

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON APPROVING A UNIFORM EMERGENCY AID AGREEMENT FOR THE PROVISION OF AID BY DENTON MUNICIPAL ELECTRIC TO OTHER ELECTRIC UTILITIES IN TIMES OF WEATHER OR NATURAL DISASTER-RELATED EMERGENCIES; AUTHORIZING THE CITY MANAGER, OR DESIGNEE TO EXECUTE THE AID AGREEMENT AS NEEDED AND PROVIDE NOTIFICATION TO COUNCIL AND PUBLIC UTILITY BOARD; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, both independently owned electric utilities and municipally owned electric utilities have historically provided other electric utilities aid in the form of personnel and equipment in times of weather or natural disaster-related emergencies with such aid being reimbursed by the electric utility receiving such aid ("Emergency Aid");

WHEREAS, the City of Denton, through its electric utility department, Denton Municipal Electric, has provided Emergency Aid for several years;

WHEREAS, the City needs to more fully document the obligations of the parties when Emergency Aid is provided and provide the City Manager, or his designee, the ability to timely execute emergency aid agreements when emergencies arise;

WHEREAS, the City Council finds it is in the public interest for Denton Municipal Electric to provide Emergency Aid; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The attached Emergency Aid Agreement is approved for use by the City.

SECTION 3. The City Manager, or his designee, is authorized to execute the approved Emergency Aid Agreement, or modified agreement after approval by the City Attorney, as needed without further authority, guidance, or direction from the Council, and is further authorized to carry out the rights and duties of the City under the Agreement, including the expenditure of funds provided for therein.

SECTION 4. The City Manager, or his designee, is directed to notify the Council and the Public Utilities Board within 24 hours of the execution of any and all Emergency Aid Agreements.

SECTION 5. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY: 

EMERGENCY AID AGREEMENT

This Emergency Aid Agreement is between the _____ (“Requesting Party”) and the City of Denton, a Texas home-rule municipal corporation (“Denton”). This Agreement is intended to set forth the terms and conditions under which Denton will render assistance to the Requesting Party in the event the Requesting Party’s electric system suffers damage or outages due to adverse weather events or natural disaster. Requesting Party and Denton may be referred to collectively as “Parties”.

1. Underlying Premises

1.1. **Voluntary Participation:** Participation in this Agreement is purely voluntary and requests for and responses to requests for assistance are at the sole discretion of Denton. Denton shall have the primary interest of protecting its own constituency. Neither Party shall be liable to the other Party for, or be considered to be in breach of or default under this Agreement on account of, any delay in or failure to perform any obligation under this Agreement SAVE AND EXCEPT the obligation to make payment as specified in this Agreement.

1.2. **Response Discretionary:** Emergency assistance will be in the form of resources, such as personnel, equipment, and supplies, and personnel (“Emergency Assistance”). The execution of this Agreement shall not create or otherwise impose any duty to respond to a request for Emergency Assistance on the part of Denton. Denton has the absolute discretion to decline to provide any requested Emergency Assistance and to withdraw Emergency Assistance it has provided at any time without incurring any liability SAVE AND EXCEPT only to the extent that Denton abandons a repair prior to completion that creates a new and unreasonable danger or hazard.

2. Operational Provisions

2.1. **Request for Assistance.** The Requesting Party shall make its request for assistance under this Agreement in writing and with reasonable specificity as to the amount and nature of Emergency Assistance requested. Upon receipt of such a request, the Parties shall further detail, in writing, the Emergency Assistance to be provided with respect to the resources required, such as personnel, equipment, and supplies.

2.2. **Response to Request:** Upon receipt of a request for Emergency Assistance, the responsible employee of Denton receiving the request shall, with reasonable promptness, take the following action:

2.2.1. Determine if Denton has personnel and equipment available to respond to the Requesting Party and determine the number of personnel and type of equipment available.

- 2.2.2. Upon making the determination of available resources, with reasonable promptness, advise the Requesting Party of the determination reached as to Emergency Assistance, confirm the continuing need of the Requesting Party for Emergency Assistance, and dispatch the available resources to the scene.
- 2.2.3. In the event the determination is Denton does not have the ability to respond to the request for Emergency Assistance, advise the Requesting Party of that determination with reasonable promptness.
- 2.3. Command Responsibility at Response Site: The employee of the Requesting Party in charge at the site to which the response is made shall be the individual in charge of the operations and the individual under which the Emergency Assistance sent by Denton shall serve: PROVIDED THAT, Denton's personnel, equipment and supplies shall be under the direct and immediate supervision of an employee of Denton. If the Requesting Party's employee specifically requests an employee of Denton to assume operational control the Requesting Party shall not, by relinquishing operational control, be relieved of responsibility for the operation.
- 2.4. Return of Equipment and Supplies: Upon the completion of the Emergency Assistance, such assistance and help as is necessary will be rendered by each Party to locate and return any items of equipment and/or supplies to the Party owning the same. All Emergency Assistance provided under the terms of this Agreement shall be returned to Denton after the completion of the Emergency Assistance, or upon request being made by Denton for return of the same.

Article 3. Compensation for Emergency Assistance Provided

- 3.1. Denton shall at all times be responsible to its own personnel for the payment of wages and other compensation, for carrying workmen's compensation upon its personnel, and each shall be responsible for its own equipment and supplies and shall bear the risk of loss for the same, subject to the right to reimbursement set out in this Agreement.
- 3.2. The Requesting Party agrees to reimburse Denton for the following costs and charges related to the Emergency Assistance provided under this Agreement ("Emergency Assistance Charges").
- 3.2.1. Charges for personnel, including necessary administrative support, shall be billed at Denton's actual cost for hourly pay and any overtime. The time utilized by Denton's personnel for the benefit of the Requesting Party shall be billed in one-quarter hour increments and at a rate which shall be equal to the actual compensation rate, including all benefits, paid by Denton to each of its personnel.
- 3.2.2. Charges for equipment, supplies and transportation shall be billed at Denton's standard rates and practices in effect at the time.

3.2.3. Materials furnished shall be billed at actual cost.

3.2.4. Meals, lodging and other incidental expenses shall be reasonable and billed at actual cost.

3.2.5. Charges for transportation, meals, lodging and other incidental expenses

3.3. The Denton will provide Requesting Party a written invoice for Emergency Assistance Charges within forty-five (45) days after the completion of the Emergency Assistance.

3.4. The Requesting Party shall pay Denton all Emergency Assistance Charges due under the invoice with thirty (30) days after receipt of the same. Any due and unpaid Emergency Assistance Charges shall bear interest at the rate of 1% per month.

3.5. If a dispute arises with respect to an invoice, the Parties shall first negotiate in good faith to resolve the dispute, and failing resolution by such means, shall then submit the dispute to a mutually agreeable non-binding dispute resolution process before resorting to litigation.

Article 4. Term

4.1. This Agreement shall continue in effect until the earlier of:

4.1.1. The Denton has completed the Emergency Assistance;

4.1.2. The Denton is no longer providing Emergency Assistance; or

4.1.3. A Party to this Agreement gives the other two (2) days written notice of its intent to cancel.

Article 5. Damages, Disclaimer of Warranty, Limitation of Liability, Indemnity, Apportionment and Contribution

5.1. Damages. In no event shall Denton be liable to the Requesting Party for any special, indirect, incidental, punitive, exemplary or consequential damages with respect to any claim arising out of or related to the Emergency Assistance rendered under this Agreement or the work performed by Denton's personnel or equipment.

5.2. Disclaimer of Warranty. All Emergency Assistance will be performed, and all equipment or supplies shall be provided, without warranties, which Denton disclaims, including the warranties of merchantability and fitness for a particular purpose.

5.3. Limitation of Liability. The Denton's liability to the Requesting Party shall be limited to amounts payable under this Agreement, and all other damages at law or in equity are waived by the Requesting Party.

5.4. Indemnity. The Requesting Party assumes all risk of and responsibility for, and agrees to hold harmless Denton and its elected officials, appointed officials, officers and employees from and against any and all claims, demands, suits, actions, recoveries, judgments, costs and expenses (including reasonable attorney's fees) in connection therewith, made, brought, or obtained on account of loss of life or property, or injury or damage to the person or property of any person or persons which arise out of or relate to Denton's performance of this Agreement, except to the extent such liabilities are the direct result of gross negligence or willful misconduct by Denton.

5.5. Apportionment and Contribution. In any lawsuit brought against either Party to this Agreement or as against their elected officials, appointed officials, officers, agents, or employees by persons or entities not signatory to this Agreement, neither Party shall be limited in its legal rights to request apportionment of any judgment rendered against it, and neither Party shall be limited in its rights as provided under the laws of the State of Texas to seek contribution for any judgment it is required to pay in excess of its proportionate share of any liability judgment or award.

Article 6. Insurance

6.1. Each Party agrees to maintain insurance coverage for its own personnel, equipment, and supplies, whether through third-party insurance, self-insurance, or membership in an appropriate insurance pool providing equivalent coverage.

Article 7. General Terms

7.1. Waiver. The failure on the part of either Party at any time to require the performance by the other Party, of any portion of this Agreement, shall not be deemed a waiver of, or in any way effect that Party's rights to enforce such provision, or any other provision. Any waiver by any Party herein of any provision hereof, shall not be taken or held to be a waiver of any other provision hereof, or any other breach hereof.

7.2. Cumulative Remedies. In the event of default by a Party, the other Party, except as limited by this Agreement, shall have all rights and remedies afforded to it at law or in equity to recover damages and interpret, or enforce, the terms of the Agreement. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

7.3. Federal, State and Local Laws. This Agreement is subject to all applicable federal, state and local laws, statutes, codes and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. In the event the emergency requiring Denton's Emergency Assistance impacts a large geographical area that activates either federal or state

emergency laws, this Agreement shall remain in effect until or unless this Agreement conflicts with such federal and state emergency laws.

7.4. No Third Party Beneficiary. The Parties are entering in this Agreement solely for the benefit of their entities and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto.

7.5. Incorporation of Provisions Required by Law. Each provision and clause required by law to be inserted into this Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included. If through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, the Agreement shall be mutually amended to make such insertion, on application by each Party.

7.6. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings between the Parties concerning the subject matter of this Agreement.

7.7. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

7.8. Governing Law and Venue. The laws of the State of Texas shall apply to the interpretation and enforcement of this Agreement. Exclusive venue of any legal proceedings to enforce this Agreement shall be in Denton County.

7.9. Counterparts. This Agreement may be executed in counterparts, with each counterpart being deemed an original agreement, but with all counterparts assembled together being one Agreement.

7.10. Assignment. Neither Party shall assign this Agreement without the prior written consent of the other Party.

7.11. Authority to Sign. Each individual signing this Agreement directly and expressly warrants that he/she has been given and has received and accepted authority to sign and execute the documents on behalf of the Party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such Party with respect to the matters set forth in this Agreement. A signature transmitted by facsimile or as a pdf copy to electronic mail shall be treated as original for all purposes.

REQUESTING PARTY:

Name of Requesting Party

Signature

Printed Name

Title

SIGNED on the _____ day of _____, 2017.

DENTON:

CITY OF DENTON, a Texas home-rule municipal corporation

Signature

Printed Name

Title

SIGNED on the _____ day of _____, 2017.

This Emergency Aid Agreement was approved for use by the City Attorney's Office under Ordinance No. 2017 - _____ .