

**AMENDED AND RESTATED AGREEMENT FOR AUTOMATIC AID
ASSISTANCE BETWEEN
TRAVIS COUNTY EMERGENCY SERVICE DISTRICT NO. 9 AND THE CITY
OF AUSTIN**

RECITALS

Travis County Emergency Services District No. 9 (TCESD #9) and the City of Austin ("City") currently provide fire protection and other types of emergency response services to local residents in their respective jurisdictions or service areas.

The parties had entered into a previous Agreement for Automatic Aid Assistance effective November 7, 2008, and this Agreement is intended to supersede and replace that Agreement.

TCESD #9 and the City have previously cooperated in the provision of emergency and fire protection services through mutual aid or first responder contracts.

TCESD #9 and the City desire to augment resources and capabilities within the geographic boundaries of their respective service areas by responding to and dispatching emergency calls on an automatic assistance basis so that the nearest available unit responds to the incidents specified in this agreement regardless of the jurisdiction involved.

TCESD #9 and the City desire to enter an agreement that complies in all respects with the requirements of the December 18, 2007 and December 17, 2008 rulings by the Honorable

Dwight E. Jefferson in the Local Government Code Chapter 43 Annexation Arbitration styled *Peninsula Westlake, Inc. v. City of Austin*.

It is the intent of this "Agreement For Automatic Aid Assistance Between Travis County Emergency Services District No. 9 and the City of Austin" ("Agreement") that the capabilities and coordination of the each of the parties' abilities to protect lives and property be enhanced.

TERMS

1. The parties to this Agreement are the City of Austin, Travis County, acting by and through its Austin Fire Department (AFD), and Travis County Emergency Services District No. 9, located in Travis County, Texas. The initial term of this Agreement shall be for one year, effective January 1, 2009, and shall automatically renew for nine successive one-year terms unless terminated pursuant to Section 19.

2. The parties agree to automatically dispatch the nearest available unit(s) to the scene of an emergency within the automatic aid agreement service area. The service areas subject to this Agreement are shown on the map attached as **Exhibit A**. The "nearest available unit" shall mean that unit of any party that meets the requirements for that type of emergency and is capable of responding quickest to a call. A party shall respond only to the extent that a unit is readily available.

3. TCESD #9 and AFD shall respond to all call types within the automatic aid

agreement service area defined in **Exhibit A**, 24 hours a day, 7 days a week, and AFD will provide dispatching services to TCESD #9 at no cost to TCESD #9. The only funding obligations under this Agreement for either party are described in Section 4 below.

4. In consideration of the assistance to be rendered by TCESD #9, the City of Austin agrees to annually compensate TCESD #9 an amount that shall be determined by multiplying the total Travis County Appraisal District assessed valuation for the Woods of Westlake, Woods of Westlake Renaissance, West Rim, and the commercial area of Lost Creek by the TCESD #9 tax rate, provided, however, that the amount to be paid by City each year shall not exceed the amounts set forth in subsection a below. The maximum payment amounts for terms beyond 2013 shall be set forth in an amendment to this Agreement. Payments for each term shall be made by City no later than March 31 of the year following expiration of the term. For example, payment for 2009 shall be due by March 31, 2010. Payments for all renewal terms shall be contingent upon sufficient appropriations by City Council in future budgets. The areas described above are shown in **Exhibit B**.

a. Maximum Annual Compensation for Four Areas Described Above

2009	\$255,000
2010	\$270,000
2011	\$286,000
2012	\$303,000
2013	\$321,000

b. Maximum Compensation if Peninsula Annexed

i) The parties agree that if the City annexes the Peninsula Annexation Area, which is shown on **Exhibit C**, the service area covered by this Agreement shall be expanded to apply to the Peninsula Annexation Area ("Peninsula"). Because the Peninsula was not annexed on or before December 31, 2008, the Peninsula will remain on the tax roll for TCESD #9 for calendar year 2009. Therefore, if the Peninsula is annexed after December 31, 2008, then no compensation will be due to TCESD #9 for the remainder of calendar year 2009 following annexation of the Peninsula. The terms and conditions of this Agreement, including the method of calculating compensation described above, shall apply to the Peninsula as of the effective date of annexation, provided that the annual not to exceed amount of compensation payable to TCESD # 9 under this Agreement shall be increased. The revised annual not -to exceed amounts are shown below.

	New Total Maximum
2009	\$613,000
20120	\$659,000
2011	\$703,000
2012	\$752,000
2013	\$801,000

ii) Shoreline Area

If the Peninsula is annexed by the City, the City intends to also provide full municipal

services to, and impose municipal taxes upon, the area adjacent to the Peninsula described as the "Shoreline Area", which is shown in **Exhibit D**. In order to do so, the City must adopt a resolution so stating, as provided in City Ordinance Number 860130-A. If the resolution is adopted by City Council, the parties agree that TCESD # 9 shall continue to provide services to the Shoreline area, and the City shall begin compensating TCESD # 9 for services to this area beginning on the effective date of the transfer of the Shoreline Area to the tax roll of the City. Because the resolution was not adopted by City Council prior to December 31, 2008, the Shoreline area will retain its current tax roll status for calendar year 2009. Therefore, no compensation will be due to TCESD #9 for the remainder of calendar year 2009 following adoption of the resolution. If the resolution becomes effective, the annual not to exceed compensation payable to TCESD #9 under this Agreement shall be increased. The revised not-to-exceed annual amounts are shown below.

	<u>New Total Maximum</u>
2009	\$708,000
2010	\$765,000
2011	\$820,500
2012	\$876,000
2013	\$931,500

c. Maximum Amount if Las Cimas Area is Annexed

The parties agree that if the City annexes the Las Cimas Annexation Area, which is shown on **Exhibit E**, the service area covered by this Agreement shall be expanded to

apply to the Las Cimas Annexation Area ("Las Cimas"). The terms and conditions of this Agreement, including the method of calculating compensation described above, shall apply to Las Cimas as of the effective date of annexation, provided that the annual not to exceed amount of compensation payable to TCESD #9 under this Agreement shall be increased. The revised annual not-to-exceed amounts are shown below.

	<u>New Total Maximum</u>
2009	\$812,500
2010	\$875,000
2011	\$937,500
2012	\$1,000,000
2013	\$1,062,500

5. The parties agree to 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 firefighters through the use of standard terminology, reporting relationships, and support structures for those emergencies requiring the use of units from the parties.

6. The parties agree to work together to cooperatively acquire equipment designed to maximize the compatibility of the equipment held by both parties; however, neither party shall be bound by this Agreement to purchase certain equipment requested by the other party. Each party shall be solely responsible for its equipment or property, including loss or damage thereto, in the performance of this Agreement.

7. All career fire fighters shall have current certifications from the Texas Commission on Fire Protection. Volunteer firefighters will be trained according to State Firemen's and Fire Marshal's Association of Texas standards and have met certification requirements.

8. Each party shall be responsible for injuries or death to its employees and volunteers while performing services under this Agreement. A party shall not be liable for benefits or any other compensation for injuries to or death of the other party's employees or volunteers while performing services under this Agreement. An employee or volunteer shall be deemed to be performing services when en route to, en route from or at the scene of a call or emergency.

9. Specifically citing Texas Government Code Section 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, shall be 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 shall specifically include, but not be 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 Section 9 is intended to be different than liability otherwise assigned under Section 791.006 (a) of the Texas Government Code.

The parties further agree that if the Austin Firefighters Association (“AFA”) files a lawsuit against TCESD #9 due to TCESD #9's participation in this Agreement, the City shall intervene and participate in such lawsuit, as set forth in the Attached **Exhibit F**. In addition, if the AFA files a lawsuit against both TCESD #9 and the City due to the parties' participation in this Agreement, the City agrees to jointly defend on behalf of both parties the validity of this Agreement, with counsel of the City's choice. The parties agree that this provision does not preclude TCESD #9 from retaining its own defense counsel, at its expense, and if TCESD #9 chooses to hire its own defense, the City shall reasonably cooperate with counsel designated by TCESD.

10. It is expressly understood and agreed that this Agreement does not waive any immunity or defense that would otherwise be available to a party against third-party claims arising from activities performed under this Agreement.

11. The parties agree to cooperate in the development of procedures and protocols, including but not limited to dispatch, communications coordination, training, health and safety, fire prevention, public education, fire investigations and other activities that will enhance the ability of the fire departments to fulfill their missions.

12. When responding to a call for automatic aid outside its regular service area the assisting party shall keep a record of “time of dispatch” and “response time” for each call

responded to and such other necessary information or reports required by the receiving party for its record-keeping purposes. It is understood and agreed between the parties that the City of Austin currently maintains these records through its fire department.

13. The parties agree to comply with all applicable state and federal laws and requirements applicable in the performance of services. The parties agree to cooperate in executing such further or subsidiary agreements as may be required.

14. Calls outside the service area depicted in **Exhibit A** shall be considered requests for mutual aid and responses may be undertaken at the sole discretion of the assisting party. Assistance provided as mutual aid shall also be governed by the terms of this Agreement provided that neither party shall be obligated to pay any compensation or other fees to the other for mutual aid assistance.

15. No term or provision of this Agreement is intended to or shall be deemed to create any rights in any person, firm, corporation or other entity not a party hereto, and no such person or entity shall have any cause of action under this Agreement.

16. Unless specifically agreed to in writing by both parties for particular incidents, except as provided in Section 4, neither party shall be reimbursed by the other party for any costs incurred pursuant to this Agreement. The parties agree that all payments required to be made by a party under this Agreement shall be made from current revenues, as required by Section 791.011(d)(3) of the Texas Government Code, or other

applicable law. The parties agree to cooperate with each other in seeking reimbursement from state or federal authorities to the extent such opportunities present themselves.

17. As of January 1, 2009, this Agreement supersedes any previous agreement regarding automatic aid between the parties and does not affect the mutual aid agreement between the parties. Any previous statement or understanding not included in this Agreement shall be of no force or effect until executed as an amendment to this Agreement.

18. The parties agree to cooperate in an annual evaluation of the Automatic Aid Agreement in order to ensure that terms of the agreement are providing an efficient enhancement of both parties ability to protect lives and property.

19. With regard to the Woods of Westlake, Woods of Westlake Renaissance, West Rim, the commercial area of Lost Creek, Las Cimas, and the Shoreline Area this Agreement may be terminated by either party upon not less than 120 days written notice. With regard to the Peninsula, this Agreement may only be terminated upon completion of a new City of Austin Fire Station in similar proximity to the Peninsula as Westlake Fire Department/TCESD #9 Station #1. Notice shall be provided to the parties at the following addresses:

Chief, Austin Fire Department
City of Austin
4201 Ed Bluestein Blvd.
Austin, Texas 78721

City Attorney
City of Austin
302 West Second, Fourth Floor
Austin, Texas 78701

President
Travis County Emergency Service District No. 9
P.O. Box 162170
101 1 Westlake Dr.
West Lake Hills, Texas 78746

Fire Chief
Westlake Fire Department
P.O. Box 162170
101 1 Westlake Dr.
Austin, Texas

Ken Campbell
BURNS ANDERSON JURY & BRENNER, L.L.P.
P.O. Box 26300
Austin, Texas 78755-6300

20. No term or provision in this Agreement is intended to create a partnership or joint venture.

21. The parties agree to schedule joint training exercises between the stations likely to provide services under this Agreement as soon as possible, and to periodically meet to review procedures and operations, and to make such adjustments to the Agreement as may prove mutually beneficial.

22. If for any reason any provision of this Agreement is held invalid by a court of competent jurisdiction, such holding shall not affect, impair or invalidate the remaining paragraphs of this Agreement but shall be confined in its operations to the specific sections, sentences, clauses or parts of this Agreement and shall not affect or prejudice in

any way the validity of this Agreement in any other instance.

23. If any provision of this Agreement is found by a court or arbitrator of competent jurisdiction to fail to satisfy the requirements of the December 18, 2007, the December 17, 2008, and any other rulings by the Honorable Dwight E. Jefferson in the Local Government Code Chapter 43 Annexation Arbitration styled *Peninsula Westlake, Inc. v. City of Austin*, the parties agree that by virtue of such finding such provision of this Agreement shall automatically be stricken or reformed so as to comply with the requirements of all rulings by the Honorable Dwight E. Jefferson in the Local Government Code Chapter 43 Annexation Arbitration styled *Peninsula Westlake, Inc. v. City of Austin*.

**TRAVIS COUNTY EMERGENCY
SERVICE DISTRICT NO. 9**

CITY OF AUSTIN

By: _____
Its: President

By: _____
Its: Assistant City Manager

EXHIBITS:

EXHIBIT A – Service Area

EXHIBIT B – Woods of Westlake, Woods of Westlake Renaissance, West Rim &
Lost Creek Commercial Area

EXHIBIT C – Peninsula Annexation Area

EXHIBIT D – Shoreline Area

EXHIBIT E – Las Cimas Annexation Area

EXHIBIT F – City Memo to Chief Gary Warren