

STATE OF TEXAS §
§ INTERLOCAL COOPERATION AGREEMENT
COUNTY OF TARRANT §

This Interlocal Agreement for Emergency 9-1-1 Communications Center and Dispatch Services (“Agreement”) is entered into by and between the City of Everman, Texas, a home-rule municipality (“Everman”) and the City of Blue Mound, Texas, a general-law municipality (“Blue Mound”) by and through their authorized representatives. Everman and Blue Mound are at times each referred to herein as a “party” or collectively as the “parties.” The Agreement, once signed by the Parties, becomes effective on _____ (the “Effective Date”).

RECITALS:

WHEREAS, Everman has established a comprehensive regional public safety and public service communications and dispatch center (“Communications Center”); and

WHEREAS, Everman’s Communications Center is equipped with radio, telephone and data equipment and is designated as an emergency 9-1-1 communications Public Safety Answering Point (“PSAP”); and

WHEREAS, Everman currently has equipment and operator capacity above and beyond the immediate needs of Everman and has offered to make such equipment and operators available to address the regional communications/dispatch needs for the purpose of local government/agency communications; and

WHEREAS, Everman has determined that it is in the best interests of the public to share its communication facility, equipment and personnel capabilities with cities, towns, fire departments, emergency medical care providers and other governmental entities in order to facilitate more effective and efficient use of the Communications Center; and

WHEREAS, Blue Mound has requested that Everman provide emergency 9-1-1 communications and dispatch services to Blue Mound, and Everman has agreed to provide such services under the terms and conditions of this Agreement and pursuant to the provisions of Chapter 791 of the Texas Government Code (otherwise known as the Interlocal Cooperation Act) and specifically Section 791.006(a) of the Texas Government Code, as amended; and

WHEREAS, the provision of emergency 9-1-1 communications and dispatch services is a governmental function that serves the public health and welfare and is of mutual concern to the parties; and

WHEREAS, Everman and Blue Mound deem it to be in the best interest of both parties to enter into this Agreement; and

WHEREAS, each party paying for the performance of governmental functions or services is making those payments from current revenues available to the paying party and all payments are in an amount that fairly compensates the performing party for the services or functions performed under this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Everman and Blue Mound hereby agree as follows:

Article I
Performance of Services

1.1 Everman shall provide to Blue Mound, on a non-exclusive basis, emergency 9-1-1 communication and dispatch services through its Communications Center for the following emergencies: fire, medical, weather, hazardous materials and general civil emergencies (collectively, "Services"). In order to facilitate the Services, Blue Mound shall provide to Everman's communications personnel, on a continuing basis, all necessary street, apparatus and response information, as well as all necessary dispatching information unique to Blue Mound's operations.

1.2 Blue Mound shall further be responsible for contacting and coordinating with Tarrant 9-1-1 and any other applicable agencies or authorities and for taking all actions necessary for establishment, configuration, and operations required to facilitate Everman's provision of the Services and for payment of all associated costs.

1.3 Without waiving any governmental immunity to which it is entitled, Everman agrees to and accepts full responsibility for the acts, negligence and/or omissions of all Everman employees and agents in connection with the performance of the Services. Without waiving any governmental immunity to which it is entitled, Blue Mound agrees to and accepts full responsibility for the acts, negligence and/or omissions of all Blue Mound employees and agents. It is also the responsibility of Blue Mound to ensure that its use of the Communications Center conforms to all Federal Communications Commission rules and regulations.

1.4 On an ongoing basis, Everman and Blue Mound agree to provide complete and adequate training to personnel selected by Blue Mound and/or Everman in the use of the Communications Center.

1.5 It is specifically agreed and understood by the parties hereto that no property rights are granted under this Agreement.

1.6 In the event Blue Mound or Everman should fail to fulfill any of its obligations hereunder or shall violate any municipal, county, state or federal law, the other party shall have the option of terminating this Agreement by giving written notice of such violation and intent to terminate one hundred and eighty (180) days in advance of the effective date of the termination.

1.7 Correspondence, comments, requests, and complaints regarding Services rendered under this Agreement shall be reduced to writing and forwarded to the persons designated below for receipt of notices. Failure to properly forward comments, requests, demands, and complaints may be considered as sufficient cause to terminate this Agreement under Section 1.6 above.

1.8 The Services shall not arbitrarily be withheld, but it is understood by the parties that unforeseen circumstances may arise which prevent Everman from providing Services at a particular time. It is recognized that Everman has the duty and responsibility of rendering Services to citizens of both Everman and Blue Mound.

1.9 There is hereby created a Chiefs Advisory Board. During the term of this Agreement, the Chiefs Advisory Board shall be composed of the Police and Fire Chiefs from Everman, the Police and Fire Chiefs from Blue Mound , the police chief(s) from any other cities or entities that enter into a similar Interlocal Agreement for police dispatch services with Everman, and the fire chief(s) from any other cities or entities that enter into a similar Interlocal Agreement for fire dispatch services with Everman. The Everman Chief of Police shall be the Chairman of the Chiefs Advisory Board and shall have the authority to call meetings of the Chiefs Advisory Board. A majority of the members of the Chiefs Advisory Board constitutes a quorum to conduct business. The Chiefs Advisory Board will, by majority vote of the full membership, set policies and procedures for personnel and equipment required for the provision of Services under this Agreement, including but not limited to criteria for determination of priorities in the dispatching and use of equipment and personnel.

Article II Term

The term of this Agreement shall commence on Effective Date (hereinafter defined) and shall terminate five (5) years after the Effective Date (“Primary Term”), unless terminated earlier in accordance with this Agreement. Upon the completion of the Primary Term, this Agreement shall automatically renew for two (2) successive five (5) year periods (“Renewal Terms”), unless terminated earlier by either party in accordance with this Agreement.

Article III Termination

3.1 This Agreement may be terminated on the occurrence of either of the following:

- (a) Either party may terminate the Agreement by providing the other party written notice of termination at least one hundred and eighty (180) days prior to the anticipated date of termination; or
- (b) Mutual agreement of termination of the Agreement, executed in writing by both parties, without the requisite one hundred and eighty (180) days prior written notice.

3.2 In the event of a termination, Everman shall be compensated on a pro-rata basis for all Services performed to the termination date. In the event of termination, should Everman be over-compensated on a pro-rata basis for all Services performed to the termination date, Blue Mound shall be reimbursed on a pro-rata basis for all such over-compensation. Receipt of payment and/or reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement. At the sole discretion of Everman, this Agreement may be terminated or renegotiated in the event Blue Mound annexes additional territory into its corporate limits and/or increases the area the Blue Mound services. Immediately upon the completion of any annexation proceedings, Blue Mound shall notify Everman of the annexation, in writing, and provide Everman with a legal description of the annexed area.

Article IV Fee for Services

4.1 Blue Mound, out of current revenues available to it, shall annually pay to Everman the amounts set forth hereinbelow as compensation for Everman's provision of the Services during the Primary Term and each Renewal Term of this Agreement, except as otherwise provided in this Section (the "Annual Compensation Amount"). Such amount is based upon the annual costs incurred by Everman in order to fulfill Everman's obligations under this Agreement. Blue Mound shall pay the Annual Compensation Amount to Everman annually on or before the Effective Date of this Agreement and each annual anniversary of the Effective Date thereafter during the Primary Term and each Renewal Term of this Agreement. The Annual Compensation Amount for the first year of the Primary Term under this Agreement shall be \$35,000.00, subject to the provisions set forth in sections 4.2 and 4.3 of this Agreement. For each year of the Primary Term thereafter and for any year of a Renewal Term, the Annual Compensation Amount shall be set in accordance with the provisions of sections 4.2 and 4.3 of this Agreement.

4.2 For the second through fifth years of the Primary Term and for any year of a Renewal Term, the Parties may, by mutual agreement, leave unchanged or decrease the Annual Compensation Amount. Any increases anticipated for costs for providing the Services shall be communicated by Everman to Blue Mound in writing on or before March 1 of each year during the Primary Term and any Renewal Term. To the extent that the total amount of any such increases communicated by Everman would be in excess of fifteen percent (15%) of the full amount of Blue Mound's payment due for the then-current term, Blue Mound may, at its discretion, elect to terminate this Agreement by providing Everman written notice of termination at least one hundred and eighty (180) days before the start of the successive Renewal Term (i.e. on or before July 5 of the then-current year). In such an event, this Agreement shall be deemed to terminate immediately before said Renewal Term would have commenced and the Parties shall have no further obligations under this Agreement.

4.3 The Annual Compensation Amount due for any term of this Agreement shall be prorated in the event a party elects to terminate this Agreement in accordance with the terms of this Agreement prior to the expiration of the then-current term.

Article V Indemnification

5.1 TO THE EXTENT ALLOWED BY LAW, EACH PARTY HERETO SHALL INDEMNIFY AND SAVE HARMLESS THE OTHER PARTY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, THE ACTS OF THE PARTY, ITS OFFICERS, AGENTS, OR EMPLOYEES IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

5.2 IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, IN THE EXECUTION OF THIS AGREEMENT, NO PARTY WAIVES, NOR SHALL BE DEEMED HEREBY TO WAIVE, ANY IMMUNITY OR DEFENSE THAT WOULD OTHERWISE BE AVAILABLE TO OR AGAINST CLAIMS ARISING IN THE

EXERCISE OF GOVERNMENTAL FUNCTIONS RELATING HERETO OR OTHERWISE. BY ENTERING INTO THIS AGREEMENT, THE PARTIES DO NOT CREATE ANY OBLIGATIONS EXPRESSED OR IMPLIED, OTHER THAN THOSE SET FORTH HEREIN, AND THIS AGREEMENT SHALL NOT CREATE ANY RIGHTS IN ANY PARTIES NOT SIGNATORY HERETO. THE REMEDIES OF A PARTY HERETO WITH RESPECT TO A CLAIM AGAINST ANOTHER PARTY HERETO SHALL BE IMPAIRED BY THIS AGREEMENT WHEN THE CLAIM DOES NOT ARISE FROM THE USE AND OPERATION OF THE COMMUNICATIONS CENTER AND/OR DISPATCH SERVICES.

5.3 EACH PARTY AGREES TO AND ACCEPTS FULL RESPONSIBILITY FOR THE ACTS, NEGLIGENCE AND/OR OMISSIONS OF SUCH PARTY'S OFFICERS, AGENTS AND EMPLOYEES IN THE EXECUTION AND PERFORMANCE OF THIS AGREEMENT.

**Article VI
Miscellaneous Provisions**

5.1 **Consideration.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

5.2 **Notice.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or be delivered the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Blue Mound, to: City of Blue Mound
Attn: _____
301 S Blue Mound Rd
Blue Mound, Texas 76131

If to Everman, to: City of Everman
Attn: Craig Spencer City Manager
212 N. Race Street
Everman, Texas 76140

5.3 **Entire Agreement.** This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both parties.

5.4 **Venue and Governing Law.** This Agreement and any of its terms or provisions,

as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas, and both parties agree that venue shall be in Tarrant County, Texas.

5.5 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

5.6 **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

5.7 **Severability.** The provisions of this Agreement are severable. In the event that any paragraph, section, subdivision, sentence, clause or phrase of this Agreement shall be found to be contrary to the law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party fifteen (15) days written notice of its intent to terminate.

5.8 **Amendments.** Everman and Blue Mound may amend this Agreement only by an instrument in writing.

5.9 **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

5.10 **Assignment.** This Agreement may not be assigned by any party without the prior written consent of the other party.

5.11 **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed, that each party has had an opportunity to confer with counsel, on the matters contained herein.

5.12 **Drafting Provisions.** This Agreement shall be deemed to have been drafted equally by all parties hereto. The language of all parts of this Agreement shall be constructed as a whole according to its fair and common meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this Agreement.

5.13 **Independent Contractor.** Except as otherwise expressly provided herein, Blue Mound and Everman agree and acknowledge that each entity is not an agent of the other entity and that each entity is 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.

5.14 **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third-party beneficiaries by entering into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth below.

CITY OF BLUE MOUND, TEXAS

CITY OF EVERMAN, TEXAS

Darlene Copeland, Mayor
Date: _____

Craig Spencer, City Manager
Date: _____

ATTEST:

ATTEST:

Amber Smith, City Secretary

Mindi Parks, City Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Ashley Dierker, City Attorney

John Oliver, Asst. City Attorney
(111122vwtTM132356)