

**INTERLOCAL AGREEMENT
BETWEEN THE
AMARILLO LOCAL GOVERNMENT CORPORATION
AND
POTTER COUNTY, TEXAS
(Parking)**

This Agreement is made between the Amarillo Local Government Corporation, a Texas corporation created pursuant to Subchapter D, Chapter 431 Texas Transportation Code corporation, (hereafter, "LGC") and the County of Potter, Texas (hereafter, "POTTER"). Pursuant to the authority granted by the "Texas Interlocal Cooperation Act," Chapter 791, Texas Government Code, as amended, providing for the cooperation between local governmental bodies, the parties hereto, in consideration of the premises and mutual promises contained herein, agree as follows:

1. Entity. Each party is a local government within the State of Texas.
2. Public Benefit & Purpose. The respective governing body of each party finds that: the subject of this Agreement is necessary for the benefit of the public; and, that each party has the legal authority to perform and to provide the governmental function or proprietary service which is the subject matter of this Agreement; and, that the division of cost fairly compensates the performing party under this Agreement; and, the performance of this Agreement is in the common interest of both parties.
3. Current revenues. Both the party promising to perform and the party paying for the performance shall, respectively, render performance and make payment from then-current revenues legally available to each party.
4. LGC Obligation. LGC now promises to perform and provide to POTTER certain access to a Parking Facility in accordance with Exhibit A.
5. County Obligation. POTTER hereby (a) accepts the duties, terms, conditions, limitations, procedures, fees, and scope of services stated in Exhibit A and, (b) agrees to perform its obligations stated therein, (c) including timely payment.
6. Effective Date & Term; Renewal.

 - a. This Agreement shall become effective on the first day after it has received approval of both governing bodies. The twenty-five years (25) period of use shall commence on the first date the Parking Facility becomes available for public use.
 - b. This Agreement may be terminated at any time prior to its expiration by mutual agreement of the Parties. However, after public use begins, neither party may unilaterally cancel this Agreement until the fifteenth (15th) year after occupancy. After that period, either Party may terminate the Agreement upon giving two (2) years prior written notice to the other Party.
 - c. At the end of the 20th year of the initial term, the parties may negotiate to extend the Agreement for a mutually acceptable additional term of years and consideration.

7. Exhibit incorporated. The provisions of Exhibit A are incorporated herein by this reference as though stated herein verbatim.

8. Delegated Authority. The governing body of each Party hereby authorizes its point-of-contact official (named elsewhere herein) to mutually agree (without the need of further approval by either governing body) to make minor adjustments in the operational procedures, allocated duties, rights, etc. with regard to the matters contained in Exhibit A, in order to facilitate greater efficiencies, reduce opportunity for errors, and better serve the public, so long as such adjustments do not require or constitute a change in fees or costs, or creates a material change in the performance required of a party, and are allowed by the laws applicable to the entity acting.

9. Liability. The purpose of this Agreement is only to set forth the rights and duties of the Parties with regard to the governmental function or services described. This agreement does not create any right, benefit, or cause of action for any third party. By executing this Agreement, neither Party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. Each Party shall be solely responsible for any loss, damage, injury, or death to a third party (parties) arising out of or related to the acts or omissions of it's employees or agents and not those of any other party.

10. Venue. Each Party agrees that if legal action is brought under this Agreement, then exclusive venue shall lie in the county in which the defendant Party is located and, if located in more than one county, in the county in which the principal offices of the defendant Party are located.

11. Contacts. The point of contact for each Party shall be as specified in Exhibit A.

12. Severance & Survival. 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 request, such invalidity, illegality, or unenforceability shall not affect any other provision contained herein and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained. The provisions of paragraphs 5(c) through 8, inclusive, shall survive termination, cancellation, expiration or non-renewal of this Agreement.

13. Amendments. This Agreement, including Exhibit A and any other attachment, contains all the commitments and the agreements of the Parties, and any oral or written commitments not contained herein shall have no force or affect to alter any provision of this Agreement. This Agreement, including Exhibit A and any other attachment, may be amended or modified only in writing by the mutual agreement of the Parties. In the event of a conflict between the terms of this agreement and Exhibit A, then the terms of Exhibit A shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers the day and year written below.

POTTER COUNTY, TEXAS

AMARILLO LOCAL GOVERNMENT
CORPORATION

By:

Nancy Potter

_____, County Judge

By:

Richard F. Brown

_____, Board President

Date:

1-29-15

Date:

1/14/15

EXHIBIT A – (Shared Access to Parking Facility)

The purpose of this Exhibit A and the Interlocal Agreement (Agreement) to which it is attached is to state the terms, conditions, and consideration by which the Amarillo Local Government Corporation (LGC) will share its parking facility with Potter County (COUNTY) for a specified term of years and by which Potter County will pay in advance for such shared access to the parking facility, as more fully described herein. To the extent of any conflict between the Interlocal Agreement and this Exhibit A, this exhibit controls.

1. Shared Access for Parking:

(a) The LGC is planning to build a parking garage (Parking Facility) on property located between S. Buchanan, S. Pierce, S.E. Seventh Avenue and S.E. Sixth Avenue. Because this site is also convenient to several COUNTY facilities, the parties now agree to share access to such facility as provided in this Agreement. Beginning on the day the Parking facility opens for public use, COUNTY shall have access to and the use of one hundred-fifty (150) parking spaces inside the Parking Facility between the hours of 7:30am to 5:30pm, Monday through Friday inclusive, for persons having official business to conduct with a Potter County department, court, or official during those days and hours.

(b) COUNTY shall bear all capital costs, over and above construction costs, deemed necessary or desirable for managing or controlling the use and hourly turnover of the 150 parking spaces allocated by Section 1(a). The design, placement or use of any device or personnel for such management and control shall not unreasonably interfere with the functioning, access, or traffic flow of the remainder of the Parking Facility. In providing decals or equipment and other signage, COUNTY will provide the wording and the LGC will order the decals or other necessary equipment relying on standards developed by the project architect and approved by LGC. COUNTY will reimburse LGC for the cost for such decals to the extent such cost exceeds the capital cost of construction. The LGC may, but is not obligated by this subsection to, alter its preferred or selected methods, means, or business model for design, equipping, or operating the Parking Facility.

(c) **Persons having official business with the COUNTY are not guaranteed a parking space within one of the 150 allocated to the COUNTY. Such persons shall be subject to and must pay the then-current applicable parking fees for using a space other than one within the 150 allocated to the COUNTY.**

(d) **Overnight parking of vehicles is prohibited. Any vehicle using a COUNTY parking space after 5:30pm or prior to 7:30am shall be subject to the then-current applicable parking fee rate for the time that the vehicle is parked at other than the days and hours allocated for COUNTY access by this Agreement.**

2. Consideration:

(a) For and in consideration for this Agreement, COUNTY agrees to pay and LGC agrees to accept a total payment of \$1,089,124.05 as full and final consideration for the Term of this Agreement. This sum is payable and due as follows:

- One-Half (1/2) upon the commencement of construction of the Project;
- Twenty-five percent (25%) upon fifty percent completion of the Project as certified by the Project Architect; and,
- Twenty-five percent (25%) upon substantial completion of the Project as certified by the Project Architect.

The parties intend this consideration to cover all obligations of the COUNTY, including without limitation, principal, rent, maintenance, and upkeep for the term of this Agreement, except as provided in Section 1(b),

(b) POTTER'S payment represents its share of construction costs plus operating and maintenance costs for 150 parking spaces, calculated as follows:

Capital Costs	
Cost per space	\$ 19,050.90
Times Time Factor	0.297619048 (50/168 of one week by hours)
=	5,669.91
Times 150 units	\$ 850,486.61
Operating & Management Costs	
Annual per space	\$ 233.00
Term	25 years
Discount rate	3%
Inflation rate	2.5%
Times Time Factor	0.297619048
=	\$ 238,637.44
TOTAL DUE FROM POTTER	\$1,089,124.05

The parties agree that COUNTY's payment shall be adjusted up or down proportionally based on estimate of the cost of construction as determined by the final plans submitted by the architect and used for the competitive bidding process.

(c) Whereas LGC has modified its financial plan in reliance upon this payment, the parties expressly agree that such consideration is nonrefundable should COUNTY give notice of early termination as provided above. However, if LGC gives notice of early termination as provided above, then it shall make a pro rata refund of the consideration paid by COUNTY based upon the remaining length of the Term at the time upon the effective date of the early termination.

3. No Subleasing, Assignment, Etc.: COUNTY has no right to assign, sublease, assign, collateralize, pledge, or otherwise delegate or encumber this Agreement, the rights granted by it, or the performance of this Agreement.

4. Substitute Performance: The parties acknowledge that at a future time during the Term of this Agreement, the LGC or City of Amarillo may construct additional parking garage(s) in the vicinity of the Parking Facility described in Section 1(a). In such event, the COUNTY agrees to consult with such entity(ies) in good faith as to the transfer of some or all of the 150 parking spaces contemplated by this Agreement to such other parking garage(s), and will not unreasonably withhold its consent to such a transfer. If COUNTY parking spaces are transferred to another garage, then no further consideration is required of COUNTY than what has already been paid pursuant to Section 2(a) above, but Section 2(b) shall be applicable.

5. Allocation of Risk as between the Parties: Whereas COUNTY has no command or control over the LGC's employees or agents, or the design, operation, and maintenance of the Parking Facility, LGC accepts all liability risk and legal responsibility that arises out of or relates to torts, civil rights, and other causes of action, damages, attorney fees and costs arising out of acts or omissions regarding the design, construction, operation, maintenance of the Parking Facility.

Whereas LGC has no command or control over COUNTY's employees, officials, or agents who operate motor vehicles or walk in, at, or on the Parking Facility, COUNTY accepts all liability risk and legal responsibility that arises out of or relates to torts, civil rights, other causes of action, damages, attorney fees and costs arising out of acts or omissions regarding use of the Parking Facility by COUNTY employees, officials, and agents.

Nothing in this Section 4 shall be construed as either: (a) creating any right, benefit, or cause of action for any third party that does not otherwise exist by other law; or (b) waiving any immunity, defense, affirmative defense, or legal rights of the LGC, COUNTY, and their respective employees, officials, officers, agents, or servants.

6. Contacts: Each party hereby designates the following person as its Point of Contact for administering this agreement:

Amarillo LGC
Board President
P.O. Box 1971
Amarillo TX 79105

Potter County
County Judge
500 S. Fillmore, Room 103
Amarillo TX 79101

copy to:
City Manager
P.O. Box 1971
Amarillo TX 79105

copy to:
Potter County Auditor
900 S. Polk, Suite 716
Amarillo TX 79101

7. Independent Contractor Status: As to Parking Facility design, conditions, and operations, LGC is an independent contractor and not an employee or agent of COUNTY. LGC retains sole determination as to the best manner, means, and methods for procuring, delivering, and managing the access to and the parking spaces contemplated in this Agreement. As an independent contractor, LGC has no authority or right to represent or commit to any matter on behalf of COUNTY, unless such authority is expressly stated or of necessity can be reasonably implied from the terms of this Agreement.

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