

**RESOLUTION NO. 2020-08**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS, APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE CITY OF ALLEN AS HOST ENTITY AND OTHER PARTICIPATING ENTITIES FOR MUTUAL AID FOR INFORMATION TECHNOLOGY SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, natural and manmade disasters can impact governmental operations; and

**WHEREAS**, the City Council wishes to enter an Agreement with the City of Allen as Host Entity and other cities as Participating Entities as they enter similar agreements; and

**WHEREAS**, the parties desire to help other governmental entities or be helped by them in the event of a natural or manmade disaster; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791, Government Code, authorizes units of local government to contract with one or more other units to perform governmental functions and services; Now, Therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS:**

**SECTION 1.** That the Interlocal Cooperation Agreement for Mutual Aid for Information Technology Services by and between the City of Benbrook as a Participating Entity and the City of Allen as Host Entity, a true copy of which is attached hereto as Exhibit "A" and made part hereof for all purposes, is accepted and approved in all respects by the City Council. The City Manager is authorized and directed to execute such Agreement on behalf of the City of Benbrook and to take such other administrative steps as may be necessary to participate in the mutual aid agreement.

**SECTION 2.** This Resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

**DULY PASSED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS**, on the 3rd day of September 2020.

**APPROVED:**

\_\_\_\_\_  
Jerry B. Dittrich, Mayor

**ATTEST:**

\_\_\_\_\_  
Beth Fischer, Deputy City Secretary

**APPROVED TO AS FORM:**

\_\_\_\_\_  
City Attorney

**EXHIBIT “A”**  
**INTERLOCAL COOPERATION AGREEMENT FOR MUTUAL AID FOR**  
**INFORMATION TECHNOLOGY SERVICES**

This Interlocal Cooperation Agreement (“Agreement”) is by, between, and among the City of Allen, Texas (the “Host City”) and the undersigned Participating Local Governments of the State of Texas (each a “Participating Entity”), acting by and through their respective authorized representatives (referred to individually as a “Party” and collectively as the “Parties”).

**RECITALS:**

**WHEREAS**, this Agreement is authorized by Chapter 791 of the Texas Government Code; and

**WHEREAS**, each Participating Entity may experience a cyber incident, natural disaster, or other emergency capable of degrading or disrupting information technology services (“IT Services”) beyond the capabilities of the Participating Entity; and

**WHEREAS**, each Participating Entity acknowledges the importance of prompt restoration of IT Services to allow local governments to function and operate; and

**WHEREAS**, each Participating Entity has agreed to adopt a formal or informal cyber response plan in the event of a significant cyber incident; and

**WHEREAS**, each Participating Entity has agreed to adopt a formal or informal response plan in the event of a natural disaster or other emergency; and

**WHEREAS**, a Participating Entity requesting IT Services (hereinafter referred to as a “Requesting Entity”) receives benefit from a responding Participating Entity (hereinafter referred to as a “Responding Entity”) through the provision of supplemental IT Services personnel or computer hardware for the period of support; and

**WHEREAS**, the Responding Entity receives the benefit of its IT Services personnel gaining knowledge through the experience of aiding in the restoration of IT Services during a crisis; and

**WHEREAS**, the Parties desire to enter a mutual aid agreement to offer time and expertise of IT Services personnel to assist in the detection, response and short-term remediation of the cyber incident or assist in the repair and restoration of IT Services due to a natural disaster or other emergency.

**NOW THEREFORE**, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I DEFINITIONS**

Unless the context clearly indicates otherwise, the following words and phrases used in this Agreement shall have the following meaning:

“Host Entity” shall mean the City of Allen, Texas.

“IT Incident” shall mean an event or set of circumstances resulting from a cyber incident, natural disaster, pandemic or other emergency (including state or local declared state of disaster pursuant Chapter 418 Texas Government Code) whether natural or manmade, which is capable of degrading or disrupting information technology services beyond the capabilities of the Requesting Entity.

“Mutual Aid” shall mean, but is not limited to, such IT Service resources as facilities, equipment, services, supplies, and personnel.

“Participating Entity” shall mean a participating local government that executes this Agreement.

“Requesting Entity” shall mean the Participating Entity that requests Mutual Aid under this Agreement as result of an IT Incident under the terms of this Agreement.

“Responding Entity” shall mean the Participating Entity providing Mutual Aid to a Requesting Entity in response to a request from a Requesting Entity under this Agreement as a result of an IT Incident.

## **ARTICLE II PURPOSE**

The purpose of this Agreement is to establish a mutual aid agreement between and among the Parties, which will allow each Participating Entity to provide Mutual Aid to a Requesting Entity as a result of, in response to, or during an IT Incident.

## **ARTICLE II TERM; TERMINATION**

3.1 The term of this Agreement shall be for a period of one (1) year commencing on the last date of execution by the Participating Entity (“Effective Date”). Thereafter, this Agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless sooner terminated as provided herein.

3.2 A Participating Entity may terminate its participation in this Agreement by providing thirty (30) days prior written notice to terminate its participation in this Agreement to the Host Entity. The Host Entity shall provide written notice of any such termination to the designated representative of each Participating Entity.

3.3 A Participating Entity’s participation in this Agreement may be terminated by the Host Entity for cause, including, but not limited to, failure to comply with the terms

or conditions of this Agreement upon thirty (30) days prior written notice to such Participating Entity.

3.4 Termination by one or more Parties to this Agreement does not affect the Agreement as it applies to the remaining Parties.

## **ARTICLE IV RESPONSIBILITY OF PARTIES**

4.1 Requesting Assistance. The Chief Information Officer (“CIO”), Information Technology Director (“IT Director”), or designee of the Participating Entity that has experienced an IT Incident may request Mutual Aid from the CIO, IT Director, or designee of another Participating Entity verbally or in writing. The determination as to what Mutual Aid may be made available to the Requesting Entity without unduly interfering with the IT Services of the Responding Entity shall be made at the sole discretion of the CIO, IT Director, or designee of the Responding Entity. Each Participating Entity agrees to assess local resources to determine availability of Mutual Aid based on current or anticipated needs of the Responding Entity. Requests for Mutual Aid shall not be requested by a Party unless it is directly related to the IT Incident and resources available from the Requesting Party are inadequate.

4.2 Each Participating Entity recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide aid and assistance to the Participating Entity’s own constituents. This Agreement shall not be construed to impose any obligation on any Participating Entity to provide Mutual Aid to Requesting Entity. Each Participating Entity may choose not to render Mutual Aid at any time for any reason, or to recall such Mutual Aid that has been provided at any time.

4.3 Procurement of Equipment, Software and Services. The Requesting Entity shall be responsible for any incidental costs, equipment, software, or services related to the Mutual Aid response to the IT Incident. If the Responding Entity indicates a need for the acquisition or purchase of equipment, software, or services, the Requesting Entity shall decide if such acquisition or purchase is necessary and will make any required acquisition or purchase.

4.4 Personnel Costs. The Requesting Entity shall pay any overtime costs that occur for personnel of the Responding Entity if requested by the Responding Entity. The Responding Entity shall provide the Requesting Entity with a written invoice for such overtime costs which shall include an itemized list of Responding Entity employees, the date and time of overtime hours worked within sixty (60) days after the provision of such Mutual Aid. The Requesting Entity shall pay such invoice to the Responding Entity within thirty (30) days after receipt of such invoice.

4.5 Use of Computer Hardware. A Requesting Entity in need of computer hardware (e.g. personal computers, laptops, servers, network equipment, etc.), will compile a written list of such computer hardware and the estimated length of time that such equipment is needed which may be sent to the Participating Entities. Any Participating Entity may choose to respond in whole or part and is under no obligation to provide computer hardware to the Requesting Entity. A Responding Entity which chooses to loan computer hardware will respond back to the Requesting Entity to affirm that such computer hardware or portion thereof is available for temporary use. The Responding Entity makes no claim of the currency or operational use of the computer

hardware nor is the Responding Entity liable for any damages resulting from the Requesting Entity's use of any computer hardware so provided. The transportation and delivery of such computer hardware or charges related thereto shall be the responsibility of the Requesting Entity unless otherwise agreed by those Parties. The Requesting Entity shall be responsible for, and pay the Responding Entity for any damages, loss, or destruction of such computer hardware while in the use and possession of the Requesting Entity, including the transport thereof. Any ongoing maintenance, lease or other fees related to such computer hardware shall continue to be paid by the Responding Entity.

4.6 Criminal Justice Information System ("CJIS"). The Requesting Entity shall be responsible for restricting the Responding Entity personnel from access to CJIS information unless the Responding Entity personnel have completed all CJIS background checks and is in current compliance with CJIS training requirements.

4.7 List of Participating Entities. The Host City shall maintain a current list of Participating Entities and provide such list to a Participating Entity upon request

## **ARTICLE V INSURANCE**

5.1 Worker's Compensation Coverage. Each Party shall be responsible for its own actions and those of its employees and is responsible for complying with the Texas Worker's Compensation Act.

5.2 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.

5.3 General Liability Insurance. Each Party agrees to obtain general liability and public official's liability insurance, if applicable, or maintain a comparable self-insurance program.

5.4 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 rendered or performed pursuant to the terms and conditions of this Agreement. Except as specifically stated in this Agreement, each Party 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 Mutual Aid pursuant to this Agreement, except those caused in whole or in part by the negligence of an officer, employee, or agent of another Party. It is expressly understood and agreed that in execution of this Agreement, no Party waives, nor shall be deemed to have waived, immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights for any third parties not signatories hereto.

## **ARTICLE VI MISCELLANEOUS**

6.1 Expending Funds. Each Party that furnishes Mutual Aid pursuant to this Agreement shall do so with funds available from current revenues of such Party. No Party shall have any liability for the failure to expend funds to provide Mutual Aid.

6.2 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.

6.3 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.

6.4 Legal Construction. In the event any 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 other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.5 Amendment. This Agreement may be amended only by the mutual written consent of the Parties.

6.6 Third Parties. This Agreement is intended to inure only to the benefit of the Parties hereto. This Agreement is not intended to create, nor shall be deemed or construed to create any rights in third parties.

6.7 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. By execution of this Agreement the Participating Entity consents to be a Party to this Agreement and acknowledges that it is not necessary to receive copies of the Agreement from other local governments that are, or which become, Parties to this Agreement.

6.8 Entire Agreement. This Agreement is the entire agreement between and among the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between and among the Parties that in any manner relates to the subject matter of this Agreement.

6.9 Governing Law. This Agreement 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 Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all the counterparts shall constitute one and the same instrument.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period following the termination of this Agreement shall survive termination.

6.13 Notice. All notices pertaining to this Agreement shall be in writing and shall be deemed delivered (i) when received at a Party's address if hand delivered or sent via overnight delivery service by way of USPS, UPS, FedEx, or similar carrier, or (ii) on the third (3rd) business day after being deposited in the United States mail, postage prepaid, certified mail, addressed to Participating Entity at the address set forth below the signature of the Party

6.14 Severability. In the event any 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 the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

***[Signature Pages to Follow]***

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

**City of Allen, Texas**

By: \_\_\_\_\_  
Eric Ellwanger, City Manager

One Allen Civic Plaza  
305 Century Parkway  
Allen, Texas 75013

**ATTEST:**

By: \_\_\_\_\_  
City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

**PARTICIPATING ENTITY:**

**CITY OF BENBROOK, TEXAS**

By: \_\_\_\_\_

Andy Wayman, City Manager  
911 Winscott Road  
Benbrook, Texas 76126

**ATTEST:**

By: \_\_\_\_\_  
Beth Fischer, Deputy City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney