

AGREEMENT FOR FIRE DEPARTMENT AUTOMATIC ASSISTANCE

AMONG THE TOWN OF ADDISON, CITY OF CARROLLTON, CITY OF COPPELL AND CITY OF FARMERS BRANCH

THIS AGREEMENT FOR FIRE DEPARTMENT AUTOMATIC ASSISTANCE (this “Agreement”) is entered into as of the Effective Date by and among the Town of Addison, City of Carrollton, City of Coppell and City of Farmers Branch, (hereinafter referred to as “Addison,” “Carrollton,” “Coppell” and “Farmers Branch,” respectively, as a “City,” when referenced individually or, collectively as the “Cities”), all of which are Texas home rule municipalities, each acting herein through its duly authorized officials.

RECITALS

WHEREAS, this Agreement serves to maximize cooperation among the Cities and promote a stronger homeland security effort through regionalism as promulgated by the Department of Homeland Security; and,

WHEREAS, the governing officials of the Cities, political subdivisions of the State of Texas and United States of America, desire to secure for each such entity the benefits of automatic assistance in the protection of life and property from fire and other disasters as well as provision of aid in the event of medical emergencies;

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, the Cities agree as follows:

1. In consideration of each City’s automatic assistance to one or more of the other Cities upon the occurrence of an emergency condition in any portion of the designated area where this Agreement for Fire Department Automatic Assistance is in effect, a predetermined number and amount of rescue equipment and personnel, firefighting equipment and/or emergency medical equipment or personnel of one or more of the Cities shall be dispatched, to such point where the emergency condition exists in order to assist in the protection of life and property subject to the conditions hereinafter stated. The Cities acknowledge and agree that the services and assistance described herein relate only to firefighting and emergency medical services provided by the fire departments of the respective Cities. This Agreement does not require the provision of mutual aid through any other departments or agencies of the Cities, which mutual aid may be (and in some cases are) covered under other mutual aid agreements between or among one or more of the Cities.

2. For the purposes of this Agreement the following words and phrases shall have the meanings set forth below unless the context otherwise clearly indicates another meaning:

A. “MAA” means that certain *Mutual Aid Agreement* relating to the provision of mutual aid assistance relating to disaster and emergency events within Dallas County by and among various local governmental entities local all in or part within Dallas County, Texas, including, but not limited to Addison (which signed the MAA on July 26, 2011), Carrollton (which signed the MAA on January 11, 2011), Coppell (which signed the MAA on January 11, 2011), and Farmers Branch (which signed the MAA on December 16, 2010).

B. “Emergency Condition” means any condition requiring water rescue, fire protection or emergency medical services, inclusively.

C. “Receiving City” means the City within whose corporate limits the location of the site where the Emergency Condition is occurring.

D. "Responding City" means the City responding to a call relating to an Emergency Condition pursuant to this Agreement the site of which is within the incorporated limits of another City.

3. Details as to amounts and types of assistance to be dispatched, methods of dispatching and communications, training programs and procedures and areas to be assisted will be developed by the Cities' Fire Chiefs. These details will be stipulated in one or more Memoranda of Understanding ("MOU") signed by the Fire Chiefs of the Cities to which the MOU applies. Each MOU may be revised or amended at any time by mutual agreement of the Fire Chiefs whose departments are parties to the MOU. The MOUs entered pursuant to this Agreement may include and apply to two, three, or all four of the Cities as necessary to carry out the purpose of this Agreement. In the event of a conflict between an MOU and the main body of this Agreement, this Agreement shall control.

4. Any dispatch of equipment and personnel pursuant to this Agreement is subject to the following conditions:

A. The predetermined amount of aid, type of equipment and number of personnel shall be sent by the Responding City in accordance with the applicable MOU, unless such amount of assistance is unavailable due to emergency conditions confronting the Receiving City's or Responding City's forces at the time of need for assistance under this Agreement.

B. In fulfilling their obligations provided for in this Agreement, the Cities agree to comply with the procedures set forth in the MOU's which their respective Fire Chiefs have signed pursuant to this Agreement, a copy of which shall be placed on file in the office of the City Secretary of each City in reference to this Agreement and made part hereof for all purposes upon its completion and execution by the Chiefs.

5. Each City waives all claims against the other Cities for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement and each MOU entered pursuant to this Agreement. THE ASSIGNMENT OF LIABILITY UNDER THIS AGREEMENT IS INTENDED TO BE DIFFERENT THAN LIABILITY OTHERWISE ASSIGNED UNDER TEXAS GOVERNMENT CODE SECTION 791.006, SUBSECTION (a). INSTEAD, LIABILITY, IF ANY, SHALL BE AS SET OUT IN THIS AGREEMENT, AS PROVIDED BY TEXAS GOVERNMENT CODE SECTION 791.006, SUBSECTION (a1). EACH CITY SHALL BE RESPONSIBLE FOR ANY LIABILITY RESULTING FROM ITS OWN ACTIONS OR OMISSIONS, AND THOSE OF ITS OWN EMPLOYEES, REGARDLESS OF WHICH CITY WOULD HAVE BEEN RESPONSIBLE, IN THE ABSENCE OF THIS AGREEMENT, FOR FURNISHING THE SERVICES PROVIDED. THIS PROVISION IS FOR THE BENEFIT OF THE CITIES AND IS NOT INTENDED TO CREATE A THIRD-PARTY CAUSE OF ACTION OR WAIVE ANY IMMUNITIES OR DEFENSES AVAILABLE TO THE CITIES.

6. A Responding City, whether one or more, shall not be reimbursed by the Receiving City for costs incurred pursuant to this Agreement. It is understood and agreed that each City has previously entered into the MAA. Costs incurred and to be reimbursed pursuant to the MAA shall be governed under the terms of the MAA. An employee of a Responding City who is assigned, designated or ordered by the employee's Fire Chief to perform duties pursuant to this Agreement shall receive the same wage, salary, pension, and all other compensation 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 corporate limits of Responding City where the person is regularly employed. Moreover, all medical expenses, wage and disability payments, except for those payments each City is required to pay under the MAA, pension payments, damage to equipment and clothing, and expenses of travel, food, and lodging shall be paid by the City with which the employee in question is regularly employed. Notwithstanding the **AGREEMENT FOR FIRE DEPARTMENT AUTOMATIC ASSISTANCE: ADDISON, CARROLLTON, COPPELL & FARMERS BRANCH:**

foregoing to the contrary, as to any mutual assistance between or among the Cities arising out of the occurrence of an Emergency Condition in the areas described in an MOU, the conditions and obligations of this Agreement shall take precedence over the conditions and obligations of the MAA. The resources necessary for the Cities to meet their respective obligations under this Agreement are deemed to be unavailable to provide services under the MAA.

7. All equipment used by each City's fire department in carrying out this Agreement will, during the time response services are being performed, be owned by the Responding City; and all personnel acting for each City's fire department under this Agreement will, during the time response services are required, be paid employees of the City where they are regularly employed.

8. At all times while equipment and employees of a Responding City's fire department are traveling to, from, or within the incorporated limits of the Receiving City in accordance with the terms of this Agreement, such personnel and equipment shall be deemed to be employed or used by the Responding City. Further, such equipment and personnel shall be deemed to be engaged in a governmental function for the Responding City.

9. In the event that any person performing duties subject to this Agreement shall be cited as a defendant party to any state or federal civil lawsuit arising out of the person's official acts while performing duties pursuant to the terms of the Agreement, such person shall be entitled to the same benefits that the person would be entitled to receive had such civil action arisen out of an official act within the course and scope of the person's duties as an employee of the City where the person is regularly employed and occurred within the jurisdiction of the City where the person is regularly employed. The benefits described in this Section 9 shall be supplied by the City with whom the person is regularly employed. However, in situations where the other Receiving City may be liable, in whole or in part, for the payment of damages, then the Receiving City may intervene in such cause of action to protect its interests.

10. Each City shall have the right to terminate its participation in this Agreement by providing written notice to the other Cities not later than ninety (90) days prior to the date of termination of such City's participation.

11. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

12. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. This Agreement is made for the Cities' respective fire departments as automatic assistance pursuant to V.T.C.A., Government Code, Chapter 418, commonly referred to as the Disaster Act of 1975; and nothing in this Agreement is intended to limit the availability of benefits to each City's personnel under Texas Government Code Chapter 615, as amended, and as it may be amended in the future.

14. Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or facsimile transmission and addressed to the respective City at the following address:

If intended for Town of Addison:

Town of Addison
Attn: City Manager
5300 Belt Line Road
Dallas, Texas 75254

With copy(ies) to:

City Attorney
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Town of Addison
Attn: Fire Chief
5300 Belt Line Road
Dallas, Texas 75254

If intended for City of Carrollton:

City of Carrollton
Attn: City Manager
1945 E. Jackson Road
Carrollton, Texas 75006

With copy(ies) to:

City Attorney
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

City of Carrollton
Attn: Fire Chief
1945 E. Jackson Road
Carrollton, Texas 75006

If intended for City of Coppell:

City of Coppell
Attn: City Manager
255 E. Parkway Boulevard
Coppell, Texas 75019

With copy(ies) to:

Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

City of Coppell
Attn: Fire Chief
255 E. Parkway Boulevard
Coppell, Texas 75019

If intended for City of Farmers Branch:

City of Farmers Branch
Attn: City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With copy(ies) to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

City of Farmers Branch
Attn: City Manager
13333 Hutton Drive
Farmers Branch, Texas 75234

15 In the performance of this Agreement, none of the Cities waive, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Cities **AGREEMENT FOR FIRE DEPARTMENT AUTOMATIC ASSISTANCE: ADDISON, CARROLLTON, COPPELL & FARMERS BRANCH:**

do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in any persons or entities who are not parties to this Agreement.

16. This Agreement and the MOU's entered pursuant to this Agreement represent the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

17. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

18. The recitals to this Agreement are incorporated herein.

19. This Agreement may be amended by the mutual written agreement of all Cities.

20. Each City has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each City has been properly authorized and empowered to sign this Agreement. The persons signing this Agreement hereby represent that they have authorization to sign on behalf of their respective City.

21. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

22. No City may assign, transfer, or otherwise convey this Agreement without the prior written consent of the other Cities.

23. Unless expressly stated otherwise, whenever the consent or the approval of a City is required herein, such City shall not unreasonably withhold, delay or deny such consent or approval.

24. Whenever a dispute or disagreement arises under the provisions of this Agreement, the Cities agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Cities shall refer the matter to outside mediation, the costs of which shall be shared equally, prior to engaging in litigation (unless delaying the filing of a lawsuit might result in the lawsuit being barred, including but not limited to a bar by a statute of limitations). The provisions of this Section 24 shall survive termination.

25. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

26. Each City paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying City or from funds otherwise lawfully available to the City for use in the payment of the City's obligations pursuant to this Agreement.

27. No City shall be liable to any or all of the other Cities for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the City's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a City is not legally responsible or which is not reasonably within its power to control ("a Force Majeure Event"). The affected City's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the City whose

performance is affected by a Force Majeure Event shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

28. This Agreement shall be effective and enforceable as to those Cities who have signed this Agreement on the date it has been signed by an authorized representative of such Cities, but in no case earlier than the date the date it bears the signature of the authorized representative of two of the Cities (“the Effective Date”).

(Signatures on Following Pages)

Town of Addison Signature Page

SIGNED AND AGREED this _____ day of _____, 2015.

TOWN OF ADDISON

By: _____
Charles W. Daniels, Interim City Manager

ATTEST:

Laura Bell, City Secretary

APPROVED AS TO FORM:

Brenda N. McDonald, City Attorney

City of Carrollton Signature Page

SIGNED AND AGREED this _____ day of _____, 2015.

CITY OF CARROLLTON

By: _____
Leonard Martin, City Manager

ATTEST:

Krystle F. Nelinson, City Secretary

APPROVED AS TO FORM:

Meredith A. Ladd, City Attorney

City of Coppell Signature Page

SIGNED AND AGREED this _____ day of _____, 2015.

CITY OF COPPELL

By: _____
Clay Phillips, City Manager

ATTEST:

Christel Pettinos, City Secretary

APPROVED AS TO FORM:

City Attorney

City of Farmers Branch Signature Page

SIGNED AND AGREED this _____ day of _____, 2015.

CITY OF FARMERS BRANCH

By: _____
Gary D. Greer, City Manager

ATTEST:

Amy Piukana, Interim City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney