



## **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 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.** *[This section intentionally left blank.]*

**C.** *[This section intentionally left blank.]*

**D.** *[This section intentionally left blank.]*

**E.** *[This section intentionally left blank.]*

## **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, 2023 through November 30, 2024. 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 hereby waives all claims against the other Party for compensation of 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 in 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, not 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 employees 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 ESD#1  
Attn: President  
2451 Service Drive  
Cleburne, Texas 76033

With a copy to:  
Ken Cambell  
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 NO. 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 NO. 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 NO. 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 NO. 1 at 141 W. Renfro, Burleson, Texas following reasonable advance notice by JCESD NO. 1 and shall otherwise cooperate fully with JCESD NO. 1 during any audit.

JCESD NO. 1 agrees that Burleson will have the right to audit the financial and business records of JCESD NO. 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 NO. 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.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]*

Executed this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_\_.

**CITY OF BURLESON, TEXAS**

**JOHNSON COUNTY ESD #1**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
President

ATTEST:

ATTEST:

\_\_\_\_\_  
City Secretary, City of Burleson

\_\_\_\_\_  
Secretary, Johnson County ESD #1

APPROVED AS TO FORM & LEGALITY:

APPROVED AS TO FORM & LEGALITY:

\_\_\_\_\_  
City Attorney, City of Burleson

\_\_\_\_\_  
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 Burleson and JCESD NO. 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. Burleson:

The Burleson Fire Department will respond into JCESD NO. 1 district with one engine or quint staffed with a minimum of 3 firefighters on all reported structure fires, within a specified area of JCESD NO. 1. All such responses are subject to availability of personnel and equipment.

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

#### B. JCESD NO. 1:

The JCESD NO. 1 will respond into Burleson Fire Department district with one engine or quint staffed with a minimum of 3 firefighters on all reported structure fires, within a specified area of JCESD NO. 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 Map", 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. Burleson:

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 NO. 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 NO. 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 NO. 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.

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.