

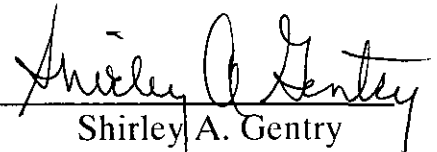
RESOLUTION NO. 20090618-022

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council authorizes the City Manager to negotiate and execute an Interlocal Mutual Aid Agreement with the City of Houston to, in the event of a disaster, provide aid, including emergency personnel, debris removal personnel, equipment and other aid as requested by the affected municipality.

ADOPTED: June 18, 2009

ATTEST:


Shirley A. Gentry
City Clerk

**INTER-JURISDICTIONAL MUTUAL AID AGREEMENT
BETWEEN THE CITY OF HOUSTON, TEXAS
AND AUSTIN, TEXAS**

State of Texas §
 §
County of Harris §

This Mutual Aid Agreement ("Agreement") is entered into by and between the City of Houston, Texas, a Texas Home Rule City located principally in Harris County and the City of Austin, a Texas Home Rule City located principally in Travis County (jointly, "Parties"):

RECITALS

The Parties recognize the vulnerability of the people and communities located within the Parties' territorial limits to damage, injury, and loss of life and property resulting from disasters and/or civil emergencies and recognize that disasters and/or civil emergencies may present equipment and manpower requirements beyond the capacity of each individual Party.

The Parties recognize that, in the past, mutual aid has been provided between or among the Parties in the form of personnel, supplies, and equipment during disasters and/or civil emergencies as well as during cleanup periods.

The governing officials of the Parties desire to secure for each Party the benefits of mutual aid and protection of life and property in the event of a disaster and/or civil emergency.

The Parties wish to make suitable arrangements for furnishing mutual aid in coping with disasters and/or civil 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 Executive Order No. RP-12 by the Governor of the State of Texas (April 3, 2002.)

The Parties recognize that a formal agreement for mutual aid would allow for better coordination of effort, would provide that adequate equipment and manpower is available, and would help ensure that mutual aid is accomplished in the minimum time possible, and thus desire to enter into an agreement to provide mutual aid.

NOW, THEREFORE, the Parties agree as follows:

TERMS

1. Recitals and Exhibits. The recitals set forth above are true and correct; Exhibits "A through B" attached to this Agreement are incorporated for all purposes.

2. DEFINITIONS. For purposes of this Agreement, the terms listed below will have the following meanings:
- (a) "Civil emergency" means 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.
 - (b) "Disaster" means 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, and other public calamity requiring emergency action.
 - (c) "FEMA" means the Federal Emergency Management Agency or its successor agency.
 - (d) "Local government" means a county, municipality, special district, or any corporate/political entity organized under state law, of Texas or a state that borders Texas.
 - (e) "Mutual aid" includes, but is not limited to, provision of resources such as equipment, supplies, and personnel.
 - (f) "Political subdivision" means county or incorporated city.
3. Party's Emergency Management Plan. Each Party shall prepare and keep current an emergency management plan for its jurisdiction to provide for emergency/disaster mitigation, preparedness, response and recovery, in accordance with Chapter 418 of the Texas Government Code. The emergency management plan shall incorporate the use of available resources, including personnel, equipment and supplies, necessary to provide mutual aid. The emergency management plan shall be submitted to the Governor's Division of Emergency Management.
4. Emergency Management Director. The Judge of the County and the Mayor of the City of Houston shall each serve as the Emergency Management Director for the City of Houston. The Mayor of the City of Austin, or his designee, shall serve as the Emergency Management Director for the City of Austin. Each Emergency Management Director shall take all steps necessary for the implementation of this Agreement. Each Emergency Management Director may designate an Emergency Management Coordinator who shall serve as an assistant to the *presiding officer of the political subdivision for emergency management purposes.*

5. Activation of Agreement. This Agreement shall be activated in the event of:
(a) a declaration of a local state of disaster by a Party pursuant to Chapter 418 of the Texas Government Code; (b) the finding of a state of civil emergency by the presiding officer of the governing body of a Party; or (c) a request by the governing body of a Party made in anticipation of a local state of disaster. The activation of the Agreement shall continue whether or not the local disaster declaration or state of civil emergency is still active, until the services of the Party rendering aid are no longer required or when the officer in charge of the forces of the Party rendering determines, in his sole discretion, that further assistance should not be provided.

6. Request for Mutual Aid.
 - (A) Local Disaster. In anticipation or the event of a local disaster declaration, the Emergency Management Director or the designated Emergency Management Coordinator of a Party seeking mutual aid from the other Party shall request such aid from the counterpart for the other Party. Such requests may be made orally or in writing, but shall be placed in a written document, using forms such as a ICS Forms 213, 211, or 308, approved by the Emergency Management Director or Coordinator within 15 days of the request.

 - (B) Civil Emergency. If the presiding officer of the governing body of a Party is of the opinion that a state of civil emergency exists or is imminent that requires assistance from the other Party, the presiding officer of the Party requesting mutual aid shall make the request directly to the Party from which assistance is sought. Before the emergency assistance is provided, the governing body of the Party whose assistance has been requested shall authorize such assistance by resolution or other official action, in accordance with Chapter 791 of the Texas Government Code. In the event of a widespread civil emergency affecting either Party's ability to perform governmental functions, the County governments in which the Parties are located shall have the authority to coordinate the call-up and assignment of resources to the affected area, pursuant to Section 8 of this Agreement.

 - (C) Scope of Aid. The Party rendering aid may provide services as listed in Exhibit "A".

7. Conditions. Any furnishing of resources under this Agreement is subject to the following conditions:
 - (a) A request for aid shall specify the amount and type of resources being requested, the location to which the resources are to be dispatched, and the specific time by which such resources are needed;

 - (b) The Party rendering aid shall take such action as is necessary to provide and make available the resources requested, provided however, that the

Party rendering aid, in its sole discretion, shall determine what resources are available to furnish the requested aid; and

- (c) The Party rendering aid shall report to the officer in charge of the requesting Party's forces at the location to which the resources are dispatched.
- 8. Coordinating Mutual Aid. The Parties shall maintain a current listing of all personnel to be contacted in each City, appropriate telephone and facsimile numbers, and other information that would be needed in order to contact each Party in the event of a disaster or civil emergency. The Parties shall also maintain current information on protocols for coordination of communications, medical response, and law enforcement activity. The Parties shall follow the provisions of Texas Government Code Section 418.1152 that are consistent with this Agreement.
- 9. 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 the other Party. Neither 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.
- 10. Costs. All costs associated with the provision of mutual aid, such as damage to equipment and clothing, personnel and medical expenses, and expenses of travel, food, and lodging, with the exception of workers compensation insurance, shall be reimbursed by the requesting Party out of current funds as set out in Section 13 below. The Parties may amend the timing and allocation of costs in a mutually agreed writing, such as pertinent ICS Forms 213, 211, or 308.
- 11. Reimbursement. In order to receive reimbursement, the Party rendering aid must submit the forms and follow the procedures listed in Exhibit "B" to the City Controller of the Party receiving aid.
- 12. Equipment and Personnel. During the time mutual aid is being furnished, all equipment used by the Party rendering aid shall continue to be owned, leased, or rented by the Party rendering aid. At all times while equipment and personnel of a Party rendering aid are traveling to, from, or within the geographical limits of the requesting Party in accordance with the terms of this Agreement, such personnel and equipment shall be deemed to be employed or used, as the case may be, in the full line and cause of duty of the Party rendering aid. In addition, such personnel shall be deemed to be engaged in a governmental function of their entity.
- 13. Expending Funds. Each Party which 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. The requesting Party shall advise the Party rendering aid of current funds available by the issuance of one or more Service Release Orders.

14. Termination. It is agreed that any Party hereto shall have the right to terminate its participation in this Agreement upon ninety (90) days written notice to the other Parties hereto.
15. Term. This Agreement shall become effective as to each Party when approved and executed by that Party. This Agreement shall continue in force and remain binding on both Parties until such time as the governing body of a Party terminates its participation in this Agreement pursuant to Section 14 of this Agreement.
16. 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 and/or civil 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 17 below.
17. Ratification. Each Party hereby ratifies the actions of its personnel taken prior to the date of this Agreement.
18. Other Mutual Aid Agreements. The Parties agree to inform each other of all mutual aid agreements that each Party has with other municipalities, entities, counties, and state or federal agencies.

The existence of this Agreement shall not prevent a municipality, county, rural fire prevention district, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity from providing mutual aid assistance on request from another municipality, county, rural fire prevention district, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity, in accordance with the provisions in Section 418.109 of the Texas Government Code. Additionally, the existence of this Agreement shall not prevent either Party from providing emergency assistance to another Local Government which is not a party to this Agreement, in accordance with the provisions in Section 791.027 of the Texas Government Code.

19. 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.
20. 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.

21. Validity and Enforceability. If any current or future legal limitations or requirements from a federal or state governmental with jurisdiction over the Parties affect the validity or enforceability of a provision of this Agreement, then this Agreement shall be deemed amended to the minimum extent necessary to bring this Agreement into conformity with the requirements or limitations, and so modified, this Agreement shall continue in full force and effect.
22. Amendment. This Agreement may be amended only by the mutual written consent of the Parties.
23. 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.
24. Warranty. The Agreement has been officially authorized by the governing body of each Party hereto 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.
25. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. Venue for an action arising under this Agreement shall lie exclusively in the County of the Party which rendered aid, or, if neither Party rendered aid, in Harris County.
26. 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.
27. State or Federal Reimbursement: The Parties acknowledge that the Requesting Party will seek reimbursement of any costs incurred under this Agreement from any applicable state or federal agency and each Party agrees to cooperate fully with the other Party in taking all actions and executing all documents necessary to secure such reimbursement.

* *The Rest of this Page is Intentionally Left Blank* *

EXECUTED by the Parties hereto, each respective entity acting by and through its duly authorized official as required by law, on multiple counterparts each of which shall be deemed to be an original, on the date specified on the multiple counterpart executed by such entity.

CITY OF HOUSTON

CITY OF AUSTIN

Mayor

Mayor or his Designee

ATTEST/SEAL

ATTEST/SEAL

City Secretary

Name

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Houston Assistant City Attorney
L.D. No. 0420900037001

Austin Assistant City Attorney

COUNTERSIGNED BY:

Houston City Controller

DATE COUNTERSIGNED:

EXHIBIT "A"

SCOPE OF AID

1. **General Purpose:** This Agreement shall cover all services within the general governmental functions of local government that may be necessary for recovery from a disaster or emergency.
2. **Requests for Aid:** Individual requests for aid shall be made in accordance with Section 6 (A) of this Agreement.
 - 2.1 **Request Form:** The Parties shall endeavor to send requests and responses through ICS Forms 213, 211, or 308 containing the signature of the Emergency Management Director or Coordinator. In the event the Parties do not initially correspond through ICS Forms and unless this Agreement directs otherwise, the Parties may request records of correspondence in an applicable ICS Form within 15 days of the related correspondence.
 - 2.2 **Requests Binding:** A Party requesting assistance shall be bound to reimburse the Party providing aid for services pursuant to a Party's request, regardless of whether the Party requesting aid receives aid, grants, or reimbursement from any source.

EXHIBIT "B"

REIMURSEMENT FORMS AND PROCEDURES

1. **General Requirements:** The Party rendering aid shall provide the forms listed in this Exhibit to the City Controller or Director of Finance of the Party requesting aid after aid has ceased and prior to receiving reimbursement.
 - 1.1 Request Documents: The Party rendering aid shall submit a copy of this Agreement, purchase order, ICS Forms 213, 211, or 308 or any other document the Party rendering aid relied on to provide aid.
 - 1.2 Party's Standard Invoice: The Party rendering aid shall submit a standard invoice detailing with reasonable specificity all pertinent dates, hours, rates, costs, descriptions, quantities, and measures.
 - 1.3 FEMA Documents: The Party rendering aid shall submit all pertinent FEMA forms and worksheets as specified in Section 2 of this Exhibit. If the documents or links referenced in Section 2 of this Exhibit become obsolete, the Party requesting aid will provide cites to current forms.
2. **FEMA Documents:**
 - 2.3 Labor: For labor costs, the Party rendering aid shall submit a completed FEMA Form 90-123 Force Account Labor Summary Record, which may be found at the following web address:
http://www.dola.state.co.us/dem/recovery/fema_force_account_labor_summary.doc.
 - 2.4 Equipment: For reimbursement for Equipment costs, the Party rendering aid shall submit a completed FEMA Form 90-127 Force Account Equipment Summary Record, which may be found at the following web address:
http://www.dola.state.co.us/dem/recovery/fema_force_account_equipment_summary.doc
 - 2.5 Rented or Leased Equipment: For reimbursement for equipment rented or leased by the Party rendering aid from another entity, the Party rendering aid shall submit a Force Account Rented/Leased Equipment Worksheet, which may be found at the following web address:
<http://www.nd.gov/des/documents/docs/guide/a10aforceaccountrentedleasedequipment.pdf>
 - 2.6 Materials and Other Costs: For reimbursement for materials and other costs not included on, the Party rendering aid shall submit a completed Force Account Activity Worksheet as described at the following web address:
http://www.pema.state.pa.us/pema/lib/pema/SAMPLE_ForceAccount-Contracted-SummaryCosts.pdf