INTERLOCAL AGREEMENT BETWEEN WISE COUNTY, TEXAS AND THE CITY OF RHOME, TEXAS FOR FIRE PROTECTION AND FIRST RESPONDER SERVICES

THE STATE OF TEXAS §
§
COUNTY OF WISE §

FISCAL YEAR 2016-2017

WHEREAS, this agreement is made between Wise County, Texas (COUNTY) and the City of Rhome, Texas (CITY), under and pursuant to the Interlocal Cooperation Act, Chapter 791 Texas Government Code and under Section 352.001 of the Texas Local Government Code relative to contracting with cities for the use of fire trucks and other firefighting equipment to provide fire and first responding services outside the corporate limits of municipalities in the COUNTY; and

WHEREAS, CITY and COUNTY represent that each is independently authorized to perform the functions contemplated by this Agreement; and

WHEREAS, the COUNTY currently has a need for fire protection and first responder services in portions of the COUNTY outside the city limits of Rhome, Texas and within the surrounding vicinity thereof and the COUNTY is not equipped to render such services; and

WHEREAS, each party has sufficient funds available from current revenues to perform the function contemplated by this Agreement; and

NOW, THEREFORE in consideration of the above recitals, mutual benefits and promises each to the other made herein, the parties named above do hereby agree as follows:

PUBLIC PURPOSE

The purpose of this contract is to provide public fire protection and other limited emergency response services within the area of the COUNTY that lies outside the boundaries of any municipal government. The COUNTY Government has no authority to provide fire protection or most other emergency response services within the territorial limits of incorporated municipalities and by this contract does not attempt to usurp the authority of municipalities to manage, regulate and provide fire protection and emergency response services within their boundaries.

CITY OBLIGATIONS

The CITY, as a part of this agreement, and as a condition of the payment by COUNTY of any and all sums called for under this agreement, agrees that:

(A) The CITY's Volunteer Fire Department will provide fire protection and other emergency response services for all persons and property within the unincorporated area of said COUNTY that lies within the designated primary service area of the CITY's Volunteer Fire Department. Further, the CITY's Volunteer Fire Department agrees that it shall be the First Responder for emergency medical services within the unincorporated portion of the designated primary service area of the CITY's Volunteer Fire Department. Additionally, the CITY's Volunteer Fire Department agrees that it shall respond to mutual aid calls from any other fire departments that are based in the COUNTY for fire protection services at any location within the unincorporated area of the COUNTY.

(B) Emergency services other than those concerning fire protection and other emergency response services, as defined in this contract, is not the subject of this contract. All emergency services provided within the territorial boundaries of municipal corporations are solely within the jurisdiction and the area of responsibility of the relevant municipal government. No provision is made in this contract to provide services in any municipality. However, nothing in this contract is intended to prevent the CITY's Volunteer Fire Department from providing other services in addition to the services contracted for herein, nor from providing services within municipalities, but in doing so, the CITY's Volunteer Fire Department does not act as an agent of the COUNTY and the COUNTY assumes no responsibility for such services. Further, in providing such services and as a collateral incident of this contract, it is agreed that the CITY's Volunteer Fire Department may utilize any COUNTY equipment provided to the CITY's Volunteer Fire Department under this contract. However, it is expressly agreed and understood that the **CITY'S VOLUNTEER FIRE DEPARTMENT SHALL HOLD THE COUNTY HARMLESS FOR ANY INJURY OR DAMAGE SUFFERED BY ANY PERSON OR PROPERTY RESULTING FROM SUCH ACTION AND INCLUDING ANY DAMAGE OR INJURY CAUSED OR CONTRIBUTED TO BY REASON OF THE USE OR OPERTATION OF ANY EQUIPMENT OR TANGIBLE PROPERTY OWNED BY THE COUNTY OR PURCHASED BY THE COUNTY FOR THE USE OF THE CITY'S VOLUNTEER FIRE DEPARTMENT IN PERFORMANCE OF ITS RESPONSIBILITIES UNDER THIS CONTRACT WHEN THAT EQUIPMENT IS USED BY THE CITY'S VOLUNTEER FIRE DEPARTMENT WITHIN A MUNICIPALITY.**

(C) The CITY's Volunteer Fire Department shall use reasonable diligence and effort to provide the fire protection and emergency response services it has contracted to provide by this contract and to provide immediate and direct supervision of the CITY's Volunteer Fire Department members, volunteers, employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms, and conditions of this contact.

(D) CITY's Volunteer Fire Department agrees to cause its members and personnel providing fire protection services in performance of this contract, when performing said services, to conduct themselves in a professional manner and to comply with applicable laws. Non-member volunteers will not be used for fire protection. All fire fighters must be members and properly trained and equipped to perform fire protection duties. Radio communications will be conducted in accord with any rules, procedures or directives of the Sheriff of Wise County and/or County Fire Marshal. The CITY's Volunteer Fire Department further agrees that it will cooperate with the County Fire Marshal to the extent provided for in Texas law.

(E) The CITY's Volunteer Fire Department warrants that in carrying out the terms of this contract, it will not utilize any person under 18 years of age in the performance of the services to be provided under this contract.

(F) It is agreed that the CITY's Volunteer Fire Department shall comply with any rules, procedures or directives of the County Fire Marshal for determining which fires warrant investigations, and shall cooperate with any such investigation made by the appropriate COUNTY Official or the designated agent of the County Fire Marshal, State Fire Marshal, County Sheriff, and/or other law enforcement agencies or their designees

(G) The books and records maintained for operating the CITY's Volunteer Fire Department shall be open to inspection by the COUNTY or its designated representatives during normal business hours.

(H) The CITY's Volunteer Fire Department shall submit a financial report to the COUNTY, no later than three months after the close of the Fire Department's fiscal year.

(I) The CITY's Volunteer Fire Department shall file a TXFIRS report with the State Fire Marshal's office within two weeks of the end of the month that an incident occurred. The Wise County Fire Marshal is authorized to review and update all fire incident reports filed by the Fire Department with the State Fire Marshal's office.

(J) The CITY's Volunteer Fire Department shall maintain a "current" status throughout the life of this agreement as a First Responder Organization (FRO) per Texas Administrative Code 157.14.

(K) If the CITY'S Volunteer Fire Department is utilizing COUNTY property, the attached "Wise County Asset Control Verification Form" must be completed and returned with this agreement. If the form is not completed and returned with the interlocal, said property will become subject to forfeit to the COUNTY.

(L) The CITY shall maintain statutory workers' compensation coverage for its employees, officers and volunteers regarding the CITY'S performance under this contract. The CITY recognizes that the COUNTY has no responsibility to furnish this coverage and The CITY waives any right to pursue the COUNTY for liability regarding payments for this coverage or for liability regarding payments for claims filed against this coverage.

CONSIDERATION

For the services provided above, the COUNTY shall provide to CITY a sum not to exceed $4,200.00 per month during the term of this contract. All sums to be paid under this contract by the COUNTY shall be made from current revenues available.

GENERAL APPORTIONMENT OF RESPONSIBILITY AND IMMUNITY IN ACCORDANCE WITH GOVERNMENT CODE 791.006 (A-1)

In difference to 791.006(a), in the event of joint or concurrent negligence of the parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to either party individually under Texas law. The CITY shall be responsible for its sole negligence. The COUNTY shall be responsible for its sole negligence. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person.

NOTICE OF NONAPPROPRIATION

If, for any fiscal year, a party fails to appropriate funds in amounts sufficient to pay or perform its obligations under this Agreement, such party shall endeavor to provide thirty (30) days notice of its intent not to appropriate the necessary funds for its performance of obligations under this Agreement.

DEFAULT

In the event either party shall fail to keep, observe, or perform any provision of this contract, the breaching party shall be deemed in default. If such default shall continue for a period of thirty (30) days after notice thereof by the non-breaching party to the other, then the non-breaching party shall be entitled to all available options under the termination and dispute resolution sections of this Agreement.

TERM AND RENEWAL

The effective date of this agreement shall be October 1, 2016, or the date that both parties have signed within the 2016-2017 fiscal year, whichever is the later, and this contract shall expire at midnight of September 30, 2017.

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. "Debt" means any obligation to be paid for with future rather than with current revenues. Any agreement that would provide for automatic renewal of this contract would necessarily provide for payments that would have to be made from future revenues. Without a special tax, there can be no lawful automatic renewal of this contract. Instead a new contract must be executed for each fiscal year. **The fiscal year of the COUNTY is from October 1 through September 30 of the next calendar year.**

Consequently, there shall be no automatic renewal of this contract. It is agreed that renewal of a fire protection services contract between the COUNTY and the CITY, must be by execution of a new contract for each fiscal year on or before October 1 of the fiscal year covered by the contract that is expiring.

TERMINATION

A. **By Mutual Agreement**: This Agreement may be terminated by mutual agreement of the CITY and the COUNTY, as evidenced by a written termination agreement.

B. **For Nonappropriation of funds**: As mentioned above, if a party fails to appropriate funds necessary for performance of the obligations under this Agreement, the other party may terminate this Agreement.

C. **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.

DISPUTE RESOLUTION

Dispute Resolution Process. Before commencing formal legal proceedings concerning any dispute arising under or relating to this Agreement, or any breach thereof, the Parties agree to observe the following Dispute Resolution Process.

Notice. A written complaint which contains sufficient detail to clearly identify the problem(s) giving rise to the dispute, and the responding Party shall have a reasonable opportunity to respond.

First Resolution Meeting. After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution, the Parties shall schedule a meeting and designate representatives to attend such meeting to attempt to facilitate an agreed resolution.

Second Resolution Meeting. If the Parties' designated representatives cannot reach an agreed resolution, the following representatives shall meet to discuss the matter: CITY: City Manager and/or Mayor; COUNTY: County Commissioner and/or County Judge.

Successful Resolution. If resolution is made, it shall be reduced to a written agreement to be approved by each side's governing body. If approved, the written agreement will become an amendment to the original agreement. However, it will not supersede any term or condition except those dealing with the subject matter of the dispute.

Unsuccessful Resolution. If all above options are completed and the Parties are unable to reach a resolution, either Party may pursue all legal and equitable remedies available to it under Texas law.

GENERAL PROVISIONS

Agent of the COUNTY for Certain Limited Purposes *Only*: The COUNTY and the CITY understand and agree that Section 352.004 of the Texas Local Government Code applies to the services performed by the CITY for the COUNTY under this contract and that when engaged in the scope of its duty to provide fire protection services for the *residents* in any part of the area of the COUNTY that lies outside the territorial limits of any municipal corporation, the CITY acts as an agent of the COUNTY to the *limited* extent said law mandates.

NIMS- National Incident Management Systems: The CITY Fire Departments shall supply the COUNTY at the time of execution of this contract a list of personnel for the Fire Department as well as the Certificate of NIMS compliant testing for each person on the list. Testing shall be in accordance with FEMA guidelines as to what level, who and when training is done to remain compliant. All departments must be NIMS compliant.

Department Chief Officers shall complete NIMS 300 and are encouraged to complete NIMS 400 training. NIMS 300 shall be completed as soon as possible following appointment to office.

All DEPARTMENT members shall complete NIMS 100, 200, 700 and 800 training. The DEPARTMENT shall submit records for each member documenting completion of NIMS training. The DEPARTMENT shall maintain supporting records for each member and shall be made available to the COUNTY within forty-eight (48) hours notice.

Severability Clause: The Parties intend for the various provisions of this Agreement to be severable so the invalidity, if any, of one or more sections of this Agreement shall not affect the validity of the remaining provisions of the Agreement.

Counterparts: This document may be executed in any number of original signature counterparts, each of which shall for all purposes be deemed an original, and all such counterparts shall constitute one and the same document.

Notices:

To COUNTY: Any Notice permitted or required to be given to the COUNTY hereunder must be in writing and may be given by Certified United States Mail, Return Receipt Requested, postage prepaid, addressed to:

County Judge
P.O. Box 393
Decatur, Texas 76234

To CITY: Any notice permitted or required to be given to the CITY hereunder must be in writing and may be given by Certified United States Mail, Return Receipt Requested, postage prepaid, addressed to:

_____

_____

_____, Texas 76_____

Any notice permitted or required to be given hereunder shall be deemed to have been given upon deposit of the notice in the United States Mail as aforesaid.

Authority to Contract: Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

Governing Law/Venue: This Agreement shall be interpreted in accordance with the laws of the State of Texas and Wise County is the proper venue for any action regarding this contract.

Limitation of Liability: By entering into this agreement, neither party waives sovereign immunity defenses or any other limitation of liability. No provision of this agreement is intended to modify or waive any provision of the Texas Tort Claims Act as amended.

Entire Agreement: This Agreement represents the entire agreement of the parties and supersedes any verbal or written representations of, to or by the parties to each other.

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.

DATED to be effective this the 1st day of October, 2016

WISE COUNTY

_____

Wise County Judge

Date: 8/29/16

CITY OF RHOME

BY: Michelle Pittman

Title: Mayor

Date: 9/20/2016

WISE COUNTY FIRE MARSHAL

_____

Wise County Fire Marshal

Date: 8/29/16

VOLUNTEER FIRE DEPARTMENT OF RHOME

By: _____

Title: FIRE CHIEF

Date: 9/26/2016