

**INTERLOCAL AGREEMENT RELATED TO A PILOT PROJECT FOR AN
EARLY WARNING WILDFIRE DETECTION SYSTEM**

This Interlocal Agreement is among the following parties: **City of Austin**, a Texas home-rule municipality ("Austin"), **City of West Lake Hills**, Texas ("West Lake Hills"), a Type A general-law municipality, and **Travis County** ("County") (collectively the "Parties") and shall be effective on the date it has been executed by all parties ("Agreement").

1. This Agreement establishes the obligations of all Parties in connection with a pilot project related to the implementation of an early warning wildfire detection system.

This Agreement is authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each Party's monetary obligations, if any, are for the performance of governmental functions or services and are payable only from the current revenues appropriated and available for the performance of those functions or services.

2. **Purpose.** The purpose of the Agreement is to establish an agreement between the Austin, West Lake Hills, and County for a pilot project to test the effectiveness of an early warning detection system for wildfires using smoke sensors with the primary coverage being in the western portion of Travis County for a limited period of time (one year), and develop recommendations for wildfire detection on a long term basis including the continuation of the use of smoke sensors, alterations to the methods used, and the expansion of the use and other factors that present themselves during the one year pilot project.
3. **Functional Steps:** The Parties shall install five (5) compatible smoke sensors as public safety equipment in compliance with the Texas Local Government Code, determine the placement of each sensor for optimal results in the covered area(s), monitor the information transmitted by the smoke sensors, and evaluate and report on those results periodically and after each covered incident. The sensor currently owned by West Lake Hills shall be one of the five sensors required by this Agreement.
4. **Evaluation:** The Parties shall evaluate the effectiveness of the early warning wildfire detection system pilot program on an on-going basis throughout the year with the reporting of fires correctly detected, fires that occurred but were not detected, false positive detections, and also information on the dates and level of fire hazard for all days throughout the year to indicate how severe the fire season was during the pilot program.

5. **Cooperation.** Austin, West Lake Hills, and County agree to cooperate with each other in good faith at all times to accomplish the purposes and intent of this Agreement.
6. **Duties and Performance by Austin.** Austin shall provide the following activities and services:
 - 6.1 If the vendor delivers two (2) early warning wildfire detection system sensors at no charge to Austin or the County within ten (10) days after approval of this agreement by all of the Parties, Austin shall be responsible for the purchase and all costs associated with the purchase, installation, and maintenance of two (2) early warning wildfire detection system sensors as described in Exhibit A . Austin shall be responsible for the installation and maintenance of early warning wildfire detection system sensors at four (4) locations. At the end of the pilot project, two (2) of these sensors shall be the property of the County upon payment by County to Austin as set forth in Paragraph 7.1.
 - 6.2 Austin shall assume responsibility for the monitoring station from West Lake Hills and shall be responsible for providing sufficient staff to monitor all sensors that are part of the early warning wildfire detection system on high fire hazard days utilizing the National Fire Danger Rating System (NFDRS).
 - 6.3 Austin shall notify all appropriate agencies of possible fire activity as detected by the early warning wildfire detection system sensors.
 - 6.4 Austin shall be solely responsible for the salary and benefits of Austin staff assigned to monitor the early warning wildfire detection system.
 - 6.5 Austin shall share data obtained from its sensors with County and West Lake Hills.
 - 6.6 Austin shall provide a single staff member as primary contact for this Agreement.
7. **Duties and Performance by County.** County shall provide the following activities and services:
 - 7.1 County shall pay Austin for all costs associated with the purchase and installation of one (1) early warning wildfire detection system sensor as described in Exhibit A . County shall also pay for the price of one structural analysis to be performed on one radio tower selected for this pilot project as described in Exhibit B no later than thirty (30) calendar days before the expiration of this agreement. The total amount to be paid to Austin in connection with this pilot project shall not exceed \$180,019.

7.2 County shall share data obtained from its sensors with Austin and West Lake Hills.

7.3 County shall provide a single staff member as primary contact for this Agreement.

8. Duties and Performance by West Lake Hills. West Lake Hills shall provide the following activities and services:

8.1 West Lake Hills shall allow Austin and County to reposition its current sensor if necessary for the needs of the pilot project and utilize its current sensor in connection with this pilot project, as well as any additional sensors purchased by West Lake Hills during this Agreement.

8.2 The cost of any additional sensors purchased by West Lake Hills during this Agreement shall be the responsibility of West Lake Hills. This includes the cost of installation and maintenance of that sensor.

8.3 West Lake Hills shall share data obtained from its sensor(s) with Austin and County.

8.4 West Lake Hills shall temporarily convey its early wildfire detection systems computer workstation, radio transmitter, and related monitoring equipment to Austin for Austin's utilization during the initial term of this Agreement. Austin shall return to West Lake Hills the computer workstation, radio transmitter, and related monitoring equipment at the end of the initial term if so requested by West Lake Hills, or sooner if this Agreement is terminated prior to the end of the initial term.

8.5 West Lake Hills shall provide a single staff member as primary contact for this Agreement.

9. Location, Ownership, Replacement and Maintenance of Assets and Facilities

9.1 Location of Sensors: Unless the Parties agree in writing otherwise, the early warning fire detection system sensors shall be placed at the following locations: The "Lakeway" radio tower site, located at 3322 FM 620, Lakeway, TX 78738, and the "Four Points" radio tower site, located at 10507 FM 2222, Austin, TX 787309.

9.2 All real or tangible property shall be the property of the Party that purchased it, or when applicable upon full payment, and shall remain in its possession upon termination of this Agreement. The real or tangible property of one of the two (2) sensors provided at no charge by the vendor shall be the property

of Austin. The real or tangible property of the second one of the two (2) sensors provided at no charge by the vendor shall be the property of County.

9.3 Ownership: Data. All data collected by the early warning wildfire detection system shall be the joint property of Austin, West Lake Hills, and County. At the termination of this Agreement each Party may utilize that data as it sees fit.

10. Breach of Agreement, Dispute Resolution, and Termination

10.1 Termination for Breach: Notice of any claims of material breach, including the non-compliance of a Party to fulfill its deliverables as have been outlined above or due to financial circumstances and the intent to terminate this Agreement because of that breach shall be given in writing to the other Parties, identifying the breach claimed with particularity, and stating the time permitted for cure, such time to be commercially and legally reasonable. Such a notice of claim of breach is sufficient to constitute termination of this Agreement. Without waiving any legal rights, the Parties may agree to voluntary mediation of any disputes.

10.2 Termination without Cause. A Party may terminate this Agreement at any time, with or without cause, by providing the other Parties with one hundred and twenty (120) days written notice. Upon termination, the ownership and possession of the sensors in the applicable Party becomes effective.

11. Miscellaneous and Closing Clauses

11.1 Compliance with Law. Austin, West Lake Hills, and County shall comply with all applicable federal, state and local constitutions, laws, rules and regulations in the performance of this Agreement including those related to health, safety, staffing requirements, purchasing, licensing, and reporting.

11.2 Independent Contractors, No Agency. The Parties to this Agreement are independent contractors. An officer or employee of one Party shall not be construed to be the agent or the employee of the other Parties. No Party may represent the others for any purpose not expressly authorized in this Agreement without the prior consent of the other Parties. It is acknowledged by each Party that no officer, agent, employee or representative of another Party has any authority to amend or assign this Agreement, or waive any violations of this Agreement unless expressly granted that specific authority by that Party's governing body.

11.3 Employees. This Agreement shall have no effect upon the personnel policies of Austin, or employment status or benefits of any Austin employee. Austin shall be responsible for payment of taxes, workers' compensation coverage, and benefits required by law for its employees.

This Agreement shall have no effect upon the personnel policies of West Lake Hills, or employment status or benefits of any West Lake Hills employee. West Lake Hills shall be responsible for payment of taxes, workers' compensation coverage, and benefits required by law for its employees. This Agreement shall have no effect upon the personnel policies of County, or employment status or benefits of any County employee. County shall be responsible for payment of taxes, workers' compensation coverage, and benefits required by law for its employees. This Agreement does not create an employment contract between Austin, West Lake Hills, or County and any individual with respect to continued employment or the provision of any benefit. The Parties shall not have any statutory liability for any employee of the other Parties.

- 11.4 Force Majeure. No Party is liable nor is it deemed to be in default for any delay or failure to perform its obligations under this Agreement to the extent, and for the period of time, that this failure is caused by an event or condition reasonably beyond the control of that Party including, but not limited to, acts of God, civil or military authority, acts of public enemies, acts of terrorism, fires, floods, strikes or regulatory delay or restraint. The Party invoking this provision shall give notice to the other Parties and shall use due diligence to remedy the event or condition of Force Majeure as soon as is reasonably possible. Each Party acknowledges that it is bound to perform its obligation under this Agreement to the fullest extent possible taking into consideration the limitations caused by the event or condition of Force Majeure.
- 11.5 Joint and Separate Liability. For any claims, damages and attorney fees arising from the intentional acts or negligent or wrongful acts or omissions of Austin, West Lake Hills, or County employees in relation to their respective obligations as described in this Agreement, if all Parties are liable, Austin, West Lake Hills, and County shall be liable for the portion of the claims, damages and attorney fees that arise from the intentional acts or negligent or wrongful acts or omissions of that Party as determined by a court of competent jurisdiction adjudicating the matter or as agreed in any settlement. If only one Party is liable, that Party shall be liable for the claims, damages and attorney fees that arise from the intentional acts or negligent or wrongful acts or omissions of that Party as determined by a court of competent jurisdiction adjudicating the matter or as agreed in any settlement. The Parties agree that the assignment of liability described this Section is intended to be different than liability otherwise assigned under Section 791.006(a) of the Texas Government Code.
- 11.6 Amendment. Any change to a provision of this Agreement shall be made in writing and signed by all Parties. It is acknowledged that no officer, agent, employee or representative of the other Parties has any authority to

change the provisions of this Agreement or any exhibits to it unless expressly granted that specific authority by the Party's governing body.

11.7 Assignment. No Party may assign any of its rights or responsibilities under this Agreement without the prior written consent of the other Parties. It is acknowledged by each Party that no officer, agent, employee or representative of the other Parties has any authority to grant that assignment unless expressly granted that specific authority by the Party's governing body.

11.8 Non-waiver. Any act of forbearance by a Party to enforce any provision of this Agreement and any payment made in compliance with this Agreement shall not be construed as a modification of this Agreement or as a waiver of any breach or default of the other Parties which then exists or may subsequently exist. The failure of a Party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of the right or privilege. Exercise of any right or remedy shall not impair, prejudice, or preclude the exercise of any other right or remedy under this Agreement.

11.9 Notices. Notice to be effective under this Agreement must be in writing and received by the Party/Parties against whom it is to operate. Notice is received by a Party: (1) when it is delivered to the Party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, and return receipt requested, to the Party's address specified below, and signed on behalf of the Party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the Party/Parties at the address specified below.

11.10 Address of County. The address of County for all purposes under this Agreement shall be:

If by Mail

Danny Hobby (or his successor)
County Executive,
Emergency Services
Travis County
P.O. Box 1748
Austin, Texas 78767

If by Personal Delivery

Danny Hobby (or his successor)
County Executive,
Emergency Services
Travis County
5501 Airport Blvd, Suite 203
Austin, Texas 78751

11.11 Address of Austin. The address of Austin for all purposes under this Agreement shall be:

If by Mail

Marc Ott (or his successor)
City Manager
City of Austin
P.O. Box 1088
Austin, Texas 78767

If by Personal Delivery

Marc Ott (or his successor)
City Manager
City of Austin
301 West 2nd Street
Austin, Texas 78701

With copies to (registered or certified mail is not required)

If by Mail:

Rhoda Mae Kerr (or her successor)
Chief
City of Austin Fire Department
P.O. Box 1088
Austin, Texas 78767

If by Personal Delivery:

Rhoda Mae Kerr (or her successor)
Chief
City of Austin Fire Department
4201 Ed Bluestein Blvd
Austin, Texas 78721

And to:

Karen Kennard (or her successor)
City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767

Karen Kennard (or her successor)
City Attorney
City of Austin Law Department
301 West 2nd Street
Austin, Texas 78701

11.12 Address of West Lake Hills. The address of West Lake Hills for all purposes under this Agreement shall be:

If by Mail

Robert J. Wood (or his successor)
City Administrator
City of West Lake Hills
911 West Lake Drive
West Lake Hills, Texas 78746

If by Personal Delivery

Robert J. Wood (or his successor)
City Administrator
City of West Lake Hills
911 West Lake Drive
West Lake Hills, Texas 78746

And to:

If by Mail
Alan Bojorquez
City Attorney West Lake Hills
12325 Hymeadow Dr., Ste 2-100
Austin, Texas 78750

If by Personal Delivery
Alan Bojorquez
City Attorney West Lake Hills
12325 Hymeadow Dr., Ste 2-100
Austin, Texas 78750

11.13 Non-Party Beneficiaries. No provision in this Agreement creates any rights in any person or entity that is not a Party to this Agreement, and the rights to performance in this Agreement are only enforceable by Austin, West Lake Hills, and County.

11.14 Term. This Agreement is effective once the last required signature is affixed and shall expire one (1) year from the date the fifth sensor is installed and is fully operational, unless terminated earlier by a Party as provided for in this Agreement.

11.15 Law and Venue. The Agreement is governed by the laws of the State of Texas and the United States of America. All obligations under this Agreement are performable in Travis County, Texas.

11.16 Severability of Provisions. If any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder shall continue to have full force and effect and shall in no way be impaired or invalidated by that holding.

12. **Entire Agreement.** This Agreement replaces all prior contracts and all oral and written agreements between the Parties regarding the subjects and terms of this Agreement. Any agreement, covenant or understanding that is not included in this document is superseded by this Agreement.

13. **DUPLICATE ORIGINALS:** This Agreement may be executed in triplicate originals.

CITY OF AUSTIN

By: _____
Marc A. Ott, City Manager

Date: _____

TRAVIS COUNTY

By: _____
Samuel T. Biscoe, County Judge

Date: _____

CITY OF WEST LAKE HILLS

By: _____
Robert J. Wood, City Administrator

Date: _____

Exhibit A
Copy of Letter from FireWatch Texas

FireWatch Texas

May 12, 2014

BY EMAIL AND BY HAND

Ms. Erin D'Vincent
City of Austin Purchasing Office
124 West gdo Street
Austin, TX 78701

Dear Ms. O'Vincent:

On behalf of FireWatch America, LLC, here is our proposal to outfit two GATRSS towers with FireWatch equipment and software, establish communication links and move a control computer from the West Lake Hills Police Department to a location to be specified by the Austin Fire Department (AFD). Total cost: \$350,000.

Outfit two GATRSS towers known as the "Lakeway" tower (30.3284°N, 17.1721°W) and the "Four Points" tower (30.3906°N, 97.8439°W) as follows *at each tower*:

- a. 2 head units (precision cameras)
- b. 1 Image-processing computer
- c. 1 DC and 1 AC power supply with lightning protection
- d. Hybrid fiber-optic/copper cables for data transmission and power to head units
- e. Fire-detection software license (tower software)
- f. Installation and additional cabling
- g. 1 year warranty on all software and equipment.

COST: \$175,000 per tower; total \$350,000.

Additional work to be completed at no additional charge:

- h. Relocate the control computer (FireWatch Office computer) currently at the West Lake Hills Police Department to a location to be specified by the Austin Fire Department
- i. Establish communications link over the internet from the control computer to the towers
- j. Establish communications from the towers to the control computer via GAATN fiber optic cable where available, or otherwise via 5 GHz radio relay to the nearest tower providing a GAATN connection, or otherwise via Verizon mobile 4G hotspot.
- k. All necessary equipment to complete h. - j. above.
- l. If 4G hotspot equipment is needed, provide access to the Verizon network and cover the cost through the FireWatch America account with Verizon for the first year of operations.

This proposal assumes that all equipment provided by FireWatch America, LLC to the City of West Lake Hills, including its control computer, will be made available to the Austin Fire Department through an agreement between the City of Austin and the City of West Lake Hills. This proposal does not include placing a second camera on the tower at Mt. Larson.

Attached to this proposal, please find my email of March 5, 2014 to Jim Linardos and Chuck Brotherton to demonstrate that I am offering to outfit the above towers with two-camera systems for the same price as I had proposed to outfit towers with one-camera systems.

1300 West Lynn 5 Ste 104' PO Box 5674' Austin, TX 78763' (512) 474-4738
Alfred@FireWatchTexas.com • www.FireWatchTexas.com

Exhibit B



Account Manager: Clay Cassard
2120 W Breaker Lane Suite P
Austin TX 78758

Date: 6/30/14
Quote#: scc53014a

City of Austin Contract Number: S01153

Prepared For: Chuck Brotherton
Phone Number: (512) 927-3209
Email : charles.brotherton@austintexas.gov
Agency: City of Austin
Customer #: 1000559891

Ship to Address:
City of Austin Wireless
ATTN: Gary Wilks
1006 Smith Rd
Austin, TX 78721

Bill to Address:
City of Austin Wireless
ATTN: Gary Wilks
1006 Smith Rd
Austin, TX 78721

Item	Qty	Description	Model	Contract Price	Extended
1	1	Lakeway Tower Analysis Report	SVC	5,019.00	5,019.00
2	1	Four Points Tower Analysis Report	SVC	5,019.00	5,019.00
					10,038.00