

STATE OF TEXAS § MOSQUITO GROUND CONTROL AGREEMENT BETWEEN
 § DALLAS COUNTY, TEXAS, ON BEHALF OF THE DALLAS
 § COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT, AND
COUNTY OF DALLAS § THE CITY OF COPPELL, TEXAS, A MUNICIPALITY

1. PARTIES

This Interlocal Agreement ("Agreement") is an Interlocal contract made by and between the City of Coppel, Texas, a "Municipality" as defined by Section 1.005(3) of the Texas Local Government Code ("Municipality"), and Dallas County, Texas ("County"), on behalf of the Dallas County Health and Human Services Department ("DCHHS"), based on the authority of the Interlocal Cooperation Act in Chapter 791 of the Texas Government Code, and the Local Public Health Reorganization Act in Chapter 121 of the Texas Health and Safety Code, to protect the public health by controlling the population of mosquitoes by ground spraying of adult mosquitoes ("adulticiding") and by treating standing water to destroy mosquito larvae ("larvaciding") in order to prevent and control the outbreak of diseases associated with mosquitoes.

2. DURATION OF THIS AGREEMENT

This Agreement is effective from October 1, 2016 through September 30, 2017, unless otherwise stated in this Agreement.

3. ADULTICIDING AND LARVACIDING SPRAYING SERVICES

- A. Upon written request from Municipality, County will provide adulticiding and larvaciding by way of **ground application** at the rate set forth in Paragraph 4;
- B. In the event that aerial spraying is needed to control the St. Louis Encephalitis or the West Nile virus throughout the County, Municipality will have the option to participate in the County's separate emergency aerial mosquito spraying plan. If Municipality agrees to participate in the County's separate emergency aerial mosquito spraying plan, Municipality must provide written notice to County and agree in writing to the following:
 - 1) Indicate in writing the areas and amount of acres to be sprayed; and
 - 2) Pay Municipality's proportioned share of the cost based upon the number of acres to be sprayed multiplied by the per-acre spraying cost, as determined by County.

4. BUDGET AND PAYMENT BY MUNICIPALITY TO COUNTY

- A. Municipality will pay County at a rate of One Hundred Eighty-Five (\$185.00) Dollars per hour, with a minimum of one (1) hour of service assessed.
- B. After the initial one (1) hour minimum service time for a given day of spraying, spraying services will be assessed using thirty (30) minute minimum intervals.
- C. Only spraying time will be assessed. Travel time to or from the site of ground spraying or treating standing water will not be assessed.
- D. Municipality must pay County the assessed fees within thirty (30) days of receipt by Municipality of the monthly written request for payment, or if County fails to make any written payment request(s), then Municipality will pay any remaining assessed fees no later than the last day of the term of this Agreement.
- E. Any payment not made within thirty (30) days of its due date will bear interest in accordance with Chapter 2251 of the Texas Government Code. Municipality's obligation

to pay fees assessed and interest accrued under this Agreement will survive the term of this Agreement until the Municipality pays the assessed fees and accrued interest.

5. AUDITING AND WITHHOLDING OF PAYMENTS

The Dallas County Auditor has the exclusive right and authority to audit this Agreement or to demand access to or copies of County's records concerning this Agreement or the County's administration of this Agreement. Municipality will have no right or authority to audit this Agreement or to demand access to or copies of County's records concerning this Agreement or the County's administration of this Agreement. Municipality has no right to withhold payments to County pending any audit of or inquiry about this Agreement or the County's administration of this Agreement.

6. TERMINATION

- A. Without Cause: This Agreement may be terminated in writing, without cause, by either party upon thirty (30) days prior written notice to the other party.
- B. With Cause: The County reserves the right to terminate the Agreement immediately, in whole or in part, at its sole discretion, for the following reasons:
 - 1) Municipality's lack of or reduction in funding or resources, financial or otherwise; or
 - 2) Municipality's misuse of resources, financial or otherwise; or
 - 3) Municipality's failure to comply with the terms of this Agreement; or
 - 4) Municipality's submission of inaccurate, incomplete, or false data, statements, or reports.

7. NO INDEMNIFICATION

COUNTY AND MUNICIPALITY, INCLUDING THEIR RESPECTIVE ELECTED OFFICIALS AND EMPLOYEES, AGREE THAT EACH WILL BE RESPONSIBLE FOR ITS OWN NEGLIGENT ACTS OR OMISSIONS OR OTHER TORTIOUS CONDUCT IN THE COURSE OF PERFORMANCE OF THIS AGREEMENT, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITIES AVAILABLE TO COUNTY OR MUNICIPALITY UNDER TEXAS LAW OR OTHER APPLICABLE LAWS AND WITHOUT WAIVING ANY AVAILABLE DEFENSES UNDER TEXAS LAW OR OTHER APPLICABLE LAWS. NOTHING IN THIS PARAGRAPH MAY BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES.

8. INSURANCE

Municipality agrees that Municipality will at all times during the term of this Agreement maintain in full force and effect general liability insurance; or self-insurance, to the extent permitted by applicable law under a plan of self-insurance, that is also maintained in accordance with sound, generally accepted accounting practices. Municipality expressly understands and agrees that it is solely responsible for 1) all costs of such general liability insurance; 2) any and all deductible amounts in any general liability insurance policy; and 3) any liability in the event that any insurance company denies coverage for any incident reasonably related to the performance of this Agreement.

9. NOTICE

Any notice or certification required or permitted to be delivered under this Agreement will be deemed to have been given when personally delivered, or if mailed, seventy-two (72) hours

after deposit of the notice or certification in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, and properly addressed to the contact person shown at their respective addresses set forth below, or at such other addresses as may be specified by written notice delivered by the methods described above in this subsection:

<u>Dallas County, Texas</u>	City of Coppell, Texas
Zachary Thompson, Director	Karen Hunt, Mayor
Dallas County Health & Human Svcs	City of Coppell; Attn: Carol Primeaux
2377 N. Stemmons Frwy, Suite 600	265 Parkway Blvd
Dallas, Texas 75207-2710	Coppell, TX 75019

10. ENTIRE AGREEMENT AND AMENDMENTS

This Agreement, including any Exhibits and Attachments, constitutes the entire agreement between the parties and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written. No modification, amendment, novation, renewal, or other alteration of this Agreement can be effective unless mutually agreed upon in writing and executed by the parties.

11. COUNTERPARTS, NUMBER, GENDER, AND HEADINGS

This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument when considered together in context. Words of any gender used in this Agreement will be held and construed to include any other gender any words in the singular will include the plural and vice versa, unless the context clearly requires otherwise. Headings are for the convenience of reference only and cannot be considered in any interpretation of this Agreement.

12. SEVERABILITY

If any term of this Agreement is construed to be illegal, invalid, void or unenforceable, this construction will not affect the legality or validity or any of the remaining terms. The unenforceable or illegal term will be deemed stricken and deleted, but the remaining terms will not be affected or impaired and such remaining terms will remain in full force and effect.

13. FISCAL FUNDING CLAUSE

Notwithstanding any terms contained in this Agreement, the obligations of the County under this Agreement are expressly contingent upon the availability of funding for each item and obligation for the term of the Agreement and any pertinent extensions. Municipality has no right of action against County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to Municipality at the earliest possible time prior to the end of its fiscal year.

14. DEFAULT - CUMULATIVE RIGHTS - MITIGATION

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. Both parties have a duty to mitigate damages.

15. SOVEREIGN IMMUNITY

THIS AGREEMENT IS EXPRESSLY MADE SUBJECT TO MUNICIPALITY'S AND COUNTY'S GOVERNMENTAL IMMUNITIES, INCLUDING, WITHOUT LIMITATION, TITLE 5 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE AND ALL APPLICABLE STATE AND FEDERAL LAWS. THE PARTIES EXPRESSLY AGREE THAT NO TERM OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY, OR A WAIVER OF ANY TORT LIMITATION, AND ANY DEFENSES THAT MUNICIPALITY OR COUNTY HAVE BY OPERATION OF LAW, OR OTHERWISE. NOTHING IN THIS AGREEMENT IS INTENDED TO OR DOES BENEFIT ANY THIRD PARTY BENEFICIARY.

16. COMPLIANCE WITH LAW, CHOICE OF LAW, AND VENUE

In providing services required by this Agreement, Municipality and County must observe and comply with all licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable Federal, State, and local statutes, ordinances, rules, and regulations. The laws of the State of Texas govern this Agreement. Exclusive venue for any action or claim arising from this Agreement is in the State or Federal District Courts that are physically located in Dallas County, Texas.

17. RELATIONSHIP OF PARTIES

County and Municipality are each independent political subdivisions of the State of Texas. Neither is an agent, servant, joint enterpriser, joint venturer, or employee of the other. Municipality and County agree and acknowledge that each governmental entity will be responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work covered under this Agreement.

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18. SIGNATORY WARRANTY

Municipality and County represent that each has the full right, power, and authority to enter and perform this Agreement in accordance with all of its terms and conditions, and that the execution and delivery of this Agreement has been made by authorized representatives of the parties to validly and legally bind the parties to all terms set forth in this Agreement.

COUNTY:

MUNICIPALITY:

BY: Clay Lewis Jenkins
County Judge
Dallas County, Texas

BY: Karen Hunt
Mayor
City of Coppell, Texas

DATE SIGNED: _____

DATE SIGNED: _____

Recommended:

BY: Zachary Thompson
Director, DCHHS
Dallas County, Texas

Approved as to Form*:

Approved as to Form:

DALLAS COUNTY

MUNICIPALITY

**Susan Hawk
District Attorney**

BY: Melanie Barton
Assistant District Attorney
Civil Division

BY: _____
Attorney for Municipality

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).