

EDUCT

HANDBOOK FOR DEVELOPMENT

OF

MUTUAL AID AGREEMENT

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This handbook explains the difference between Mutual Aid Agreements and Interlocal Agreements. It describes what each type of agreement is best suited to accomplish, what should be included in preparation of our agreement, and how to get an agreement executed.

This handbook can be used as a reference document for the development of the EDUCT agreement. There are certain legal requirements under Texas law that must be followed in preparing these agreements. While this handbook is intended to be helpful in preparing agreements, it cannot substitute for legal review of the final agreement. Therefore, any agreement should undergo a step-by-step legal review prior to final approval by the respective parties.

MUTUAL AID AND INTERLOCAL AGREEMENTS

A Mutual Aid Agreement is a written understanding between local fire departments to provide reciprocal emergency aid and assistance. The Mutual Aid Agreements are to be consistent with the State Emergency Management Plan in an emergency. Each signatory local jurisdiction is responsible for providing assistance within their capabilities in accordance with the signed agreement. The purpose of an Interlocal Agreement is to permit local jurisdictions to make the most efficient use of their powers by enabling them to cooperate with other local jurisdictions on a basis of mutual advantage. An Interlocal Agreement will allow the local jurisdictions to provide or receive services and facilities from other local jurisdictions. In effect, Interlocal Agreements are a contract.

- Written understanding between at least two parties established.
- Document proof of the agreement and its contents.
- Define the parties involved, identify respective responsibilities, and define how and when they are to be implemented, who performs what and how, who pays for specific services, how long the agreement is in effect, how the agreement is terminated and who administers the agreements.
- Provide for the utilization of city resources to augment impacted or insufficient resources or capabilities of other jurisdictions, thus allowing for greater flexibility for all participants.
- Limit costs by overcoming budgetary restrictions, equipment shortages, and operations or capability limitations.
- Provide liability protection to the participating parties.
- Reduce the possibility of duplication of services and equipment.

- Enhance communication and cooperation between the participating parties.
- Reduce the misunderstandings between participating parties, which often exist when assistance is requested or provided on an informal basis.
- Provide a legal basis for a participating party to operate outside its jurisdiction.
- Provide an agreement that spans changes in government administration changes.

DISTINGUISHING FEATURES BETWEEN A MUTUAL AID AND INTERLOCAL AGREEMENT

A Mutual Aid Agreement:

- Is imprecise in designating resources or capabilities needed or to be provided;
- Is based on the concept that resources, materials or services are, in most circumstances, voluntarily provided by the parties to the agreement with the idea that there will be a reciprocal exchange of roughly comparable value, if and when required;
- Is based on the idea that resources, materials or services provided would not result in profit to the providing party;
- Commits participating parties to a mutually beneficial, cooperative agreement based on principles and concepts of contract law that support protecting lives and property;
- Provides a mechanism for coping with emergency situations or events that allows maximum flexibility in the use of resources;
- Can assure parties providing assistance that they may withhold all or part of their resources under certain conditions;
- Should provide that a party requesting assistance will indemnify the party providing the assistance for any resulting liability.

An Interlocal Agreement:

- Is very precise and identifies the specific service, activity or undertaking the local jurisdictions are authorized by law to perform;
- Emphasizes the fulfilling of the terms in the Interlocal Agreement rather than protecting lives and property;
- Identifies specific costs of the clearly defined resources, materials or services;
- Is based on the principles and concepts of contract law. Failure to provide the service, activity or undertaking would constitute, in most cases, a breach of contract;

- Provides a mechanism to deal with day-to-day services, activities or understandings, as opposed to emergencies or disasters, which occur on an unscheduled or infrequent basis;
- Does not provide a flexible mechanism to respond to unusual situations identified within the scope of the Interlocal Agreement.

PREPARATION OF AN AGREEMENT

As the participating jurisdictions come together to prepare the agreement, several things should be kept in mind:

- An agreement creates an obligation;
- It is a promise, or more often, a set of promises that the local jurisdictions make to each other;
- These promises are enforceable by law;
- It is important to understand that each jurisdiction entering into the agreement has a mutual responsibility to perform the agreement together.

Each participating jurisdiction should consult with their prosecuting attorney, city attorney or other legal counsel for assistance and advice in the preparation and negotiation of the agreement.

The agreement consists of the agreement documents, prior documents and subsequent documents that clarify or amend it (e.g., letters, formal changes, resolutions, statutes, proclamations, ordinances, preambles, requests for assistance and responses). The language of the agreement should clearly reflect the intent of the local jurisdictions. It should say what the signatories want and intend it to say. Questions may arise if two terms conflict, if a term is ambiguous, or if there is uncertainty about what a term means. Some recognized rules of interpretation have been established to assist in establishing the meaning of an agreement in these instances.

The purpose of the rules of interpretation is to determine the probable intent of the local jurisdictions at the time they entered into the agreement. The intent of the local jurisdictions is established by examining how the local jurisdictions expressed themselves through their words, actions or inactions.

1. **Common Sense:** Common sense is the most important rule for interpreting agreements. The rules of interpretation are intended to reflect this. The words and acts of the local jurisdictions are interpreted in light of the meaning that the words or acts would have conveyed to any reasonable person standing in the place of the local jurisdictions at the time the agreement was executed.
2. **Implied Legal Requirements:** Though not written in the agreement documents, there are many other terms of an agreement implied by law. It is implied in every agreement that the local jurisdictions are dealing with each other in good faith and cooperation. It is implicit that the local jurisdictions are in agreement and will do nothing contrary to the goals of the

agreement. Some implied terms can be changed if the local jurisdictions so indicate in the agreement document. An example of this is that the service provided by the aiding local jurisdiction will be the same as the service provided to the constituents of the aiding local jurisdiction. The local jurisdictions cannot alter Federal or State safety standards for workers (unless they make the standards higher than the highest standard imposed by Federal or State law).

3. **Agreement Interpreted as a Whole:** To interpret an agreement it should be read as a whole document. Particular words, phrases or clauses are not read and interpreted alone. If possible, all provisions of an agreement are interpreted to have a meaning in harmony.
4. **Custom and Usage:** Government practice may be used in interpreting the agreement unless there is an expressed or explicit term within the agreement in conflict with the asserted customary practice or usage of the term. Thus, in the absence of such an expressed term, the standard of performance on which the agreement is to be based is that which is the usual standard in the particular jurisdictional entity.
5. **Precedence of Words and Terms:** The agreement generally sets forth the precedence or importance to be accorded to words and terms in case a conflict exists. Where an agreement is made up of written, typed and printed terms and there is an inconsistency, the following order of precedence applies: The written provisions take precedence over typewritten provisions, and typewritten provisions take precedence over printed provisions. This order of precedence is established on the premise that it yields the most immediate language, which is normally the language that the parties last put into the agreement. As a general rule, where an agreement contains both general and special provisions relating to the same subject, the special provisions are controlling--unless the agreement states something to the contrary.
6. **Ambiguities Construed Against the Drafter:** The rule of interpretation is used as a rule of last resort. After applying the foregoing rules, if the meaning of the agreement is uncertain, clarify the ambiguous language by consulting the original jurisdiction drafting the language or drawing. This demonstrates the need for maintaining all correspondence.
7. **Duty to Seek Clarification:** A participating jurisdiction has a duty during the development phase to inquire about obvious ambiguities, omissions or conflicts in the provisions.

MUTUAL AID AGREEMENT FORMAT

The following is a format for a Mutual Aid Agreement. Elements may be added, deleted and/or combined to fit the situation.

Preliminary--List the ordinances, resolutions, or executive orders implementing and putting the agreement into force. Items are provided by all parties to the agreement and should be limited to one or two pages.

Preamble to the Agreement--Provide a brief description to the agreement, to include background, need, purpose and what the agreement will provide (i.e., an executive summary).

BASIC DOCUMENT

Participating Parties--A precise description of the jurisdictions and/or private corporations entering into such an agreement along with the terms to be used to describe the entity throughout the document (i.e., the assisting and assisted jurisdictions).

Purpose--A brief, but comprehensive, general description of the assistance to be rendered.

Authorization--Reference is made to applicable specific Federal, State and local laws, codes, statutes, ordinances and/or resolutions.

Assistance to be Rendered--A more detailed description of goods and services to be rendered by the participating jurisdictions and the standard of goods and services to be provided.

Condition for Implementation--Description of the conditions for requesting, offering and/or withdrawing support. The form in which the request or offer will be made should be stated.

Request for Assistance--Description of the manner in which the requesting party will make their request and the designation of the official authorized to make the request.

Command, Control, Coordination and Communication Responsibilities--Conditions for implementing the agreement are described. How the personnel and equipment of the providing jurisdiction are described.

Post Response--Describes the method by which the request for assistance and/or response to the request is terminated. This may include returning equipment, releasing personnel, acquiring property and holding and disposing of equipment and property.

Compensation--This is the local jurisdiction's agreement to seek or not to seek compensation for the services and goods provided and for the losses incurred. Wages, materials and equipment costs and, in particular, workers' compensation should be addressed. For instance, if overtime costs are to be reimbursed, it should be clearly stated.

Insurance--Who will, and what type of insurance coverage the agreeing parties will provide.

Liability--The responsibility for liabilities is stated.

Agreement Maintenance--Establishes a regularly scheduled review of the agreement, specific operational procedures, procedures for resolving disagreement, developing possible changes to the agreement, or any other action that will facilitate the intent of the agreement.

Agreement Administration--A provision for administering the agreement and representing the local jurisdictions involved, along with any financing or budget requirements associated with the agreement.

Agreement not Exclusive--Includes a statement that the agreement is not intended to be exclusive between the jurisdictions and that other agreements can be entered into by the participating parties.

Signature Blocks--A signature block for the key executive officials and the attesting official of all participating jurisdictions and authority, if necessary.

COORDINATING THE AGREEMENT

There is no set manner in which our Mutual Aid Agreement should be coordinated, however, it is absolutely essential that our agreement be properly coordinated.

1. **Conduct a comprehensive local needs assessment.** Identify local needs that cannot be met, or are only partially met, other jurisdictions or organizations that may have the resources available. Determine who can satisfy those needs.
2. **Determine if a Mutual Aid or Interlocal Agreement best meets the needs of the jurisdiction or organization.** EDUCT will execute a Mutual Aid Agreement.
3. **Contact the key staff personnel in the appropriate jurisdiction or organization.** Create a working group of key staff personnel who must be involved in drafting an agreement. Involve those individuals who have the authority and interest to enter into an agreement for that jurisdiction or organization.
4. **Conduct meetings and discussions to get input on the agreement.** Representatives of various groups can identify the problems, find solutions and answer questions necessary to prepare a draft agreement for review by key officials. The language of the agreement should clearly reflect the intent of the parties. Special attention should be given to preparing the agreement so there are no misunderstandings and the intent and purpose is clear to all.
5. **Conduct a review and incorporate comments into the agreement.** Once the first draft has been reviewed and revised by the work group, the agreement should be submitted to the appropriate legal counsel for review and comment.
6. **Revise the draft document and brief key officials.** Include necessary revisions suggested by legal counsel and present the final draft to key officials for comments. If the key officials change any of the legal counsel comments, the revised document will need a second legal review.
7. **Prepare the final copy for signature.** Provide a copy for signature to the appropriate officials or representatives of the parties to the agreement. Ensure additional resolutions, ordinances or other supplemental documents required to implement the agreement are passed or adopted.
8. **Exchange and file the signed agreement.** Each participating party must follow necessary legal requirements to comply with local policy and submit executed copies to the city secretary.

It is important to understand this Mutual Aid Agreement is a contract and can say and do what the parties want and agree should be done. In preparing this agreement, legal authorities of the jurisdictions, prosecuting attorneys, city attorneys, or hired counsel should play an important part in drafting and reviewing the document. What is prepared and signed is a matter of coordination and agreement between our local jurisdictions and must comply with legal requirements for that jurisdiction. Once signed it is a contractual obligation.