

INTERLOCAL AGREEMENT FOR FIRE PROTECTION SERVICES

THE STATE OF TEXAS §
COUNTY OF JOHNSON §

THIS Interlocal Agreement for Fire Protection Services ("Agreement") is entered into by and between the CITY OF BURLESON, a home rule municipality located in Tarrant County and Johnson County, Texas ("Burleson"), and the JOHNSON COUNTY EMERGENCY SERVICES DISTRICT NO. 1, an Emergency Services District and political subdivision of the State of Texas located in Johnson County, Texas ("JCESD #1"), each one acting through its authorized representatives, each sometimes hereinafter referred to individually as the "Party" and collectively as the "Parties".

WHEREAS, Texas Health and Safety Code, Chapter 775, Section 775.031, Section 775.033, and other applicable law authorizes the District to contract with other entities, including other districts or municipalities, for reciprocal operation of services and facilities; and

WHEREAS, Texas Government Code, Chapter 791, Texas Interlocal Cooperation Act, Sections 791.003(3)(B), and 791.003(4)(A) allow local governments, including special districts, to contract with one another to perform governmental functions and services, including fire protection; and

WHEREAS, the Board of Emergency Services Commissioners of the District desires to contract with Burleson to provide certain fire protection and emergency services to the residences and businesses located within boundaries of the Johnson County Emergency Services District No. 1; and

WHEREAS, the City Council of the City of Burleson desires to contract with JCESD #1 to provide certain fire protection and emergency services to the residences and businesses located within the territorial limits of the city; and

WHEREAS, entry into this Agreement would be mutually beneficial and not detrimental to the City of Burleson; and

WHEREAS, entry into this Agreement would be mutually beneficial and not detrimental to the Johnson County Emergency Services District No. 1;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements included in this Agreement, the Parties agree as follows:

I. Services to be Performed.

The services to be performed under this Agreement are as listed in Attachment "A", which is attached hereto and considered a part hereof for all purposes. The services performed shall be subject to the Operating Provisions in Attachment "B", which is attached hereto and considered a part hereof for all purposes.

II. Contract Price and Reimbursable Costs.

- A. Costs. The Parties agree to reimburse each other for actual costs other than ordinary operating costs incurred by each other in the performance of this Agreement. "Ordinary operating costs" shall mean those costs incurred in the scope of performing normal fire suppression duties, including but not limited to fuel, mechanical wear and tear, Personal Protective Equipment, Emergency Medical Supplies, and employee wages and benefits; provided, however, that special fire suppression methods are not an ordinary operating cost. Reimbursement shall be made on an incident-by-incident basis and shall be made subsequent to a submission of an invoice by the Party incurring costs to the other Party. Notwithstanding the above, each Party shall be responsible for all costs associated with its own equipment, including damage and breakage. As soon as possible after the situation is stabilized, all Responding Parties are to be released. AB automatic aid response hereunder is considered the first operational period of 12 hours ("First Operational Period"), and for each operational period after 12 hours ("Subsequent Operational Periods"), any response hereunder will be considered a mutual aid response and subject to reimbursement, as appropriate. Nothing in this Agreement shall preclude any party from seeking reimbursement of expenses from third parties, or other appropriate entities, including, but not limited to, local, state, or federal government agencies, as appropriate. Nothing in this Agreement obligates a party responding to an emergency situation hereunder from remaining on scene for more than the first operational period.
- B. Contract Price. Burleson shall pay the JCESD #1 SIXTY THREE THOUSAND DOLLARS (\$63,000.00) to aid the JCESD #1's staffing associated with providing the level of fire and emergency services to Burleson under the terms of this Agreement ("Contract Price"). The Contract Price shall be adjusted annually as necessary and upon the mutual written consent of the Burleson and the JCESD #1, and any adjustment to the Contract Price shall be set forth in a written amendment to this Agreement.
- C. Payment of Contract Price. The Burleson shall pay the Contract Price to the JCESD #1 in quarterly payments on January 30, April 30, July 30, and October 30. Payments shall be remitted to: JCESD #1, Attn. Executive Director, 2451 Service Drive, Cleburne, Texas 76033.
- D. Accounting. JCESD #1 shall provide an accounting of costs for each year after final audited financial statements for that year are completed. The JCESD #1 shall credit Burleson, on a pro rata basis, for any unspent funds remaining in the adopted JCESD #1 budget applicable to this Agreement at the conclusion of each closed fiscal year. A credit due from the closed fiscal year shall be applied as an adjustment to the Contract Price for the next year after the closed fiscal year audit, or refunded to Burleson after termination or expiration of this Agreement.
- E. JCESD #1 Equipment and Personnel. JCESD #1 agrees to provide the personnel necessary to accomplish the fire and emergency services under this Agreement. The JCESD #1 shall remain responsible for the payment of all salaries, benefits, insurance or other funds necessary for the personnel who provide fire and emergency services under this

Agreement, as well as the certification, licensing, or other actions required by any governmental or regulatory authority, specifically including but not limited to the Texas Commission on Fire Protection and/or the Texas Department of State Health Services, for the Fire and Emergency services provided under this Agreement.

III. Term of Agreement and Termination.

The Initial Term of this Agreement shall be for twelve (12) months beginning at 12:00 AM on December 1, 2019 through November 30, 2020. This Agreement shall automatically renew after the Initial Term for successive one (1) year terms, unless terminated by either Party by giving written notice of such termination to the other Party at least sixty (60) days prior to the end of the term.

IV. Liability.

Each Party to this Agreement shall at all times be and remain legally responsible for the conduct of their respective fire department employees regardless of whether such employees were performing duties under this Agreement at the request of the requesting Party and regardless of whether such employees were acting under the authority, direction, suggestion or orders of an officer of the requesting Party. This assignment of civil liability is specifically permitted by Section 791.006(a-1) of the Texas Government Code ("Code") and is intended to be different than the liability otherwise assigned under section 791.006(a) of the Code. Each Party hereby waives all claims against the other Party for compensation for any loss, damage, personal injury or death occurring as a consequence of the performance of this Agreement. Each party shall be responsible for injuries or death to its employees and volunteers while performing services under this Agreement. A party shall not be liable for benefits or any other compensation for injuries to or death of the other party's employees or volunteers while performing services under this Agreement. An employee or volunteer shall be deemed to be performing services when en route to, en route from, or at the scene of a call or emergency. Specifically citing Texas Government Code Section 791.006(a-1), the parties agree that, for purposes of determining civil liability for non-party claims, the act of any person or persons while fighting fires, providing rescue services, providing first response EMS services, traveling to or from any type of emergency call or emergency scene, or in any manner furnishing services in accordance with this Agreement, shall be the act of the party performing such act. The payment of any and all civil or other liability, including negligence, resulting from the furnishing of services under this Agreement is the responsibility of the individual party performing such acts. This shall specifically include, but not be limited to, the payment of court costs, expenses, and attorneys' fees resulting from any such claim or lawsuit. 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. It is expressly understood and agreed that the entering into and execution of this Agreement does not waive, nor shall be deemed to waive, any right, immunity, or defense that would otherwise be available to a party against third-party claims arising from activities performed under this Agreement. The parties agree to comply with all applicable state, local and federal laws and regulations in providing services under this Agreement. The parties agree to cooperate in executing such further or subsidiary agreements as may be required.

Neither Party shall be reimbursed by the other Party for costs incurred pursuant to this Agreement, except as set forth in Section II of this Agreement. Personnel who are assigned, designated, or ordered by their governing body to perform duties pursuant to this Agreement shall receive the same wage, salary, pension, and all other compensation, benefits and rights for the performance of such duties, including injury or death benefits and Worker's Compensation benefits, as though the service had been rendered within the territorial limits of the Party where he or she is regularly employed.

All wage and disability payments, pension payments, damage to equipment and clothing, medical expenses, and expenses of travel, food, and lodging or any benefits or payments to which an individual is entitled shall be paid by the Party in which the employee in question is regularly employed.

All equipment used by the responding Party in carrying out this Agreement will, during the time response services are being performed, be owned, leased, or rented by such responding Party. All employees acting on behalf of a responding Party at the request of a requesting Party will, during the time response services are being performed, be employee's members of the responding Party for all purposes, including any claims for Worker's Compensation that may arise during the time such services are being rendered.

At all times while equipment and personnel of the responding Party are traveling to, from, or within the geographical limits of the normal response area of the requesting Party in accordance with the terms of this Agreement, such personnel and equipment shall be deemed to be employed or used, as the case may be, in the full line and cause of duty of the responding Party. Further, such personnel shall be deemed to be engaged in a governmental function of their Party.

Nothing herein shall be construed to be a waiver of immunity under the Texas Tort Claims Act by either Party.

V. Independent Contractor.

Each Party shall operate under this Agreement as an independent contractor, and not as an agent, representative, servant or employee of the other. Subject to the terms of this Agreement, each Party shall have the right to control the details of its performance hereunder.

VI. Notice.

Unless otherwise provided, all notices required or permitted by this Agreement shall be made to the following addresses:

City of Burleson
Attn: City Manager
141 West Renfro
Burleson, Texas 76028-4261

With a copy to:

E. Allen Taylor, Jr.
Attorney for the City of Burleson
6000 Western Place, Suite 200
Fort Worth, Texas 76107

Johnson County Emergency Services District No. 1
Attn: President
2451 Service Drive
Cleburne, Texas 76033

With a copy to:
Ken Campbell
Attorney for Johnson County ESD#1
P.O. Box 26300
Austin, Texas 78755

VII. Payments.

Any and all payments arising under this Agreement for the performance of governmental functions or services must be made from current revenues available to the paying Party.

VIII. Compliance.

Both Parties shall comply with all Federal, State and City statutes, ordinances and regulations applicable to the performance of the services under this Agreement.

IX. Entire Agreement.

This writing embodies the entire agreement and understanding between the Parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

X. Amendments.

No alteration, change, modification or amendment of the terms of this Agreement shall be valid or effective unless made in writing and signed by both Parties hereto and approved by appropriate action of the governing body of each Party.

XI. Waiver.

No waiver of performance by either Party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

XII. Governing Law and Venue.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas — Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

XIII. Successors and Assigns.

Neither Party hereto shall assign, sublet or transfer its interest herein without prior written consent of the other Party, and any attempted assignment, sublease or transfer of all or any part hereof without such prior written consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of Burleson and JCESD #1 and their respective successors and permitted assigns.

XIV. No Third-Party Beneficiaries.

The provisions and conditions of this Agreement are solely for the benefit of Burleson and JCESD #1, and any lawful successor or assign, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

XV. Severability.

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

XVI. Force Majeure.

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war; civil commotion; acts of God; inclement weather; governmental restrictions, regulations, or interferences; fires; strikes; lockouts, national disasters; riots; material or labor restrictions; transportation problems; or any other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such Party was delayed.

XVII. Contract Construction.

The Parties acknowledge that each Party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

XVIII. Captions.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

XIX. Right to Audit.

Burleson agrees that JCESD #1 will have the right to audit the financial and business records of Burleson that relate to the services provided (collectively "Records") at any time during the Term of this Agreement and for three (3) years thereafter in order to determine compliance with this Agreement. Throughout the Term of this Agreement and for three (3) years thereafter, Burleson shall make all Records available to JCESD #1 at 141 W. Renfro, Burleson, Texas following reasonable advance notice by JCESD #1 and shall otherwise cooperate fully with JCESD #1 during any audit.

JCESD #1 agrees that Burleson will have the right to audit the financial and business records of JCESD #1 that relate to the services provided (collectively "Records") at any time during the Term of this Agreement and for three (3) years thereafter in order to determine compliance with this Agreement. Throughout the Term of this Agreement and for three (3) years thereafter, JCESD #1 shall make all Records available to Burleson at 2451 Service Drive, Cleburne, Texas following reasonable advance notice by Burleson and shall otherwise cooperate fully with Burleson during any audit.

Notwithstanding anything to the contrary herein, this Section XIX shall survive expiration or earlier termination of this Agreement.

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Executed this 11 day of November, A.D. 20 19.

CITY OF BURLESON, TEXAS

JOHNSON COUNTY EMERGENCY SERVICES DISTRICT NO. 1

By: [Signature]
Mayor

By: [Signature]
President

ATTEST:

ATTEST:

[Signature]
City Secretary, City of Burleson

[Signature]
Secretary, Johnson County ESD #1

APPROVED AS TO FORM:

APPROVED AS TO FORM:

[Signature]
City Attorney, City of Burleson

[Signature]
Attorney for Johnson County ESD #1



ATTACHMENT A

I. AUTOMATIC AID RESPONSE

Explanatory note: Upon receipt of the report of an incident requiring response in their own respective cities, the Burlson and JCESD #1 fire departments may normally dispatch the level of resources described in Section I.A below to the reported locations. For the purposes of this agreement, automatic aid in the amount of resources described will be dispatched by one party into the other party's jurisdiction limits outlined below, if the incident is reported in any of the geographical areas listed below. Also for purposes of this agreement, "reported" will be defined to mean any telephone calls into the 911 system, direct telephone calls to the fire department or radio transmissions to the fire and/or police dispatch centers. Excluded are automatic alarms, unless followed up by one of the above.

A. Burlson:

The Burlson Fire Department will respond into JCESD #1 with one engine or quint staffed with a minimum of 3 firefighters on all reported structure fires, within a specified area of JCESD #1. All such responses are subject to availability of personnel and equipment.

The specified area shall be the area outlined in orange in the map attached hereto as Exhibit "A", attached hereto and incorporated herein by reference for all purposes.

B. JCESD #1:

JCESD #1 will respond in different ways depending on the time of day.

1. Calls Received between 7:00 am and 7:00 pm, Monday through Friday. The JCESD #1 Fire Department will respond into Burlson with an engine or quint company staffed with a minimum of 4 personnel, on all reported structure fires, within a specified area of the City of Burlson. All such responses are subject to availability of personnel and equipment.
2. Calls Received outside of 7:00 am and 7:00 pm, Monday through Friday. JCESD #1 shall not be required to automatically respond.

The specified area shall be the area outlined in orange in the map attached hereto as Exhibit "B", attached hereto and incorporated herein by reference for all purposes.

II. MUTUAL AID RESPONSE

"Mutual aid" may include any area within the jurisdiction of the requesting department (e.g. city limits or district boundaries) and may include responding to fire, EMS, and other types of emergencies.

A. Burlson:

Calls for assistance during "working" structure fires, EMS, vehicle accidents, and other types of incidents shall be given on an "as needed basis" by Burleson and shall include one engine or quint staffed with a minimum of 3 firefighters. All such responses are subject to availability of personnel and equipment.

B. **JCESD #1:**

Calls for assistance during "working" structure fires, EMS, vehicle accidents, and other types of incidents shall be given on an "as needed basis" by JCESD #1 and shall include one engine or quint staffed with a minimum of 3 firefighters. All such responses are subject to availability of personnel and equipment.

ATTACHMENT "B"

Operating Provisions

- I. Any dispatch of equipment and personnel pursuant to this Agreement is subject to the following conditions:
 - A. Any request for aid hereunder shall include a statement of the amount and type of equipment and number of personnel that are needed, but the amount and type of equipment and number of personnel to be furnished shall be determined by a representative of the responding Party. The Parties would provide a fire company staffed by certified firefighters as certified by the Texas Commission on Fire Protection.
 - B. In areas where common jurisdictional boundaries exist, it is conceivable that accurate determination of jurisdiction may not be possible upon receipt of an alarm. In such cases, it is deemed appropriate and in the best interest of the public for the entity receiving the alarm to dispatch its forces and to notify the other affected entities of the alarm. The requested entity will respond, if able to, as conditioned by this Agreement.
 - C. In the event that the responding Party is unable to respond to the request for assistance, the fire chief or designee of the responding Party shall immediately notify the fire department of the requesting Party that no response can be made.
 - D. Personnel from the Fire Department of the responding Party shall report to the officer in charge of the requesting Party at the location to which the equipment are dispatched and shall be subject to the orders of that official. At all times the ultimate control and responsibility of the personnel from the responding Party shall remain with the highest ranking fire officer from the responding Party at the scene. The Command Post will be staffed by representatives from both Burleson and JCESD #1 so that a "Unified Command" is established.
 - E. Personnel from the Fire Department of the responding Party shall be released by the officer in charge from the requesting Party when the services of the responding Party are needed within the area for which it normally provides fire protection.
 - F. A working accountability system in accordance with NFPA guidelines shall be established at every incident.
 - G. The departments shall conduct a minimum of one joint training session and/or exercise annually.

All equipment used by the responding Fire Department in carrying out this Agreement will, at the time of action hereunder, be owned, leased or rented by it.

