

**RESOLUTION NO. 1172**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS APPROVING A FIRST AMENDMENT TO A MUTUAL AID AGREEMENT BETWEEN THE CITY OF CEDAR HILL, THE CITY OF DESOTO, THE CITY OF DUNCANVILLE, THE CITY OF GLENN HEIGHTS, THE CITY OF FERRIS, THE CITY OF LANCASTER, THE CITY OF MIDLOTHIAN, THE CITY OF OVILLA, THE CITY OF RED OAK AND THE CITY OF WAXAHACHIE, TEXAS REGARDING THE PROVISION OF CERTAIN GOVERNMENTAL FUNCTIONS AND SERVICES IN CONNECTION WITH THE PROTECTION OF LIFE AND PROPERTY IN THE EVENT OF A DISASTER, CIVIL DISASTER, AND/OR EMERGENCY; AUTHORIZING THE MAYOR TO EXECUTE THE SAID FIRST AMENDMENT; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Cedar Hill, the City of DeSoto, the City of Duncanville, the City of Glenn Heights, the City of Ferris, the City of Lancaster, the City of Midlothian, the City of Ovilla, the City of Red Oak and the City of Waxahachie are neighboring municipalities and, pursuant to and in accordance with law, previously entered into an agreement regarding the provision of certain governmental functions and services for one another as set forth herein, including assisting and cooperating with one another in connection with the protection of life and property in the event of a Disaster, Civil Emergency and/or Emergency, entitled "Interjurisdictional Mutual Aid Agreement for Ellis Dallas Unified Cooperative Team" (the "Agreement"), a true and correct copy of which is on file in the office of the City Secretary; and

**WHEREAS**, Red Oak, the City of Cedar Hill, the City of DeSoto, the City of Duncanville, the City of Glenn Heights, the City of Ferris, the City of Lancaster, the City of Midlothian, the City of Ovilla, and the City of Waxahachie desire to amend the Agreement by adding the City of Ennis, Texas as a party thereto and by making certain other changes as set forth in that First Amendment to the Interjurisdictional Mutual Aid Agreement for Ellis Dallas Unified Cooperative Team, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein; and

**WHEREAS**, the City Council of the City of Waxahachie, Texas finds it to be in the public interest to approve the changes to the Agreement as set out in the First Amendment to the Interjurisdictional Mutual Aid Agreement for Ellis Dallas Unified Cooperative Team;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS;**

**SECTION 1.** The above and foregoing recitals to this Resolution are true and correct and are incorporated into and made a part of this Resolution for all purposes.

**SECTION 2.** The City Council approves the First Amendment to the Interjurisdictional Mutual Aid Agreement for Ellis Dallas Unified Cooperative Team attached hereto as Exhibit A. The Mayor is authorized to execute the said agreement on behalf of the City.

**SECTION 3.** This Resolution shall be effective immediately upon approval.

**Interjurisdictional**  
**MUTUAL AID AGREEMENT**  
**For**  
**Ellis Dallas Unified Cooperative Team**  
**EDUCT**

**INTERJURISDICTIONAL  
MUTUAL AID AGREEMENT**

**STATE OF TEXAS**

**§**

**§**

**COUNTIES OF DALLAS AND ELLIS**

**§**

This Mutual Aid Agreement ("Agreement") is entered into by, between and among the following Cities of the State of Texas (collectively, "the Parties").

City of Cedar Hill (Dallas and Ellis Counties), City of DeSoto (Dallas County), City of Duncanville (Dallas County), City of Ferris (Ellis County), City of Glenn Heights (Dallas and Ellis Counties), City of Lancaster (Dallas County), City of Midlothian (Ellis County), City of Ovilla (Ellis and Dallas County), City of Red Oak (Ellis County), City of Waxahachie (Ellis County).

**RECITALS**

The Parties recognize the vulnerability of the people and communities located within each County to damage, injury and loss of life and property resulting from Disasters, Civil Emergencies and/or Emergencies; and recognize that they may present equipment and manpower requirements beyond the capacity of each individual Party; and

The Parties must confront the threats to public health and safety posed by possible terrorist actions and weapons of mass destruction and other incidents of man-made origin, and the threats to public health and safety from natural Disasters, all capable of causing severe damage to property and danger to life; and

The Parties to this Agreement recognize that Mutual Aid has been provided in the past and determined that it is in the best interests of themselves and their citizens to create a plan to foster communications and the sharing of resources, personnel and equipment in the event of such calamities; and

The governing officials of the Parties desire to secure for each Party the benefits of Mutual Aid for the protection of life and property in the event of a Disaster, Civil Emergency and/or Emergency; and

The Parties wish to make suitable arrangements for furnishing Mutual Aid in coping with Disasters, Civil Emergencies and/or Emergencies, and are so authorized and make this Agreement pursuant to Chapter 791, Texas Government Code (Interlocal Cooperation Act); Chapter 418, Texas Government Code (Texas Disaster Act of 1975); and Chapter 362, Local Government Code; and

It is expressly understood that any Mutual Aid extended under this Agreement and the operational plans adopted pursuant thereto, is furnished in accordance with the "Texas Disaster Act" and other applicable provisions of law, and except as otherwise provided by law, the responsible local official in whose jurisdiction an incident requiring Mutual Aid has occurred

shall remain in charge at such incident including the direction of such personnel and equipment provided him/her through the operation of such Mutual Aid plans.

**INITIAL RECOGNITION OF PRINCIPLES BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES**

As this agreement is a reciprocal contract, it is recognized that any party to this agreement may be requested by another party to be a provider. It is mutually understood that each party's foremost responsibility is to its own citizens. The provisions of this agreement shall not be construed to impose an unconditional obligation on any party of this agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when a party is requested to provide aid and assistance, in good faith it may deem itself unavailable to be a provider when the resources being requested are necessary to provide reasonable and adequate protection for its own citizens. A party unable to honor a request for aid and assistance will so inform the party initiating a request.

Given the finite resources of each party and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage each other to enlist other local entities in mutual aid and assistance efforts, and to enter into such agreements accordingly. Likewise, the parties fully recognize that there is ample public purpose for entering into this agreement, and therefore, shall attempt to render assistance in accordance with the terms of the agreement to the fullest extent possible.

All functions and activities performed under this agreement are hereby declared to be governmental functions. Functions and activities performed under this agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties or persons, and no third parties or persons shall have any right of action under this agreement for any cause whatsoever. All immunities provided by law shall be fully applicable.

NOW, THEREFORE, the Parties agree as follows:

1. **RECITALS**. The recitals set forth above are true and correct.
2. **DEFINITIONS**. For purposes of this Agreement, the terms listed below will have the following meanings:
  - a. **AGREEMENT**--This Interjurisdictional Mutual Aid Agreement, duly executed.
  - b. **ASSISTING PARTY**--The Party furnishing equipment, supplies, facilities, services and/or manpower to the Requesting Party.
  - c. **CIVIL EMERGENCY**--An unforeseen combination of circumstances or the resulting consequences thereof within the geographic limits of a given jurisdiction that calls for immediate action or for which there is an urgent need for assistance or relief to protect the general citizenry.

- d. **DISASTER**--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, energy emergency (as that term is defined in Chapter 418 of the Texas Government Code), acts of terrorism, or other public calamity requiring Emergency action.
  - e. **EMERGENCY**--Any occurrence, or threat thereof, whether natural or caused by man, in war or in peace, which results in substantial injury or harm to the population, or substantial property damage or loss of property.
  - f. **MUTUAL AID**--Includes, but is not limited to, such resources as facilities, equipment, services, supplies and personnel.
  - g. **REQUESTING PARTY**--The Party requesting aid in the event of a Disaster, Civil Emergency and/or Emergency.
3. **ACTIVATION OF AGREEMENT.** The incident commander of the affected Party or his/her designee making a request for aid, may activate this Agreement.
- The activation of the Agreement shall continue, whether or not a local Disaster Declaration or state of Civil Emergency is still active, until the services of the Assisting Party are no longer required.
4. **PROCEDURES FOR REQUESTS AND PROVISION OF MUTUAL AID.** The Incident Commander of a Party or his/her designee may request Mutual Aid assistance by communicating a request for Mutual Aid assistance to an Assisting Party.
- a. **REQUESTS DIRECTLY TO ASSISTING PARTY:** The Requesting Party may directly contact the Assisting Party or his/her designee and provide the necessary information as prescribed in Section 4.B. below.
  - b. **REQUIRED INFORMATION BY REQUESTING PARTY:** Each request for assistance shall be accompanied by the following information, to the extent known:
    - (1) A general description of the damage or injury sustained or threatened;
    - (2) Identification of the emergency service function or functions for which assistance is needed (e.g., fire, law enforcement, emergency medical, search and rescue, transportation, communications, public works and engineering, building, inspection, planning and information assistance, mass care, resource support, health and other medical services, etc.), and the particular type of assistance needed;
    - (3) The amount and type of personnel, equipment, materials, supplies, and/or facilities needed; and

- (4) The location or locations to which the resources are to be dispatched.
- c. **ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE.** When contacted by a Requesting Party, the Assisting Party from which aid is requested agrees to assess local resources to determine availability of personnel, equipment and other assistance based on current or anticipated needs. All Parties shall render assistance to the extent personnel, equipment and resources are deemed available. No Party shall be required to provide Mutual Aid unless it determines that it has sufficient resources to do so based on current or anticipated events within its own jurisdiction.
- d. **INFORMATION REQUIRED OF THE ASSISTING PARTY.** An Official of the Assisting Party who determines that the Assisting Party has available personnel, equipment, or other resources, shall so notify the Requesting Party and insure the requested resources are promptly dispatched.
- e. **SUPERVISION AND CONTROL:** When providing assistance under the terms of this agreement, the personnel, equipment, and resources of any Assisting Party will be under the operational control of the Requesting Party, the response effort to which **SHALL be organized and functioning within an Incident Command System (ICS).** Direct supervision and control of personnel, equipment, resources and personnel accountability shall remain with the designated supervisory personnel of the Assisting Party. The designated supervisory personnel of the Assisting Party shall:
- (1) Maintain personnel time records, material records and a log of equipment hours;
  - (2) Be responsible for the operation and maintenance of the equipment and other resources furnished by the Assisting Party; and
  - (3) Shall report work progress to the Requesting Party. The Assisting Party's personnel and other resources shall remain subject to recall by the Assisting Party at any time, subject to reasonable notice to the Requesting Party.
- f. **MUTUAL AID PLAN.** By their signatures below, each Party hereto certifies that it will provide Mutual Aid assistance under this Agreement. Additionally, each Party will develop a plan which specifies those positions authorized to activate this Agreement.
- g. **FOOD, HOUSING AND SELF-SUFFICIENCY:** Unless specifically instructed otherwise, the Requesting Party shall have the responsibility of providing food and housing for the personnel of the Assisting Party from the time of their arrival at the designated location to the time of their departure. However, Assisting Party personnel and equipment should be, to the greatest extent possible, self-sufficient while working in the Emergency or Disaster area. The

Requesting Party may specify only self-sufficient personnel and resources in its request for assistance.

- h. **COMMUNICATIONS:** Unless specifically instructed otherwise, the Requesting Party shall have the responsibility for coordinating communications between the personnel of the Assisting Party and the Requesting Party. Assisting Party personnel should be prepared to furnish their own communications equipment sufficient only to maintain communications among their respective operating units, if such is practicable.
  - i. **RIGHTS AND PRIVILEGES:** Personnel who are assigned, designated or ordered by their governing body to perform duties pursuant to this Agreement shall continue to receive the same wages, salary, pension, and other compensation and benefits for the performance of such duties, including injury or death benefits, disability payments, and workers' compensation benefits, as though the service had been rendered within the limits of the jurisdiction where the personnel are regularly employed.
  - j. **TERM OF DEPLOYMENT:** The initial duration of a request for assistance will be specified by the Requesting Party, to the extent possible by the situation.
- 5. **COSTS.** All costs associated with the provision of Mutual Aid, including but not limited to compensation for personnel; operation and maintenance of equipment; damage to equipment; medical expenses; and food, lodging and transportation expenses shall be borne by the Assisting Party for the first forty-eight (48) hours that assistance is provided. Thereafter, all costs associated with the provision of Mutual Aid, including but not limited to compensation for personnel; operation and maintenance of equipment; damage to equipment; medical expenses; and food, lodging and transportation expenses shall be paid by the Assisting Party and reimbursed by the Requesting Party at actual cost. Requests for reimbursement must be submitted within ten (10) working days of the return of all personnel deployed under this Agreement. Such request shall identify with specificity each service, labor, or equipment provided and the unit and total costs associated with each. The Assisting Party shall be responsible for creating and maintaining for a period of three (3) years a record of all costs incurred, both reimbursed and unreimbursed costs, in providing aid under this Agreement. Such costs and reimbursements shall be paid from current funds of the respective Party. All Parties acknowledge that unreimbursable costs incurred during the initial 48-hour period will not be subject to reimbursement with any available federal funds.
- 6. **INSURANCE**
  - a. **WORKERS' COMPENSATION COVERAGE:** Each Party shall be responsible for its own actions and those of its employees and is responsible for complying with the Texas Workers' Compensation Act.
  - b. **AUTOMOBILE LIABILITY COVERAGE:** Each Party shall be responsible for its own actions and is responsible for complying with the Texas motor vehicle financial responsibility laws.

- c. **GENERAL LIABILITY, PUBLIC OFFICIAL'S LIABILITY, AND LAW ENFORCEMENT LIABILITY:** To the extent permitted by law and without waiving sovereign immunity, each Party shall be responsible for any and all claims, demands, suits, actions, damages and causes for action related to, or arising out of, or in any way connected with its own actions, and the actions of its personnel in providing Mutual Aid assistance pursuant to the terms and conditions of this Agreement. Each Party agrees to obtain general liability, public official's liability and law enforcement liability, if applicable, or maintain a comparable self-insurance program.
- d. **OTHER COVERAGE:** The Assisting Party shall provide and maintain their standard packages of medical and death benefit insurance coverage while their personnel are assisting the Requesting Party.
7. **WAIVER OF CLAIMS AGAINST PARTIES; IMMUNITY RETAINED.** Each Party hereto waives all claims against the other Parties hereto for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement, except those caused in whole or in part by the negligence of an officer, employee, or agent of another Party. No Party waives or relinquishes any immunity or defense on behalf of itself, its officers, employees and agents as a result of the foregoing sentence or its execution of this Agreement and the performance of the covenants contained herein.
8. **EXPENDING FUNDS.** Each Party that performs services or furnishes aid pursuant to this Agreement shall do so with funds available from current revenues of the Party. No Party shall have any liability for the failure to expend funds to provide aid hereunder.
9. **TERM.** This Agreement shall become effective as to each Party on June 30, 2005 and shall continue in force and remain binding on each and every Party for twelve (12) months from the effective date. This Agreement shall renew automatically for a period of one year upon the completion of the initial term and each subsequent term unless and until such time as the governing body of a Party terminates its participation in this Agreement pursuant to Section 17 of this Agreement. Termination of participation in this Agreement by a Party or Parties shall not affect the continued operation of this Agreement between and among the remaining Parties.
10. **ENTIRETY.** This Agreement contains all commitments and agreements of the Parties with respect to the Mutual Aid to be rendered hereunder during or in connection with a Disaster, Civil Emergency and/or Emergency. No other oral or written commitments of the Parties with respect to Mutual Aid under this Agreement shall have any force or effect if not contained herein, except as provided in Section 16 below.
11. **RATIFICATION.** Each Party hereby ratifies the actions of its personnel and the rendering and/or receiving of Mutual Aid taken prior to the date of this Agreement.
12. **OTHER MUTUAL AID AGREEMENTS.** It is understood that certain Parties may have heretofore contracted or may hereafter contract with each other for Mutual Aid in Civil Emergency and/or Disaster situations, and it is agreed that, to the extent there is a conflict between this Agreement and any other such Mutual Aid agreement, the provisions of



**this Agreement shall be superior to any such individual contract.** To assist each other in the process of Mutual Aid response planning, each Party agrees to inform the other Parties of all Mutual Aid Agreements that each Party has with other municipalities, entities, counties, and state or federal agencies.

13. **INTERLOCAL COOPERATION ACT.** The Parties agree that Mutual Aid in the context contemplated herein is a "governmental function and service" and that the Parties are "local governments" as that term is defined herein and in the Interlocal Cooperation Act, Texas Government Code, Chapter 791.
14. **SEVERABILITY.** If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provisions of the Agreement that can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.
15. **VALIDITY AND ENFORCEABILITY.** If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made a part of this Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations, and so modified, this Agreement shall continue in full force and effect.
16. **AMENDMENT.** This Agreement may be amended only by the mutual written consent of the Parties.
17. **TERMINATION.** Any Party may at any time by resolution or notice given to all the other Parties decline to participate in the provision of Mutual Aid. The governing body of a Party that is a signatory hereto shall, by resolution, give notice of termination of participation in this Agreement and submit a certified copy of such resolution to all other Parties. Such termination shall become effective not earlier than 30 days after the filing of such notice. The termination by one or more of the Parties of its participation in this Agreement shall not affect the operation of this Agreement as between the other Parties hereto.
18. **THIRD PARTIES.** This Agreement is intended to insure only to the benefit of the Parties hereto. This Agreement is not intended to create, nor shall it be deemed or construed to create any rights for third parties.
19. **NOTICE.** Any notice required or permitted between the Parties must be in writing, addressed to the attention of each respective Chief Elected Official, and shall be delivered in person, or mailed certified mail, return receipt requested, or may be transmitted by facsimile transmission.
20. **WARRANTY.** This Agreement has been officially authorized by the governing or controlling body or agency of each Party hereto by order, ordinance or resolution and each signatory to this Agreement guarantees and warrants that the signatory has full authority to execute this Agreement and to legally bind the respective Party to this Agreement.
21. **GOVERNING LAW AND VENUE.** The laws of the State of Texas shall govern this Agreement. In the event of an Emergency or Disaster physically occurring within the

geographical limits of only one county that is a Party hereto, venue shall lie in the county in which the Emergency or Disaster occurred. In the event of an Emergency or Disaster physically occurring in more than one county that is a Party hereto, venue shall be determined in accordance with the Texas Rules of Civil Procedure.

22. **HEADINGS**. The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.

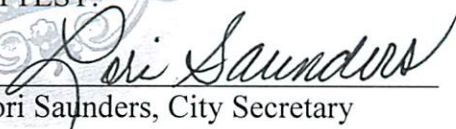
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PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
WAXAHACHIE, TEXAS this 22<sup>nd</sup> day of January, 2013.


APPROVED:

  
\_\_\_\_\_  
N.B. Jordan, Mayor

ATTEST:

  
\_\_\_\_\_  
Lori Saunders, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Steve Chapman, City Attorney