

INTERLOCAL AGREEMENT

STATE OF TEXAS §

§

COUNTY OF PARKER §

This Interlocal Agreement (“Agreement”), effective as of _____, 2023 (the “Effective Date”), by and between **PARKER COUNTY EMERGENCY SERVICES DISTRICT NO. 1** (“District”), a political subdivision of the State of Texas, organized and operating pursuant to the provisions of Section 48-e, Article III of the Texas Constitution and Chapter 775 of the Health and Safety Code, as amended (“H&S Code”) and the **CITY OF WILLOW PARK** (“City”), a Type A general law city duly organized and operating under the laws of the State of Texas. District and City are sometimes collectively referred to herein as a “Party” or “Parties”.

WITNESSETH

WHEREAS, the District is a duly organized emergency services district, created to protect life and health, and for such other purposes as determined by the District under Chapter 775 of the H&S Code, with full authority to carry out the objects of its creation; and

WHEREAS, City is a Type A general law city duly organized and operating under the laws of the State of Texas; and

WHEREAS, District and City are authorized to enter into an agreement pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code; and

WHEREAS, District annexed a tract of land located in the City of Willow Park and adjacent area (the “Willow Park Fire Area”) at an election duly conducted by law on November 8, 2022; and

WHEREAS, District will provide emergency services for the Willow Park Fire Area as required by law and this agreement is being entered into by the parties to effectuate a transition of fire protection services from the City to the District; and

WHEREAS, District and City agree that it is desirable, and District has determined that it is in the best interest of the residents and property owners of the District, to enter into an agreement whereby (i) City and District will agree to laterally transfer each of the City’s paid, full-time fire fighters into the District’s employ effective March 24, 2023; (ii) City and District will agree upon the assumption and/or allocation of accumulated benefits for all transferred employees; (iii) the City will agree to pay the District in an amount not to exceed \$691,805.00 for the costs of the District to provide emergency services to the Willow Park Fire Area for the remainder of the City’s Fiscal Year, March 24, 2023 through September 30, 2023; and (iv) City will sell, and the District will purchase, certain radio equipment and vehicles currently owned by City and used for City fire protection services (“City Fire Equipment”)

NOW, THEREFORE, for and in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree each with the other as follows:

ARTICLE I.
DEFINITIONS

Section 1.01 Definitions.

In addition to other terms defined herein, the following terms shall have the meanings assigned to them in this Article I whenever they are used in this Agreement.

- A. Board. The Board of Emergency Services Commissioners for the District.
- B. Willow Park Fire Protection Area. The geographic area of the City and surrounding area.
- C. Emergency Services. All fire protection and suppression services, emergency medical first responder services, and rescue and other services to be made available by the District for the Willow Park Fire Protection Area.
- D. Facilities. Fire stations, personal property and real property provided by District for use by District, in providing the Emergency Services.
- E. Equipment. The apparatus and related equipment provided by District for use by District in providing the Emergency Services.
- F. Fiscal Year. The period from October 1 through September 30.
- G. City Radio Equipment means the eighteen (18) portable Motorola APX 800 radios, the five (5) vehicle mounted Motorola APX 8500 radios, the one (1) mobile Motorola APX 8500 radio for station alerting, and two (2) bank chargers and other minor ancillary accessories, all as described in Exhibit B.
- H. City Fire Equipment means the City Radio Equipment, the 2020 Ford F-350 Brush Truck, the 2015 Ford F-350 Brush Truck, the 2019 Ferrara 107 Inferno Ladder Truck, the 2017 Ferrara Cinder Pumper Truck and 2010 Pierce Contender Pumper Truck, all as described in attached Exhibit B.

ARTICLE II.
REPRESENTATIONS AND WARRANTIES

Section 2.01 District's Representations and Warranties.

The District represents and warrants that it is a political subdivision of the State of Texas created and operating pursuant to the H&S Code and has the authority to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations.

Section 2.02 City's Representations and Warranties.

A. City is a Type A general law city, a political subdivision of the State of Texas, created and operating pursuant to the Texas Constitution and the Texas Local Government Code, and has the authority to enter into this Agreement and the transactions contemplated hereby and to carry out its obligations.

B. Neither the execution or delivery of this Agreement nor the consummation of the transactions or fulfillment of the obligations contemplated hereby conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which City is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever on any property or assets of City.

ARTICLE III.
TRANSFER OF PERSONNEL AND
PAYMENT FOR EMERGENCY SERVICES

Section 3.01 Requirements for Transfer to District's Employ.

City and District agree that, upon successful completion of any standard employment exams and tests, each of the City's paid, full-time fire fighters will be laterally transferred into the District's employ, effective March 24, 2023 ("Transfer"). (Each full-time paid fire fighter transferred to District's employ pursuant to this section will hereafter be referred to as a "Transferred Employee".) If a fire fighter does not pass any of the standard employment exams and tests, the District will not be required to retain the fire fighter as a "Transferred Employee."

Section 3.02 Accumulated Benefits and Future Pay and Benefits.

A. District agrees to assume, and provide to each Transferred Employee, vacation, holiday time and/or compensatory time ("Leave") accrued by each Transferred Employee while employed with City as of the effective date of the Transfer, March 24, 2023 (the "Transfer Effective Date"), in an amount not to exceed five hundred (500) accumulated hours for each Transferred Employee.

B. City agrees to assume and pay each Transferred Employee directly for any Leave time in excess of five hundred (500) accumulated hours, subject to any applicable City employment policies.

C. No later than March 24, 2023, City agrees to pay District an amount not to exceed Eighty Three Thousand and Sixty Nine Dollars (\$83,069.00) for Leave time accrued by each Transferred Employee as of the Transfer Effective Date

D. City and District agree that each Transferred Employee will be compensated for a total of 100% of the Leave time accumulated while employed by the City.

E. District agrees that each Transferred Employee will:

1) begin earning wages that are equal to or greater than the then-current wages received from the City;

- 2) immediately be eligible for consideration for step raises;
- 3) be hired as fire fighters;
- 4) maintain the then-current level of seniority based upon hire date with City; and
- 5) participate in the District’s employee benefits package applicable to all other employees of the District; and
- 6) be subject to District employment policies applicable to all other employees of the District.

Section 3.03 Payment for Emergency Services.

A. City has originally budgeted for the operation of the City’s Fire Department an amount not to exceed \$1,425,022.00, as set forth in Exhibit “A” attached hereto. For and in consideration of District assuming responsibility for the provision of Emergency Services for the Willow Park Fire Protection Area effective March 24, 2023, including, the assumption and payment of Leave, salaries, health insurance, retirement and other benefits and costs as set forth in attached Exhibit “A” for the remainder of the Fiscal Year, City agrees to reimburse District in an amount not to exceed Six Hundred Ninety One Thousand Eight Hundred and Five Dollars (\$691,805.00), such payment to be inclusive of the payment provided in Section 3.02(c) and paid by the City no later than March 24, 2023.

B. Except as provided herein, District shall be responsible for all other costs and expenses to provide Emergency Services to the Willow Park Fire Protection Area, including the costs of Facilities, Equipment and personnel necessary to provide such services.

ARTICLE IV.
TRANSFER OF CITY FIRE FLEET VEHICLES

Section 4.01 Transfer

A. City agrees to sell to District the City Fire Equipment as set forth in Exhibit “B” attached hereto and incorporated herein as though set out in full, for and in consideration of the payment by District to City of the following amounts:

- 1) City Radio Equipment - \$93,558.00;
- 2) 2020 Ford F-350 Brush Truck - \$68,000.00;
- 3) 2015 Ford F-350 Brush Truck - \$47,000.00;
- 4) 2019 Ferrera 107 Ladder Truck - \$770,440.00;

- 5) 2017 Ferrera Cinder Pumper Truck - \$305,080.00; and
- 6) 2010 Pierce Contender Pumper Truck - \$117,023.00.

B. The City Fire Equipment is sold and/or transferred herein “as is” and **CITY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSES WHATSOEVER WITH RESPECT TO THE GOODS BEING SOLD UNDER THIS AGREEMENT.**

C. In the event that there is a transferable title to the City Fire Equipment being sold herein, City shall transfer the title to District in accordance with State law.

ARTICLE V.
INDEMNIFICATION

Section 5.01 Indemnification.

To the fullest extent permitted by law, each Party shall and does hereby agree to indemnify, protect, defend, and hold harmless the other Party, its officers, agents and employees, for, from and against all claims, demands, liabilities, damages, costs, suits, losses, liens, expenses, causes of action, judgments, and fees (including court costs, attorney’s fees, and costs of investigation), of any nature, kind, or description by, through, or of any person or entity whomsoever arising out of, or alleged to have arisen out of, (in whole or in part) the work to be performed, or in any way whatsoever in connection therewith.

Section 5.02 Liability

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, is 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 specifically includes, but is not 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 Article V 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 a Party will not be held liable for the actions of any of the other Party’s employees while in any manner furnishing services under this Agreement.

Section 6.03 Payments from Current Revenues.

All payments made by either party under this Agreement shall be from current revenues.

ARTICLE VI.

MISCELLANEOUS

Section 6.01 Independent Contractor.

Nothing in this Agreement may be construed to make either party the partner or joint venturer of or with the other party. It is further agreed that in the performance of all obligations of District under this Agreement, District is an independent contractor with the right to supervise, manage, control, and direct the performance of the Emergency Services required under this Agreement.

Section 6.02 Payments from Current Revenues.

All payments made by either party under this Agreement shall be from current revenues.

Section 6.03 Term of Agreement.

This Agreement is effective on the Effective Date and will run through the end of the Fiscal Year.

Section 6.04 Termination of Agreement.

A Party may terminate this Agreement for cause as a result of a material breach of this Agreement. If the termination of this Agreement is for cause, the non-breaching Party must provide the breaching Party written notice clearly identifying the specific breach and providing a minimum 30-day cure period prior to terminating this Agreement under this provision. This Agreement may only be terminated for a material breach after a right to cure period has been exhausted.

Section 6.05 Notices.

All notices, certificates or other communications hereunder shall be deemed given when delivered by regular mail, hand delivery, or facsimile addressed as follows:

If to District, at: _____

Facsimile: _____

With a copy to: Ken Campbell
Burns Anderson Jury & Brenner, LLP
P. O. Box 26300
Austin, Texas 78755-6300
Facsimile: kcampbell@bajb.com

The District or City may by notice hereunder designate any further or different address to which subsequent notices, certificates or other communications shall be sent.

Section 6.06 Binding Effect.

This Agreement inures to the benefit of and is binding upon the District and City.

Section 6.07 Severability.

In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof. Such invalid or unenforceable provision shall be severed from all other provisions while all other provisions remain in full force and effect.

Section 6.08 Execution and Counterparts.

This Agreement may be simultaneously executed in several counterparts, each of which shall be considered an original and all of which shall constitute one and the same instrument.

Section 6.09 Captions.

The captions or headings in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of any provision or section of this Agreement.

Section 6.10 Governing Law

The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Texas.

Section 6.11 Venue

This Agreement is fully performable and enforceable in Parker County, Texas wherein venue hereunder shall lie.

Section 6.12 Assignment and Modification

City or District may not assign this Agreement, in whole or in part, without obtaining the prior written consent of the other Party, such consent to be within the sole and absolute discretion of the Party. Further, this Agreement may be modified only by written agreement and signed by both Parties.

IN WITNESS WHEREOF the District and City have caused this Agreement to be executed in their respective corporate names and their respective corporate seal to be hereunto affixed and attested by the duly authorized officers.

Signed this _____ day of _____, 2023.

ATTEST:

**PARKER COUNTY EMERGENCY
SERVICES DISTRICT NO.1**

By: _____
Secretary, Board of Emergency
Services Commissioners

By: _____
President, Board of Emergency
Services Commissioners

ATTEST:

CITY OF WILLOW PARK

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: Mayor

