

**INTERLOCAL AGREEMENT BETWEEN ATASCOSA COUNTY
AND THE CITY OF PLEASANTON, TEXAS FOR FIRE PROTECTION
AND FIRST RESPONDER SERVICES**

This Interlocal Agreement ("Agreement") is made and entered into by and between **ATASCOSA COUNTY**, a political subdivision of the State of Texas ("County"), and the **CITY OF PLEASANTON**, a duly incorporated municipality of the State of Texas ("City"), hereafter collectively referred to as the "parties," for the purpose of providing fire protection services to the residents and businesses located in the County.

WITNESSETH:

WHEREAS, the parties are created and operating under the laws and Texas Constitution which authorize the provision of fire protection services to the residents and businesses within the County as allowed by law; and

WHEREAS, the Commissioners Court of Atascosa County and the City of Pleasanton have each found that contracting to provide fire protection services and first responder services to the County provides opportunity for increased services, efficiency, and economic benefits for the citizens of each such entity;

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to state law including, but not limited to, the Interlocal Act, Chapter 791, Texas Government Code;

WHEREAS, the Texas Local Government Code, §352.001(b)(3), *et seq.*, authorizes the County to enter into contracts with municipalities for making fire protection services available to the County; and

WHEREAS, the Commissioners Court of Atascosa County desires to contract with the City to provide fire protection and first responder services to the residents and businesses located in the County.

WHEREAS, the services provided or equipment to be used pursuant to this Agreement are a government function and the County and the City desire to contract in a manner to permit the entity providing such service, personnel or use of equipment, latitude and discretion to determine the level and quality of service and equipment to be used, subject to the terms, provisions, and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements stated herein, the parties agree as follows:

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to provide fire protection services to the residents and businesses in that area located in Atascosa County more particularly described on *Exhibit "A"*

attached hereto and included herein for the purpose of establishing the "designated area" and as shown by the official Fire Protection Zone Map on file with the minutes of the Atascosa County Commissioners Court in Jourdanton, Texas. The City has the authority to request that other agencies provide mutual aid or other assistance in providing the services listed above through mutual aid on a call-by-call basis.

**ARTICLE II.
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings set forth below:

ACTIVE FIRE FIGHTER: An active paid or volunteer firefighter of the City of Pleasanton.

FIRE ALARM: Any request for emergency Fire Services as required hereunder.

FIRE FIGHTING EQUIPMENT: The vehicles and protective clothing designed and used in fire protection and suppression activities hereunder. This includes fire suppression vehicles and all related materials normally carried on or utilized by these vehicles, including, but not limited to, hoses, wrenches, generators, exhaust fans, nozzles, ladders, rescue saws, pneumatic and hydraulic tools, and self-contained breathing apparatus. Protective clothing includes boots, helmets, gloves, turn-out jackets and pants, hazardous materials suits, and similar personal protective equipment.

FIRE SERVICES: Fire protection and suppression, fire prevention, hazardous materials control and abatement, rescue, and other emergency and non-emergency services provided to the public as necessary. To include First Responder response for emergency medical services within the unincorporated portion of the "designated service area".

PAID FIREFIGHTER: A person, at least nineteen (19) years of age, who meets the criteria set forth by the Texas Commission on Fire Protection, is certified as an emergency care attendant or higher by the Texas Department of State Health Services and is an employee of the City.

TRAINING PROGRAM: A program consisting of a minimum of twenty (20) hours per year, utilizing criteria set forth by the Texas Commission on Fire Protection for paid firefighters.

VOLUNTEER FIREFIGHTER: A person, at least nineteen (19) years of age, who meets the criteria set forth by the Pleasanton Fire Department.

**ARTICLE III.
TERM**

Subject to the termination and additional terms and conditions set out below, the initial term of this Agreement is for the period beginning the ___st day of _____, and ending _____. The County is expressly prohibited by the Constitution of the State of Texas from creating a debt without providing for a tax to pay the debt. Any provision that would provide for automatic renewal of this agreement would necessarily establish a debt. Consequently, there shall be no automatic renewal of this agreement. It is agreed that renewal of a firefighting and fire

protection services agreement between County and City must be by execution of a new agreement for each fiscal year intended to be covered by the agreement.

ARTICLE IV.
OBLIGATIONS OF THE CITY

The City shall provide Fire Services to the County as if the County were located within the City limits, under the same response protocols and without a reduction of the nature or quality of response. The City agrees to perform, at a minimum, the following services for the benefit of those persons residing in the designated area:

- A. Assist the County in fire prevention programs.
- B. Maintain a continuing training program for qualified fire services personnel.
- C. Monitor the Fire Alarm or alert system and radio system on a 24-hour basis, and assure, to the extent possible within the City, that adequate personnel are available to respond to each emergency to which the City is dispatched hereunder.
- D. Respond to emergencies within the designated area on a 24-hour per day, seven day per week basis.
- E. Respond to emergencies when dispatched in the designated area on the same priority as provided to the residents and businesses of the City.
- F. Provide the "Fire Services" set forth herein.
- G. Ensure that all current and future applicants for Paid Firefighter or Volunteer Firefighter provide an appropriate criminal history and a three-year driving record before they are accepted as volunteers or employees of the City.
- H. Maintain standard operational guidelines and personnel manual that, at a minimum, ensure that individuals performing services under this Agreement behave in a safe, appropriate, courteous, professional, and respectful manner.
- I. Provide all reports or other information reasonably requested by the County, pertinent to this Agreement, within ten (10) days. The City will use its best efforts to provide records within a shorter time if requested by the County. Nothing in this section requires the City to provide information that is in violation of applicable confidentiality laws. The City agrees to provide the County, at each of its regular meetings, or special meetings if timely requested a monthly activity report.
- J. Maintain appropriate and adequate liability, casualty, automobile, workers compensation, or other insurance necessary to comply with the Texas Tort Claims Act or other applicable law, statute, rule, or regulation. The City shall maintain workers compensation insurance as required by law for all of its employees or volunteers performing under this Agreement.

- K. Maintain, as required by applicable law, appropriate records of each emergency and non-emergency response provided to the County hereunder, and comply with all applicable laws, rules, or regulations related to each Fire Alarm provided hereunder.
- L. Allow the County or its authorized representatives to inspect, upon reasonable notice, the Firefighting Equipment and related facilities used by the City in its performance under this Agreement.
- M. Follow the National Incident Management System ("NIMS") as promulgated by the U.S. Department of Homeland Security to provide for the efficient management of emergencies and for the safety of personnel through the use of standard terminology, reporting relationships and support structures for those emergencies requiring the use of equipment or personnel from the City.

The City represents that it possesses the practical ability and legal authority to enter into this Agreement, receive and manage the funds authorized by this Agreement, and to perform the services the City is obligated to perform hereunder.

**ARTICLE V.
OBLIGATIONS OF THE COUNTY**

- A. In consideration of the terms of this Agreement, the County, being a duly created political subdivision of the State of Texas, agrees to provide the City with the following sums in return for the services set forth herein: For the current term of this Agreement, Thirty-two Thousand Dollars (\$32,000.00) payable at the time of execution of this Agreement and before any services are provided. The amount and method of payments of these funds will be approved by the County's Commissioners during the term of this Agreement, prior to the close of the fiscal year preceding the term for which the allocations are made.
- B. Upon renewal of this Agreement, the negotiated funds to be paid for the renewal term of this Agreement shall be paid by the County to the City in two increments namely the month of January and the month of July, with supporting written justification submitted by the City complying with the approved budget and other obligations as contemplated herein. The County, in making payments hereunder for governmental functions or services, shall make payments from current revenues available to the County.
- C. The County's obligations under this Article are contingent upon the actual receipt by the County of sufficient tax funds. The County acknowledges that it has and will continue to set tax rates, which if paid by the property owners, will be sufficient to pay the costs properly incurred by the City under this Agreement in the amounts agreed to herein. It is understood and agreed by the parties that the funding for the term set forth above has been approved and appropriated by the County.

- D. Should the parties desire to renew this Agreement, they will meet at least sixty (60) days before the termination date of this Agreement, the City and the County may meet to discuss the designated area and services to be provided for the following year.

**ARTICLE VI.
EQUIPMENT AND PERSONNEL**

- A. The City shall provide all necessary equipment, vehicles, and personnel to support the services specified in this Agreement.
- B. The County shall not accrue any equity or ownership interest in any equipment, vehicles and personnel provided by the City, and it is under no obligation to provide any such items to the City. The City shall not accrue any equity or ownership interest in any equipment, vehicles and personnel that the County currently owns or later acquires, and that the City uses.

**ARTICLE VII.
REPORTS**

- A. The City shall maintain accurate run reports of each incident to which it responds under this Agreement. Reports shall be maintained by the City and shall be subject to inspection by the County, upon reasonable request, during the City's customary business hours.
- B. In an effort to prepare for subsequent yearly service by the City to the County, the City and the County will meet during the term of this Agreement and institute a report to include projected growth for the City and the County.

**ARTICLE VIII.
LIABILITY**

- A. Specifically citing Texas Government Code § 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 IX is intended to be

different than liability otherwise assigned under Section 791.006 (a) of the Texas Government Code.

- B. It is expressly understood and agreed that the County and the City do not waive, and shall not be deemed to waive, any immunity or defense that would otherwise be available to either against claims arising in the exercise of their governmental powers and functions, or that might otherwise be available at law or in equity. The provisions of this section will survive the expiration or early termination of this agreement. Neither party will be responsible for claims arising out of the sole negligence of the other party, including the sole negligence of the other party's employees or volunteer members, while in any manner furnishing services under this Agreement.
- C. The County reserves the right to terminate this Agreement and/or withhold a portion of the payment if it is determined by the County that the City's employees or agents are not performing their duties and obligations in a safe manner.
- D. Nothing in this Agreement shall be deemed or construed to create a joint venture between the County and the City.
- E. The County and the City do not intend any person, firm or corporation to be a third party beneficiary of this Agreement.

ARTICLE IX.

VIOLATION OF AGREEMENT; DISPUTE RESOLUTION

In the event that either party has violated any of the terms of this Agreement, the party may notify the other party of the alleged violation in writing. Within 30 days following receipt of the notice, the violating party shall correct the alleged violation and provide the other party with written confirmation that the violation has been corrected. If the party contends that the alleged violation has not occurred or that any act or omission does not constitute a violation, it shall provide a written objection to the other party of its contention within ten (10) days following the date of receipt of the notice of violation. The parties then shall attempt to resolve their differences informally. If the parties cannot reach an agreement within 30 days following the notice of objection, and to the extent authorized by Texas Government Code, Chapter 2009, the parties will submit the matter either to mediation or, if both parties agree, to binding arbitration. If arbitration is selected, the matter shall be submitted to an arbitrator with membership in the American Arbitration Association. If mediation is selected, the mediator selected will be by agreement of the parties.

ARTICLE X.

NON-PAYMENT FOR SERVICES BY COUNTY; RIGHTS OF CITY

If the County has not fully paid the City as set forth herein, and assuming payment has not ceased due to a violation of this Agreement by the City, the City shall provide to the County Judge written notice of the County's failure to properly pay for the services provided hereunder. The County, within 30 days following receipt of the notice, shall correct the deficiency or, if the County contends the City has been paid as provided for herein, it shall provide a written accounting to the City supporting its contention within ten (10) days following the date of the notice of non-payment. If, after this notice and opportunity to cure, the City is not fully paid as set forth herein, the City may immediately terminate this Agreement.

ARTICLE XI.

TERMINATION OF AGREEMENT

- A. By Mutual Agreement. This agreement may be terminated by mutual agreement of the City and County, as evidenced by a written termination agreement.

- B. By either party. This agreement may be terminated at any time for convenience or fault upon thirty (30) days written notice to the other party.

ARTICLE XII.

GENERAL PROVISIONS

- A. Severability. If any term, covenant, or condition of this agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such remaining terms, covenants or conditions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this agreement shall be valid and shall be enforced to the fullest extent permitted by law and intended by the Parties. If any provision of this Agreement shall be held by the final judgment of a court of competent jurisdiction or the final award of an arbitrator to be invalid, void or otherwise unenforceable, such provision shall be enforced to the maximum extent possible to effect the intent of the parties, or, to the extent incapable of such enforcement, shall be deemed to be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect. In such an event the parties agree to negotiate in good faith to amend and replace such invalid or void or unenforceable provision with a valid and lawful and enforceable provision which most closely approximates the intent and economic effect of such invalid or void or unenforceable provision.

B. Notices. Any notice under this Agreement, excluding reporting requirements by the parties, shall be sent by U.S. certified mail, postage prepaid, and return receipt requested, addressed to the appropriate party at the following addresses:

If to the County: County Judge
1 Courthouse Circle
Jourdanton, Texas
78206

If to the City: City Manager City of Pleasanton
108 Second Street [for
hand- delivery only]
P. O. Box 209
Pleasanton, Texas 78064

With a copy to: Fire Chief
City of Pleasanton
316 Airport Road [for hand- delivery only]
P. O. Box 826
Pleasanton, Texas 78064

C. Authority to Contract. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

D. Governing Law. This agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas and the venue for enforcement shall be Atascosa County.

E. Anti-Contra Proferentem Clause. The Parties and/or their respective legal counsel have actively negotiated and drafted the provisions of this Agreement. Notwithstanding any rule to the contrary, no provision of this Agreement shall be interpreted or construed against any party because such Party and/or its legal counsel was the drafter thereof. In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

F. Limitation of Liability. By entering into this agreement, neither Party waives sovereign immunity defenses, nor any other limitation or defense of liability provided by law or in

equity. No provision of this agreement is intended to modify or waive any provision of the Texas Tort Claims Act or any other statute.

- G. Interpretation. Throughout this Agreement, except where the context requires otherwise, the masculine usage of a term shall be construed to include the feminine, and vice versa, and the singular number shall be deemed to include the plural, and vice versa.
- H. Entire Agreement. This Agreement constitutes the total and complete integration of any and all understandings existing between the Parties hereto and supersedes any prior oral or written agreements, promises or representations between them.
- I. Captions and Headings. The headings or captions of the various paragraphs of this agreement are for convenience only, and shall not define, interpret, affect, or prescribe the meaning and interpretation of the provisions of this agreement.
- J. Current Revenues Available and No Tax Revenue. County agrees that any payments that are made under this Agreement for services will be made from current revenues available to the County. Tax revenue may not be pledged to the payment of amounts agreed to be paid under this Agreement.
- K. No Third-Party Beneficiaries. Nothing in this Agreement shall entitle any third party to any claim, cause of action, remedy, or right of any kind; it being the intent of the Parties that this Agreement shall not be construed as a third-party beneficiary contract.
- L. Amendment. If the Parties desire to amend this agreement during or after the initial term, any modifications may be either incorporated herein by a written amendment or set forth in an entirely new agreement. Any modifications must be approved and signed by authorized representatives of the Parties.
- M. Assignment. This agreement shall extend to and be binding upon the Parties and their respective successors and assignees, provided, however, that this agreement may not be assigned without the prior written consent of both parties.
- N. Nepotism. Each party represents that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the proper performance of this Agreement. No person having such an interest shall be employed by either party or shall be a member of that party's governing body.
- O. Attorney's Fees. In any action brought to enforce the provisions of this Agreement, each party agrees that it will pay its own attorney fees and costs regardless of result.

