for the Bastrop County Household Hazardous Waste Facility ("*BCHHWF*") is entered into by and between Bastrop County ("*Bastrop County*") and the City of Bastrop ("*Bastrop*")

RECITALS

WHEREAS, Bastrop County, a local political subdivision of the State of Texas and the City of Bastrop a local political subdivision of the State of Texas, hereby enter into this Interlocal Agreement ("*Agreement*") for the purpose to cooperate, operate and maintain the facility in Bastrop County for the purpose of managing, storing, and disposing household hazardous waste; and

WHEREAS, the *BCHHWF* will serve and benefit the residents of the City of Bastrop; and

WHEREAS, Lee County ("*Lee County*") will also enter into their own Interlocal Agreement with Bastrop County for the use of *BCHHWF*, together Bastrop County, Lee County, and the City of Bastrop will collectively be known as the "Participants" of the Agreement; and

WHEREAS, the City of Smithville ("*Smithville*") will also enter into their own Interlocal Agreement with Bastrop County for the use of *BCHHWF*, together Bastrop County, Lee County, and the City of Smithville will collectively be known as the "Participants" of the Agreement; and

WHEREAS, pursuant to Chapter 791, Texas Government Code, and the general and special laws of the State of Texas, the City of Bastrop is authorized to enter into this Agreement providing for the undertaking, administration and implementation of the Agreement; and

WHEREAS, the City of Bastrop desires to enter into this Agreement to provide the terms and conditions under which the *BCHHWF* will be operated.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City of Bastrop agrees as follows:

1. Facility. For purposes of this Agreement, the term "Facility" means and includes real property, buildings, equipment and other property located at 911 South MLK, Smithville, Texas 78957.
2. Allocation of Operation and Maintenance Costs. Each Participant under this ILA confirms and agrees that they shall contribute money for the cost of operating and maintaining the *BCHHWF* annually for the term of this Agreement:

Bastrop County contribution: \$10,000 per year
the City of Bastrop contribution: \$5,000 per year

3. Establishment of Funds. Bastrop County agrees to establish a "*Facility Fund*" (defined herein) as provided in this Section:
 - a. The Facility Fund shall hold and reserve funds to pay for the operation and maintenance of the Facility ("*Facility Costs*"). The Facility Fund shall be administered by Bastrop County through the general fund.
 - b. The Facility Administrator is the Bastrop County Auditor. The Facility Administrator shall create a code for the Facility Fund and administer funds and pay bills. The depository at which the Facility Fund is held and the signatories on such Fund may be changed from time to time by the Administrator of that account; provided, however, that notice of such changes are reported to the Oversight Committee (defined herein) created under Section 7 of this Agreement.
 - c. All sums on deposit in the Facility Fund shall at all times either be insured by the Federal Deposit Insurance Corporation or collateralized in the manner required by Chapter 2257, Texas Government Code.

4. Facility Administrator.
 - d. **the City of Bastrop** agrees that a Bastrop County representative shall be the initial administrator of the Facility Fund ("*Facility Administrator*").
 - e. The Facility Administrator shall have the responsibility and authority to establish the Fund as provided in Section 3, above, and to disburse funds from such Fund in the manner and for the purposes set forth in this Agreement. The Facility Administrator will have the duty to deposit all sums received from the Participants under this Agreement into the Facility Fund and to maintain proper books and records of that Fund. The Facility Administrator will secure and maintain insurance coverage. The cost of such insurance will constitute an expense of the Facility.

5. Budget. An annual budget for operation and maintenance (O&M) including any equipment needed shall be prepared and approved by the participants. **Within thirty (30) days of the start of each fiscal year, the participants shall deposit their allocated share with the Facility Administrator.**

If the City of Bastrop fails to timely deliver a Facility Fund Payment as required by this Section, then the Facility Administrator shall notify the other Participants as soon as practicable. A failure of the City of Bastrop to timely deliver the Facility Fund Payment shall constitute a default under this Agreement.

6. Accounting. The Facility Administrator shall maintain complete books and records showing all deposits into and expenditures of any nature from the Facility Fund, which books and records shall be deemed complete if kept in accordance with generally

acceptable accounting principles as applied to governmental entities in Texas. Such books and records shall be available for examination at the offices of the Facility Administrator by the duly authorized officers or agents of the City of Bastrop during normal business hours upon request made not less than five (5) business days prior to the date of such examination. The Facility Administrator shall maintain such books and records until at least four (4) years after completion of the Facility. If the Facility Administrator is changed by the Participants, all books and records relating to the Facility Fund shall be promptly turned over to the new Facility Administrator.

7. Oversight Committee.

- a. Committee Representatives. There is hereby established a standing advisory committee (the "*Oversight Committee*") consisting of one (1) representative of each Participant. The initial members of the Oversight Committee are:

Representative, Bastrop County
Representative, Lee County
Representative, City of Smithville
Representative, City of Bastrop

The participants may change its designated representative on the Oversight Committee by providing written notice to the other Participants in accordance with this Agreement.

- b. Meetings. Any member of the Oversight Committee may also request a meeting to consider issues related to this Agreement or to address other situations that need attention. The meetings shall be held at a time and place reasonably convenient for the Oversight Committee members.
- c. Purpose. The purpose of the Oversight Committee is to review, consider, and make recommendations to *BCHHWF* on all matters pertaining to the Facility, including, but not limited to, the Annual O&M Budget, expenditures of money from the Facility Fund and O&M Fund, scopes of work, actual costs compared to budgeted estimates, and any other matters relating to the Facility. Meeting minutes or a brief report summarizing each Oversight Committee meeting will be prepared and delivered to each member of the oversight committee by the Facility Administrator, or designee.
- d. Voting. Any recommendation or action of the Oversight Committee will require the affirmative vote of a majority of the Oversight Committee members at a meeting. Members may also vote by email, video-conference, or phone.
- e. Recommendations. All recommendations or actions of the Oversight Committee will be memorialized in writing and the Facility Administrator or designee shall provide a copy of such written recommendation to all of the members.

8. Operations. Bastrop County shall also designate an Operations Manager (OM). The OM shall be responsible for developing the operation guidelines, schedules, waste handling, safety, spill prevention, security, and emergency response plans. The OM shall also be responsible for maintenance of the site and equipment.

The Facility shall be manned with properly trained personnel. Each participant shall have at least two (2) persons trained and available to staff the site when required on a part-time basis. Volunteers will also be used as needed.

9. Maintenance. The Operations Manager shall notify the Oversight Committee when maintenance or repair is required for the site or equipment and recommend action to be taken. The Oversight Committee will evaluate the options and approve any actions and expenditures above \$100.00.

10. Event of Default. Subject to the Force Majeure provisions of this Agreement, the following events, if not cured by the defaulting Participant within thirty (30) days of receipt of written notice from a non-defaulting Participant (the "*Cure Period*"), shall be considered a breach of this Agreement (each an "*Event of Default*");

- a. Failure to make payments or deposits in the amount or in the time period set forth in this Agreement; or
- b. Failure to comply with any other conditions or terms of this Agreement or to take any actions required by this Agreement.

If an Event of Default is not cured within the applicable Cure Period, then the dispute resolution provisions in Section 11 shall apply.

11. Dispute Resolution. The Participants agree to negotiate in good faith and attempt to resolve any dispute between them arising under this Agreement. If the Participants are unable to resolve the dispute or to agree on a course of action within thirty (30) calendar days after the end of the Cure Period, then they agree to submit the dispute to mediation. The cost of mediation will be divided equally among all the Participants. The burden of proof as to whether a Force Majeure Event has occurred or as to whether the Force Majeure Event has prevented performance is upon the defaulting Participant. The burden of proof as to whether an Event of Default has occurred or regarding a failure to cure is on the non-defaulting Participant. If the dispute is resolved by mediation, the relief obtained as a result of mediation is the exclusive remedy available to the Participants related to the Event of Default. If the dispute is not resolved within ninety (90) calendar days after submission of the dispute to a mediator, each Participant will have all rights and remedies which may be available under law and equity, including without limitation the right to specifically enforce any term or provision of this Agreement and/or the right to institute an action for damages or mandamus.

12. Force Majeure.

- a. Definition. Except as otherwise provided below, the term "*Force Majeure Event*" means any act or event, whether foreseen or unforeseen, that meets all three (3) of the following tests:

- i. The act or event prevents a Participant (the "*Nonperforming Participant*"), in whole or in part, from (i) performing its obligations under this Agreement; or (ii) satisfying any conditions precedent to the obligations of the other Participant or Participants (the "*Performing Participants*", whether one or more) under this Agreement; and
- ii. The act or event is beyond the reasonable control of and not the fault of the Nonperforming Participant; and
- iii. The Nonperforming Participant has been unable to avoid or overcome the act or event by the exercise of due diligence.

Despite the generality of the preceding definition of a Force Majeure Event, a Force Majeure Event excludes economic hardship, changes in market conditions, or insufficiency of funds and a Force Majeure Event does not excuse any obligation by either a Performing Participant or a Nonperforming Participant to make any payment or deposit required under this Agreement.

- c. Actions on Occurrence of Force Majeure Event. No later than five (5) business days after becoming aware of the occurrence of a Force Majeure Event, the Nonperforming Participant will furnish the Performing Participant with written notice describing the particulars of the occurrence, including an estimate of its expected duration and probable impact on the performance of the Nonperforming Participant's obligations under this Agreement. During the continuation of the Force Majeure Event, the Nonperforming Participant will furnish timely, regular written notices updating the information contained in the initial notice, and providing any other information that the Performing Participant reasonably requests. In addition, during the continuation of the Force Majeure Event, the Nonperforming Participant will exercise commercially reasonable efforts to overcome, mitigate or limit damages to the Performing Participant, continue to perform its other obligations under this Agreement (to the extent it is able), and cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure Event requires. When the Nonperforming Participant is able to resume performance of its obligations under this Agreement, it will immediately give the Performing Participant written notice to that effect and will resume performance under this Agreement no later than five (5) business days after the notice is delivered.

13. Term. This Interlocal Agreement shall have a **three (3) year term**, beginning on the date last signed below. Ninety (90) days prior to the termination date all participants will be encouraged to extend the term for an additional three (3) years.

14. Miscellaneous

- a. Actions Performable; Venue. All actions to be performed under this Agreement are performable solely in Bastrop County, Texas. Venue for any action arising under this Agreement will be in Bastrop County, Texas.

- b. Governing Law. The Participants agree that this Agreement has been made under the laws of the State of Texas in effect on the Effective Date, and that any interpretation of this Agreement at a future date will be made under the laws of the State of Texas.
- c. Severability/No Waiver. If a provision of this Agreement is finally declared void illegal, or unenforceable by any court or administrative agency having jurisdiction; the remaining provisions will not be affected, but will continue in effect as nearly as possible in accordance with the original intent of the Participants. Any failure by a Participant to insist upon strict performance by another Participant of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such Participant may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.
- d. Complete Agreement/Amendment. This Agreement, including the attached exhibits, represents the complete agreement of the Participants and supersedes all prior written and oral agreements or understandings related to the subject matter of this Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only by written agreement of all of the Participants.
- e. Exhibits; Headings, Construction and Counterparts. All schedules and exhibits, if any, referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender include the feminine or neuter, and the singular includes the plural, and vice-versa. The Participants acknowledge that each of them have been actively and equally involved in the negotiation and drafting of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Participant will not be employed in interpreting this Agreement or any exhibits hereto. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.
- f. Notice. All notices under this Agreement must be in writing. Any notice given under this Agreement must be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the Participant to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery," addressed to the Participant to be notified and with all charges prepaid; (iii) by personally delivering it to the Participant, or any agent of the Participant listed in this Agreement; or (iv) by facsimile or (v) by email, and if by email, a confirming copy must also sent by first class United States Mail.

For purposes of notice, the addresses of the Participants will, until changed as provided below, be as follows:

Bastrop County:

Name: County Judge
Address: 804 Pecan Street, Bastrop, TX 78602
Phone: 512-332-7201
Fax: 512-581-7103
Email: purchasing@co.bastrop.tx.us

Lee County:

Name: County Judge
Address: 200 S Main St., STE 107, Giddings, TX 78942
Phone: 979-542-3178
Fax: 979-542-2988
Email: paul.fischer@co.lee.tx.us

City of Smithville:

Name: City Manager
Address: 317 Main St., P.O. Box 449, Smithville, TX 78957
Phone: 512-237-3282
Fax:
Email: citymanager@ci.smithville.tx.us

City of Bastrop:

Name: City Manager
Address: 1311 Chestnut Street, Bastrop Texas 78602
Phone: 512-332-8800
Fax: 512-332-8819
Email: phofmann@cityofbastrop.org

Each Participant may change its respective contact and address to any other address within the United States of America by giving at least five (5) calendar days' written notice to the other Participants.

- g. Assignment. This Agreement is not assignable by any Participant without the prior written consent of all other Participants. The foregoing will not be deemed to prohibit a Participant's Percentage Share being transferred by operation of law to a successor of a Participant upon dissolution of that


Participant under the Texas Water Code, and this Agreement will be binding upon and inure to the benefit of any such successor.

- h. Authority. Each Participant represents and warrants that it has the full right, power, and authority to execute this Agreement and all related documents. Each person executing this instrument on behalf of a Participant represents that he or she is an authorized representative of and has the authority to sign this document on behalf of the respective Participant.
- i. Time. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be extended to the next day that is not a Saturday, Sunday or legal holiday.
- j. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Participants may execute this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement and exchange the counterparts of such documents by means of facsimile transmission, and the Participants agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. Thereafter, the Participants shall promptly exchange original versions of this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission.
- k. Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the Participants, any right, remedy, or Claim under or by reason of this Agreement; or any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Participants shall be for the sole and exclusive benefit of the Participants. Nothing in this Agreement is intended to interfere with any agreements of any Participant with any third party.

The Bastrop County and the City of Bastrop have executed this Agreement as of the date(s) indicated below.


Signatures:

Bastrop County

By: 
Name: Paul Pape
Title: Bastrop County Judge

Date: 10/25, 2021

City of Bastrop

By: 
Name: Paul Hofmann
Title: City Manager

Date: 11/10/21, 2021