

ESD 4

STATE OF TEXAS §
COUNTY OF WILLIAMSON §

**MEMORANDUM OF UNDERSTANDING
ADDRESSING
APPLICABLE FIRE CODE,
CIVIL FIRE INSPECTIONS, AND
CRIMINAL FIRE INVESTIGATIONS
BETWEEN
WILLIAMSON COUNTY
AND
LOCAL EMERGENCY SERVICES DISTRICTS AND, WHERE APPLICABLE,
MUNICIPALITIES INVOLVED IN PROVIDING SERVICES TO EMERGENCY
SERVICES DISTRICT(S)**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) entered into by and between Williamson County, Texas (“WilCo”) and the local Williamson County Emergency Services Districts (“ESDs”) and, where applicable, Municipalities (“Cities”) involved in providing services to ESDs, all of which are political subdivisions of the State of Texas and individually referred to as a “Party” and collectively as “The Parties.”

RECITALS

WHEREAS, WilCo created the Williamson County Fire Marshal Office (“Wilco Fire Marshal”) on February 20, 2018 to coordinate standards for and to support fire investigations, inspections and code enforcement in the unincorporated areas of Williamson County pursuant to Chapter 352 of the Texas Local Government Code;

WHEREAS, The Parties desire to collaborate and provide support for fire code enforcement to prevent fires and emergencies and protect the health and safety of residents and property owners; and

WHEREAS, The Parties appreciate that each ESD within Williamson County has unique circumstances and different needs for designating what entity or entities have the presumed lead in providing civil fire inspection services or criminal fire investigation support;

THEREFORE, The Parties agree to and understand as follows:

PART 1 - EFFECTIVE DATE: This MOU takes effect when it has been signed by each Party's respective designated representative.

PART 2 - DURATION OF MOU: The term contemplated by this MOU shall continue until it is amended or terminated as set forth in Part 3 below.

PART 3 - TERMINATION: Any Party may opt out and terminate their respective participation in this MOU upon providing at least thirty (30) days prior written notice to the other Parties.

PART 4 - GOOD FAITH & LEGAL COMPLIANCE: The Parties agree to negotiate and act in good faith in the performance of this MOU and to follow all federal, state, and local laws.

PART 5 - APPLICABLE FIRE CODE: The minimum applicable fire code for all unincorporated areas of Williamson County, Texas is the 2015 edition of the *International Fire Code* ("2015 IFC") as set forth in an order of the Williamson County Commissioners Court ("The Court") approved and entered on July 10, 2018 during a regular session of The Court under agenda item no. 44 ("Order"). The Order is incorporated herein as if copied in full.

The Parties acknowledge that The Court retains legal authority, as set forth in Ch. 352 of the Tex. Loc. Gov't Code, to amend the Order as deemed necessary in the public interest.

The Parties also acknowledge that the ESDs retain legal authority, as set forth in Ch. 775 of the Tex. Health and Safety Code, to adopt and amend their respective fire codes as deemed necessary in the public interest. The Parties agree that the ESDs and the Cities may adopt stricter fire code requirement(s) than those contained in the Order, as amended, to apply within their respective boundaries covering unincorporated areas, including the relevant municipal extra-territorial jurisdiction(s).

PART 6 - CIVIL FIRE INSPECTIONS: Pursuant to the authority under Tex. Loc. Gov't Code Chapters 233 & 352, the Wilco Fire Marshal is authorized to conduct plan reviews and inspections, issue permits, and undertake related matters in the unincorporated areas of the County. Pursuant to the authority under Tex. Health & Safety Code Chapter 775, the ESDs are authorized to conduct plan reviews and inspections, issue permits, and undertake related matters in the unincorporated areas of the County. The Parties mutually agree to give notice to each other of any application or request for variance or exception to a rule or regulation applicable to a fire code in the areas they are policing.

The Parties acknowledge that The Court is authorized to adopt rules and procedures and for enforcing the Order and to contract with the ESDs to both obtain and provide assistance with enforcement of fire codes. *See e.g.*, Tex. Loc. Gov't Code. § 233.064 (stating "[t]he commissioners court may provide that a county employee or an employee of another governmental entity under intergovernmental contract may perform the inspection"); Tex. Loc. Gov't Code. § 352.016 (stating "the county fire marshal may inspect for fire or life safety hazards"); and Tex. Loc. Gov't Code. § 352.019 (stating "[t]he county fire marshal shall

coordinate the work of the various fire-fighting and fire prevention units in the county. On request, the county fire marshal may assist a rural fire prevention district or emergency services district located wholly or partially in the county to accomplish its powers and duties.”).

The Parties agree that the Wilco Fire Marshal may request assistance from the ESDs for enforcement of the Order and that the ESDs may request assistance from the Wilco Fire Marshal for enforcement of the ESDs’ respective fire codes, if any. If a Party provides assistance to Wilco for enforcement of the Order at the request of the Wilco Fire Marshal, that Party must coordinate and keeps the Wilco Fire Marshal informed¹.

The ESDs and the Cities may use the resources and systems at their disposal to conduct plan reviews, inspections, permits, and related matters under their respective fire codes.² This may include, but is not limited to, designating a District Fire Marshal, contracting with a City to provide such services for the ESD, or contracting with a City to provide such services for the City.

PART 7 – CRIMINAL FIRE INVESTIGATIONS: Pursuant to authority granted to The Court under Tex. Loc. Gov’t Code. § 352.013(b), “[t]he commissioners court of a county, with the advice of the county fire marshal, shall adopt rules and procedures for determining which fires warrant investigation by the county fire marshal.” The Court approved and entered on April 3, 2018 during a regular session of The Court under agenda item no. 27 (“Fire Investigations Order”). The Fire Investigations Order is incorporated herein as if copied in full.

The Parties acknowledge that the Court retains legal authority, as set forth in Ch. 352 of the Tex. Loc. Gov’t Code, to amend the Fire Investigations Order as deemed necessary in the public interest.

The ESDs and the Cities may, assuming there are adequate capabilities, to conduct their own fire origin and cause investigations³ within their respective boundaries covering unincorporated areas, including the relevant municipal extra-territorial jurisdiction(s), so long as there is no conflict with the Fire Investigations Order, as amended. Alternatively, the option of requesting assistance from the Wilco Fire Marshal’s office always remains.⁴

¹ Where deemed applicable and necessary by the Wilco Fire Marshal in the unincorporated areas, the fee schedule adopted by The Court for plan reviews, inspections of fire protection systems and final inspections must be followed for all submissions under the Wilco Order. Generally, the Party conducting the services under the Wilco Order will retain the applicable fees to recover such costs.

² The ESDs may adopt separate fee schedules for plan reviews, inspections of fire protection systems and final inspections under their respective fire codes.

³ The Parties understand and agree that the Wilco Fire Marshal must keep statistical information and information regarding circumstances of the origin of a fire and estimated amount of loss.

⁴ The Parties understand that it may be prudent and necessary to obtain input from the relevant criminal prosecutor in regard to criminal investigation(s).

PART 8 – TCOLE COMMISSIONS: The Wilco Fire Marshal will reasonably facilitate and assist requesting Parties to carry the commission for the purpose of Wilco Fire Marshal fire investigations. If the Wilco Fire Marshal carries such a commission, the Parties understand that it is narrowly-tailored to investigations with no secondary duties. Individuals commissioned through the Wilco Fire Marshal with regard to their investigative duties are subject to the rules and policies of the Wilco Fire Marshal's Office.⁵ However, the Parties understand and acknowledge that these commissioned employees are not employees of Williamson County or the Wilco Fire Marshal, and are rather employees of their respective agency. Thus, the arrangement regarding TCOLE commissions is akin to that of a task force, and the Wilco Fire Marshal reserves the right to withdraw a commission as deemed reasonably necessary in his or her sole discretion.

PART 9 – NO WAIVER OF SOVEREIGN IMMUNITY: This MOU is not intended to extend the liability of the parties beyond that provided by law. The respective Parties do not waive any immunity or defense that would otherwise be available to it against claims by third parties.

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⁵ Furthermore, an individuals certified as peace officers whose commission is held by the Wilco Fire Marshal may not work in any other law enforcement capacity, including working for other law enforcement agencies or working in a private security assignment, unless the individual's commission is held by such law enforcement agency or entity other than the Wilco Fire Marshal.

IN WITNESS WHEREOF, WILLIAMSON COUNTY AND WILLIAMSON COUNTY
ESD NO. 4 have duly executed this Memorandum of Understanding to be duly executed to
be effective as of the date of the last party's execution below. Where applicable, the CITY OF
N/A, TEXAS has also duly executed this Memorandum of Understanding.

FOR WILLIAMSON COUNTY
FIRE MARSHAL:

FOR WILLIAMSON COUNTY
ESD NO. 4:

BY: Matty Pina
FIRE MARSHAL
REPRESENTATIVE

BY: [Signature]
AUTHORIZED

Date: 12/30, 2018

Date: December 17, 2018

AUTHORIZED AND APPROVED BY THE
WILLIAMSON COUNTY COMMISSIONERS COURT:

BY: _____
WILLIAMSON COUNTY JUDGE

Date: _____, 20____

IF APPLICABLE, AUTHORIZED AND APPROVED BY THE
CITY COUNCIL OF THE CITY OF N/A

BY: N/A
MAYOR OR AUTHORIZED
REPRESENTATIVE

Date: _____, 20____