

ORDINANCE NO. 1999-04-20-001

AN ORDINANCE OF THE CITY OF KEMPNER APPROVING AN INTERLOCAL COOPERATION AND RULE 11 AGREEMENT WITH THE CITY OF COPPERAS COVE; RELEASING EXTRATERRITORIAL JURISDICTION ("ETJ") TO COPPERAS COVE; ACCEPTING A TRANSFER OF ETJ FROM COPPERAS COVE; AGREEING NOT TO EXTEND KEMPNER'S ETJ OR CORPORATE LIMITS EAST OF CERTAIN BOUNDARIES; ACCEPTING COPPERAS COVE'S AGREEMENT NOT TO EXTEND IT'S ETJ OR CORPORATE LIMITS WEST OF CERTAIN BOUNDARIES; MAKING FINDINGS OF FACT; AND PROVIDING FOR CERTAIN RELATED MATTERS.

Whereas, the City Council of the City of Kempner, Texas ("Kempner"), finds and determines that an area of Kempner's ETJ lying generally east of the most southeast corporate limits of Kempner, as more particularly described in the attached Interlocal Cooperation and Rule 11 Agreement (the "Agreement") is adjacent to the extraterritorial jurisdiction ("ETJ") of the City of Copperas Cove ("Copperas Cove") and can be efficiently served by Copperas Cove;

Whereas, an area of Copperas Cove's ETJ lying generally east of the corporate limits of Kempner and south of U. S. Highway 190 in the Taylor Mountain area, as more particularly described in the Agreement, is adjacent to the corporate limits of Kempner and can be efficiently served by Kempner;

Whereas, an area of Copperas Cove's ETJ lying generally east of the most easterly part of the corporate limits of Kempner north of U. S. Highway 190, as more particularly described in the Agreement, is adjacent to the corporate limits of Kempner and can be efficiently served by Kempner;

Whereas, an area of Copperas Cove's ETJ lying south of a tributary of Taylor Creek and Taylor Creek, from a point of beginning at the tributary's intersection with the most easterly part of the ETJ boundary of Kempner north of U. S. Highway 190 (as said boundary exists on the date of this ordinance), and extending northwesterly with the centerline of such tributary to its intersection with Taylor Creek, then westerly and southerly with Taylor Creek to the confluence of Taylor Creek and Binnion Creek, as more particularly described in the Agreement, can be efficiently served by Kempner;

Whereas, an area of Copperas Cove's ETJ lying west of Binnion Creek and a line beginning at the point of its intersection with Taylor Creek and extending northerly with the center line of Binnion Creek to a point north of the Pecan Valley Estates at which Binnion Creek intersects Copperas Cove's ETJ boundary as such boundary exists on the date of this ordinance, as more particularly described in the Agreement, can be efficiently served by Kempner;

Whereas, establishing the Southern Planning Boundary and the Northern Planning Boundary, as described in the Agreement, and the responsibility for urban planning and

development east and west of such boundaries will aide more effective and long-term urban planning for both development and municipal services;

Whereas, the Agreement will serve the present and future economic interests of Kempner by preventing litigation and providing a foundation for more efficient future municipal services;

Whereas, the Agreement will finally resolve multiple legal issues and contemplated litigation between Copperas Cove and Kempner; and

Whereas, the Agreement is authorized by state law and will serve the public health, safety and welfare of Kempner and its present and future citizens;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMPNER, TEXAS, THAT:

Section 1. Findings of Fact. The City Council hereby finds the foregoing recitals to be true and correct and incorporates the above and foregoing recitals into this ordinance as findings of fact.

Section 2. Interlocal Agreement. The City Council hereby authorizes and approves the Interlocal Cooperation and Rule 11 Agreement between the City of Kempner and the City of Copperas Cove attached hereto and incorporated herein by reference, and authorizes and directs the Mayor to execute and deliver such Agreement to Copperas Cove.

Section 3. Release and Acceptance of ETJ. Subject to Copperas Cove adopting an ordinance providing the same terms and conditions as this ordinance, the Agreement and the release, transfer and acceptance of the ETJ and planning areas by Kempner, shall be in full force and effect immediately upon the execution and delivery of the Agreement by both parties.

Section 4. Effective Date. This Ordinance shall be in force and effect from and after its passage on the date shown below.

Section 5. Open Meetings. It is hereby officially found and determined that this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, Chapter 551, Texas Government Code.

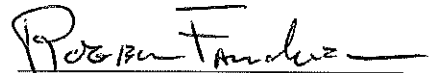
PASSED AND ADOPTED this 20th day of April 1999.

Attest:



Frances Spinney, City Secretary)

The City of Kempner



Roger Fancher, Mayor

INTERLOCAL COOPERATION AND RULE 11 AGREEMENT

This **Interlocal Cooperation and Rule 11 Agreement** ("Agreement") is made and entered into on this the 20th day of April 1999 by and between the **City of Copperas Cove**, Texas ("Copperas Cove"), a Texas home rule municipal corporation, and the **City of Kempner**, Texas ("Kempner"), a Texas general law city, acting by and through their authorized representatives.

Recitals.

Whereas, Copperas Cove and Kempner (sometimes hereinafter collectively referred to as the "cities" or "parties") have considered litigation with respect to challenging the respective corporate limits, extraterritorial jurisdiction ("ETJ") or corporate existence of the other city;

Whereas, the cities recognize that the public interest is best served by an amicable agreement resolving all existing legal issues and disputes, providing a basis for a long-term and mutually cooperative relationship as neighbors, and establishing boundaries for urban planning;

Whereas, agreement with respect to geographic areas adjacent to and neighboring their respective corporate limits and ETJ will assist and enhance the planning and development of capital improvement programs, and services to be provided by their respective communities; and

Whereas, this Agreement will accomplish legitimate public purposes of both cities and will permit more dependable urban planning that will benefit the public health, safety and welfare of their respective present and future citizens;

NOW, THEREFORE, pursuant to *Chapt. 791, Tex. Gov't. Code* (Vernons 1997), *Chapt. 42, Tex. Loc. Gov't. Code* (Vernons 1997), *Rule 11, Tex. R. Civ. P.*, and as otherwise authorized and permitted by the laws of the State of Texas (the "State"), for and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the citizens of the cities, and subject to each and every term and condition of this Agreement, the parties contract, covenant and agree as follows:

Article One Findings and Declarations.

Section 1.1. Fact Findings. The recitals hereinabove set forth are incorporated herein for all purposes and are found by the respective city councils of Copperas Cove and Kempner to be true and correct. It is further found and determined that both the governing body of the City of Copperas Cove and the City of Kempner have authorized and approved this Agreement by ordinance duly adopted by such respective governing body, and such ordinances provide that the terms, provisions and conditions of such ordinances and this Agreement will be and become in full force and effect upon the execution of this Agreement by their respective Mayors.

Section 1.2. Rule 11 Agreement. This contract and agreement is authorized by the constitution, codes and general laws of the State of Texas and, to the fullest extent permitted by law, shall specifically be and constitute a valid and binding Rule 11 agreement, pursuant to *Rule 11, Tex. R. Civ. P.* The cities have each received the advice and recommendations of their respective city attorneys, and for the purpose of giving full effect to this settlement and compromise, the City Attorney of each respective city shall execute this Agreement for the purpose of approving the same as to form and content.

Section 1.3. Equitable Remedies. It is the declared and stated intent of the cities that the terms, conditions and provisions of this Agreement may be enforced by either city, either at law or in equity, and that both such cities shall be deemed to have waived any claim or right that is inconsistent with this Agreement and shall be estopped from challenging any term, provision or condition hereof.

Section 1.4. Map. It is the stated intent and agreement of the parties that all references to any geographic areas described in this Agreement refer to areas named and shown as "tracts" on the official USGS Map unless otherwise noted, and that these namings and tracts on the USGS Map shall control the boundary descriptions. In addition, the USGS Map is referred to in this Agreement as the "Map" and such Map is attached hereto as Exhibit "A" and incorporated herein for all purposes. If there is a conflict between the Map and word descriptions in this Agreement, the parties agree and intend that the Map designations shall control over any and all word descriptions; provided that to the fullest possible extent the Map and the word descriptions shall be construed and interpreted in a manner to give effect to both consistent with the law applicable to ascertaining the boundaries of political subdivisions.

Article Two Actions By Kempner.

Section 2.1. Release to Copperas Cove. Kempner releases the following land area from the extraterritorial jurisdiction of Kempner to the ETJ of Copperas Cove, to-wit:

Tract Number 1. An area within Kempner's present ETJ that is east of the most southeast corporate limits of Kempner, and being all that geographic area within Kempner's ETJ that is east of County Road 278, County Road 91 and County Road 222, as more particularly shown as Tract 1 on the Map attached hereto as Exhibit "A" (hereinafter "Tract 1").

Section 2.2. Acceptance of ETJ from Copperas Cove. Kempner accepts from Copperas Cove the release of the geographic areas hereinafter described as, and shown on the Map as, Tracts 2, 3, 4 and 5; agrees that Tracts 2, 3, 4 and 5 are and shall be a part of the ETJ of Kempner; and hereby incorporates Tracts 2, 3, 4 and 5 into the ETJ of Kempner.

Section 2.3. U. S. Highway 190 Corridor. Kempner hereby waives and releases to Copperas Cove any and all claims, right and authority, if any that Kempner may have, with

respect to the U. S. Highway 190 corridor and the land abutting U. S. Highway 190 that lies and is situated east of the easternmost boundaries of Tracts # 2 and 3, as hereinafter described.

Section 2.4. Annexations. Kempner waives, releases, compromises and settles any and all claims and causes of action, if any that it may have, with respect to the validity of any and all annexations finally completed by Copperas Cove prior to the date of this Agreement; and agrees that such annexations were valid and accomplished in compliance with State law.

Section 2.5. Southern Planning Boundary. Beginning at a point at the intersection of F.M. 2802 and County Road 222; thence southerly with the west right-of-way ("ROW") line of County Road 222; thence easterly with the south ROW line of County Road 222 to a point of intersection with F.M. 2657; thence southerly along the west ROW line of R.M. 2657 to its intersection with the Lampasas River; all as is more particularly marked and shown on the Map attached hereto as Exhibit "A".

Section 2.6. Northern Planning Boundary. Beginning at the point of confluence of Binnion Creek with Taylor Creek; thence in a northerly direction with the centerline of Binnion Creek to the point of intersection of Binnion Creek and County Road 30; all as is more particularly marked and shown on the Map attached hereto as Exhibit "A".

Section 2.7. Urban Planning. Kempner will provide urban planning, development review, oversight and approval for the development of, the following geographic areas: area within it's ETJ; area lying west of the Southern Planning Boundary; and area lying west of the Northern Planning Boundary, to the extent authorized by State law.

Section 2.8. Extension of Jurisdiction. Kempner will not extend it's corporate limits or extraterritorial jurisdiction east of a line consisting of the Southern Planning Boundary, the easternmost extraterritorial jurisdiction and corporate limits of Kempner (whichever extends further to the east) established by this Agreement, and the Northern Planning Boundary. All the geographic area east of the above described line shall, when becoming part of Copperas Cove's ETJ pursuant to §§ 42.021 or 42.022, *Tex. Loc. Gov't. Code*, be and constitute the ETJ of Copperas Cove. In the event that a future annexation by Kempner has the legal effect of extending Kempner's ETJ east of the above described line, then, in that event, any such ETJ east of said line shall be and be deemed to be automatically transferred by the City of Kempner to the City of Copperas Cove.

Article Three Actions By Copperas Cove.

Section 3.1. Release of ETJ to Kempner. Copperas Cove releases the following land area from the extraterritorial jurisdiction of Copperas Cove to the ETJ of Kempner:

Tract Number 2. An area that abuts and lies generally east of Kempner's corporate limits south of U. S. Highway 190, in the Taylor Mountain area and

extending south, having as an easterly boundary following the centerline of a tributary to Taylor Creek shown as Stream BC-1 on the Federal Emergency Management Agency Flood Insurance Rate Map (hereinafter referred to as "FIRM") and beginning at U. S. Highway 190; thence southerly with the centerline of the tributary to County Road 278; thence with the south and west ROW line of County Road 278, as more particularly shown as Tract 2 on the Map attached hereto as Exhibit "A" (hereinafter "Tract 2").

Tract Number 3. An area that abuts and lies generally east of Kempner's corporate limits north of U. S. Highway 190, and extending north, having a northerly and easterly boundary following the centerline of a tributary to Taylor Creek shown as Stream BC-1 on the FIRM, and as more particularly shown as Tract 3 on the Map attached hereto as Exhibit "A" (hereinafter "Tract 3").

Tract Number 4. An area lying south of Taylor Creek and a tributary of Taylor Creek, having a northerly boundary following the centerline of Taylor Creek and the tributary of Taylor Creek shown as Stream BC-1 on the FIRM, beginning at the point of such tributary's intersection with the most easterly part of the ETJ limits of Kempner north of U. S. Highway 190; thence northwesterly to the intersection of such tributary with Taylor Creek; thence westerly and southerly with Taylor Creek to the point of intersection of Taylor Creek and Binnion Creek, as more particularly shown as Tract 4 on the Map attached hereto as Exhibit "A" (hereinafter "Tract 4").

Tract Number 5. An area lying west of Binnion Creek and a line beginning at the point of confluence of Binnion Creek and Taylor Creek; thence northerly with the centerline of Binnion Creek to a point north of the Pecan Valley Estates at which Binnion Creek intersects the ETJ boundary of Copperas Cove (as such boundary existed prior to this Agreement) as more particularly shown as Tract 5 on the Map attached hereto as Exhibit "A" (hereinafter "Tract 5").

Section 3.2. Acceptance of ETJ from Kempner. Copperas Cove hereby accepts the release of Tract 1 from Kempner; agrees that Tract 1 is and shall be a part of the ETJ of Copperas Cove; and hereby incorporates Tract 1 into the ETJ of Copperas Cove.

Section 3.3. Incorporation. Copperas Cove hereby waives, releases, compromises and settles any and all claims, challenges, or causes of action, if any that it may have, with respect to the validity of the incorporation of the City of Kempner; and agrees that Kempner was properly and validly incorporated in full compliance with State law.

Section 3.4. Southern Planning Boundary. Beginning at a point at the intersection of F.M. 2802 and County Road 222; thence southerly with the west ROW line of County Road 222; thence easterly with the south ROW line of County Road 222 to a point of intersection with F.M. 2657; thence southerly with the west ROW line of F.M. 2657 to its intersection with the

Lampasas River; as is more particularly marked and shown on the Map attached hereto as Exhibit "A".

Section 3.5. Northern Planning Boundary. Beginning at the point of confluence of Binnion Creek with Taylor Creek; thence in a northerly direction with the centerline of Binnion Creek to the point of intersection of Binnion Creek and County Road 30; all as is more particularly marked and shown on the Map attached hereto as Exhibit "A".

Section 3.6. Urban Planning. Copperas Cove will provide urban planning, development review, oversight and approval for the development of, the geographic area east of Kempner's ETJ and easternmost corporate limits, the Southern Planning Boundary and the Northern Planning Boundary, to the extent authorized by State law.

Section 3.7. Extension of Jurisdiction. Copperas Cove will not extend its corporate limits or extraterritorial jurisdiction west of a line consisting of the Southern Planning Boundary, the easternmost extraterritorial jurisdiction and corporate limits of Kempner (whichever extends further to the east) established by this Agreement, and the Northern Planning Boundary. All the geographic area west of the above described line shall, when becoming part of Kempner's ETJ pursuant to § 42.021 or § 42.022, *Tex. Loc. Gov't. Code* (Vernon 1997), be and constitute the ETJ of Kempner. If a future annexation by Copperas Cove has the legal effect of extending Copperas Cove's ETJ west of the above described line, then, in that event, any such ETJ west of said line shall be and be deemed to be automatically transferred by the City of Copperas Cove to the City of Kempner.

Article Four General and Miscellaneous.

Section 6.01. Policy Making Authority. The city accepting ETJ and planning area pursuant to this Agreement shall, as between the cities and to the extent not inconsistent with State law, have exclusive responsibility for urban planning, and the control, supervision and policy making authority for and with respect to city services, within such geographic area.

Section 6.02. Other Services. Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the cities to undertake any other action or to provide any service within the ETJ or planning area taken or received by it, or ceded to it, pursuant to this Agreement, except as specifically set forth in this Agreement.

Section 6.03. Jurisdiction. This Agreement shall not be deemed to extend or increase the jurisdiction or authority of either of the cities except as between themselves and as necessary to implement and give effect to this Agreement. All governmental and proprietary functions and services to be performed and provided by: (a) Copperas Cove within the geographic area and ETJ released to Copperas Cove and in the area east of the geographic boundaries identified as the Northern Planning Boundary and the Southern Planning Boundary shall, except as provided otherwise by state law, be and remain in the sole discretion of Copperas Cove; and (b) Kempner

within the geographic area and ETJ released to Kempner and in the area west of the geographic boundaries identified as the Northern Planning Boundary and the Southern Planning Boundary shall, except as provided otherwise by state law, be and remain in the sole discretion of Kempner. Nothing in this Agreement shall be deemed to be applicable to, or an attempt to limit or restrict, the legal rights, authority or jurisdiction of any other governmental entity.

Section 6.04. Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the cities nor to create any legal rights or claims on behalf of any third party. Neither Copperas Cove nor Kempner waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

Section 6.05. Quality of Service. This Agreement is not intended to and shall not be deemed to establish any requirement for, or any specific or implied standard or quality for, any level of planning or service to be provided by either of the cities within the ETJ and geographic areas for which such city accepts jurisdiction pursuant to this Agreement. The level and quality of urban planning and services to be provided within the planning areas and ETJ accepted by the parties shall be established by their respective budgets, appropriations, resolutions and ordinances adopted by their governing body in the exercise of its legislative discretion.

Section 6.06. Effective Date. This Agreement shall be in full force and effect as of the date above first written, from and after its execution by the parties as hereinafter provided.

Section 6.07. Amendments and Modifications. This Agreement may not be amended or modified except in writing executed by both Copperas Cove and Kempner and authorized by their respective governing bodies.

Section 6.08. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

Section 6.09. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

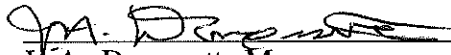
Section 6.10. Execution in Counterparts. This Agreement may be simultaneously

executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the parties have executed and attested this Agreement by their officers thereunto duly authorized as of the date first written above.

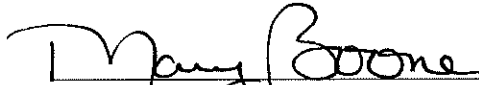
Executed this the 20th day of April 1999.

City of Copperas Cove, Texas



J. A. Darossett, Mayor

Attest:



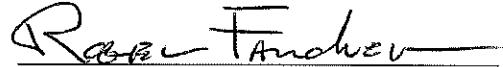
Mary Boone, City Secretary
City of Copperas Cove

Approved as to Form and Content
City of Copperas Cove




Sara Fauls, City Attorney

City of Kempner, Texas



Roger Fancher, Mayor

Attest:



Frances Spinney, City Secretary
City of Kempner

Approved as to Form and Content
City of Kempner



Barney L. Knight, City Attorney