

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN DALLAS COUNTY ON BEHALF OF THE DALLAS COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT AND THE CITY OF MESQUITE THEREBY ALLOWING DALLAS COUNTY TO AERIALY SPRAY IN THE EVENT OF AN ARBOVIRAL OUTBREAK AND A DECLARED PUBLIC HEALTH EMERGENCY; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the Dallas County Health and Human Services Department has established an Emergency Mosquito Control Plan ("Plan") in order to expedite aerial spraying in the event of an arboviral outbreak; and

WHEREAS, the Plan allows for municipalities of Dallas County to obtain aerial spraying services upon declaration of a public health emergency; and

WHEREAS, protective participation will reduce delays should such measures be necessary and provide a better public health safeguard for the residents of Mesquite; and

WHEREAS, the City of Mesquite desires to be added to the Plan to avoid any delays in the event of a declared public health emergency; and

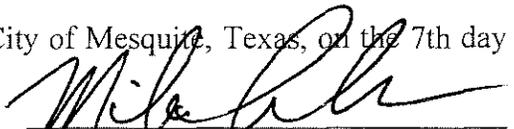
WHEREAS, the Interlocal Cooperation Act, V.T.C.A., Texas Government Code, Chapter 791, provides authorization for any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

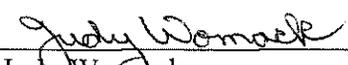
SECTION 1. That the City Manager is hereby authorized to execute the Mosquito Control Interlocal Agreement attached hereto as Exhibit "A" between the City of Mesquite and Dallas County on behalf of the Dallas County Health and Human Services Department that will allow the County to aerially spray in the event of an arboviral outbreak and declaration of a public health emergency.

SECTION 2. That this resolution shall take effect immediately from and after its passage.

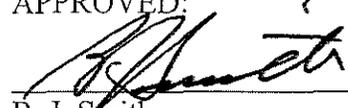
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7th day of April, 2003.


Mike Anderson
Mayor

ATTEST:


Judy Womack
City Secretary

APPROVED:


B. J. Smith
City Attorney

COURT ORDER

ORDER NO. 2003 380

DATE: MAR - 4 2003

STATE OF TEXAS }

COUNTY OF DALLAS }

BE IT REMEMBERED, at a regular meeting of Commissioners' Court of Dallas County, Texas, held on the 4th day of March, 2003, on motion made by Mike Cantrell, Commissioner of Dist. #2, and seconded by Jim Jackson, Commissioner of Dist. #1, the following Order was adopted:

- WHEREAS, on February 18, 2003, the Emergency Mosquito Control Agreement with the City of Mesquite was briefed in Commissioners' Court; and
- WHEREAS, the Emergency Mosquito Control Interlocal Agreement was approved on September 2, 1997, Court Order No. 97- 1735 with surrounding cities; and
- WHEREAS, the City of Mesquite is requesting to be added to the Emergency Mosquito Control Plan in the event of a mosquito infestation; and
- WHEREAS, services shall begin March 4, 2003 and shall terminate upon the completion of the aerial spraying contract.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Dallas County Commissioners Court does hereby approve the Emergency Mosquito Control Interlocal Agreement with the City of Mesquite, and authorize the County Judge to sign the Interlocal Agreement on behalf of Dallas County.

DONE IN OPEN COURT this the 4th day of March, 2003.

Margaret Keliher
Margaret Keliher, County Judge

Jim Jackson
Jim Jackson, District #1

Mike Cantrell
Mike Cantrell, District #2

John Wiley Price
John Wiley Price, District #3

Absent
Kenneth A. Mayfield, District #4

Recommended by:

Betty Culbreath-Lister
Betty Culbreath-Lister, Director

STATE OF TEXAS §

COUNTY OF DALLAS §

PREAMBLE

WHEREAS, The City of Mesquite hereinafter called "City" and the County of Dallas, Texas, hereinafter called "County," desire to enter into an Interlocal Governmental Agreement to combat an outbreak of St. Louis Encephalitis (SLE); and

WHEREAS, Chapter 791 of the Texas Government Code, provides authorization for local governments to contract with each other for the performance of governmental functions and services; and

WHEREAS, it is a governmental function for County and City to control mosquito infestation by aerial spraying for the health, safety and welfare of the citizens of City and County; and

WHEREAS, such action has been determined to be in the best interest of the community under the Dallas County Health and Human Services County Wide Emergency Mosquito Control Plan;

NOW THEREFORE, THIS CITY – COUNTY AGREEMENT is hereby made and entered into by the "City" and "County" upon and for the mutual consideration stated herein:

WITNESSETH

1.00 TERM. This agreement becomes effective upon the date of execution by the party whose signing constitutes final and full execution (the "Effective Date") and shall terminate upon the completion of the aerial spraying for mosquito control and termination of County aerial spraying contract. Obligations of the City to fund and pay as described herein shall survive any termination.

2.0 AERIAL SPRAYING. City agrees to participate in the **EMERGENCY MOSQUITO CONTROL PROGRAM** of aerial spraying of insecticides or chemical having an approved label and registration number from the Environmental Protection Agency by aircraft upon the determination of an **EMERGENCY** condition regarding mosquito infestation or outbreak of St. Louis Encephalitis. City agrees to pay the cost of aerial application as determined by the number of acres to be sprayed multiplied times the spraying cost per acre, as shown on Exhibit "A", attached hereto and incorporated by reference, as its fair share of the protection of its citizens.

3.00 FUNDING. City agrees to fund, from current revenue, the cost of such aerial application as described in Exhibit "A" and shall encumber such amount prior to award of

the County aerial spraying contract. City will certify to County in writing that such funds are approved, encumbered, and available for payment of City funded items at the time this contract is executed and delivered to County.

Subsequent to the aerial spraying, County shall request financial assistance for the cost of the program from the (TDH) Texas Department of Health and (FEMA) Federal Emergency Management Agency. In the event that such funds are received they will be distributed to the County and Municipalities/Cities on a prorated basis based on the total number of acres sprayed within each.

4.00 PAYMENT. The County will bill the City for the actual cost of the aerial application upon completion of the application or on a monthly basis based upon actual City funded work performed during the month, as described in Exhibit "A". City agrees to pay such billing within thirty (30) days of receipt of billing. Upon completion of the project, County will do a final cost accounting of City funded items. In the event that the amount paid by City exceeds the actual cost of city funded items, the difference will be remitted to City. In the event that additional funds are due for City funded items, County will bill City who agrees to fund and pay such amount within thirty (30) days of receipt of such billing.

5.00 COUNTY SERVICES. County hereby agrees to provide for advertisement through County Purchasing Department, for bids and award of contract for aerial application of insecticides and to provide for contract administration.

6.0 INDEMNIFICATION. Indemnification is as follows:

County agrees to be responsible for any liability or damages the County may suffer as a result of claims, demands, costs or judgments, including all reasonable attorneys fees, against the County, including workers compensation claims, arising out of the performance of the aerial spraying and services under this agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s) or corporation(s) occurring during the performance of this agreement and caused by the sole negligence of the County, its agents, officers and/or employees.

City agrees to be responsible for any liability or damages the City may suffer as a result of claims, demands, costs or judgments, including all reasonable attorneys fees, against the City, including workers compensation claims, arising out of the performance of the aerial spraying and services under this agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s) or corporation(s) occurring during the performance of this agreement and caused by the sole negligence of the City, its agents, officers and/or employees.

City and County agree that any liability or damages as stated above occurring during the performance of this agreement caused by the joint or comparative negligence of their employees or officers shall be determined in accordance with comparative responsibility laws of the State of Texas.

7.00 AGENCY. County and City agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work covered under this agreement.

8.0 MISCELLANEOUS.

8.01 NOTICE. Any notice or certification provided for in this agreement to be given by either party to the other shall be required to be in writing and shall be deemed given when personally delivered or within three (3) business days after being deposited in the United States Mail, postage prepaid, certified, return receipt requested or registered addressed as follow:

To County County of Dallas
 Director of Health and Human Services
 2377 North Stemmons Freeway, Suite 600
 Dallas County, Texas 75207-2710

To City Ted Barron, City Manager
 City of Mesquite
 Post Office Box 850137
 Mesquite, Texas 75185-0137

Either party may change its address for notice by giving the other party written notice thereof.

8.02 ASSIGNMENT. This Agreement may not be assigned or transferred by any party without the prior written consent of the other party.

8.03 BINDING AGREEMENT; AUTHORITY; PARTIES BOUND. This Agreement has been duly executed and delivered by both parties and constitutes a legal, valid and binding obligation of the parties. That each person executing this agreement on behalf of each party represents and warrants that they have full right and authority to enter into this agreement.

8.04 AMENDMENT. This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the parties hereto.

8.05 APPLICABLE LAW. **This agreement shall be expressly subject to City's Governmental Immunity and County's Sovereign Immunity, Title 5 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE and all applicable federal and state law. This agreement shall be governed by and construed in accordance with the laws of the State of Texas and venue of any legal action filed by either City or County shall lie in Dallas County, Texas.**

8.06 NUMBER AND GENDER. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise.

8.07 EFFECTIVE DATE. The Effective Date of this Agreement shall be the date it is executed by the last of the parties. Reference to the date of execution shall mean the Effective Date.

8.08 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

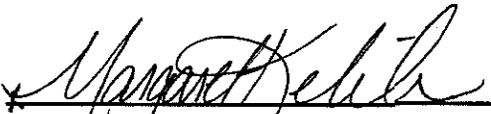
8.09 SEVERABILITY. In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in force and effect.

The City of Mesquite has executed this Agreement pursuant to duly authorized resolution/minutes _____, and the County of Dallas executed this Agreement pursuant to Commissioners Court Order No. 2003-380 on this the 4th day of March, 2003.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number 97-1735 and passed on the 2nd day of September, 1997.

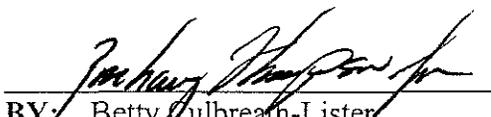
COUNTY OF DALLAS

Date _____

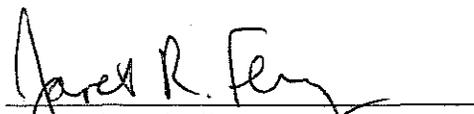

BY: Margaret Keliner
Dallas County Judge

March 4, 2003
Date

RECOMMENDED:

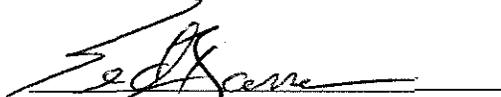

BY: Betty Zulfbreath-Lister
Director

APPROVED AS TO FORM:


BY: Janet R. Ferguson
Chief, Civil Section

CITY OF MESQUITE, TEXAS

APPROVED AS TO FORM:


BY: Ted Barron, City Manager
City of Mesquite


City Attorney

4/14/03
Date

4/14/03
Date

**EMERGENCY MOSQUITO PROGRAM INTERLOCAL
AGREEMENT APPROVAL FLOW CHART**

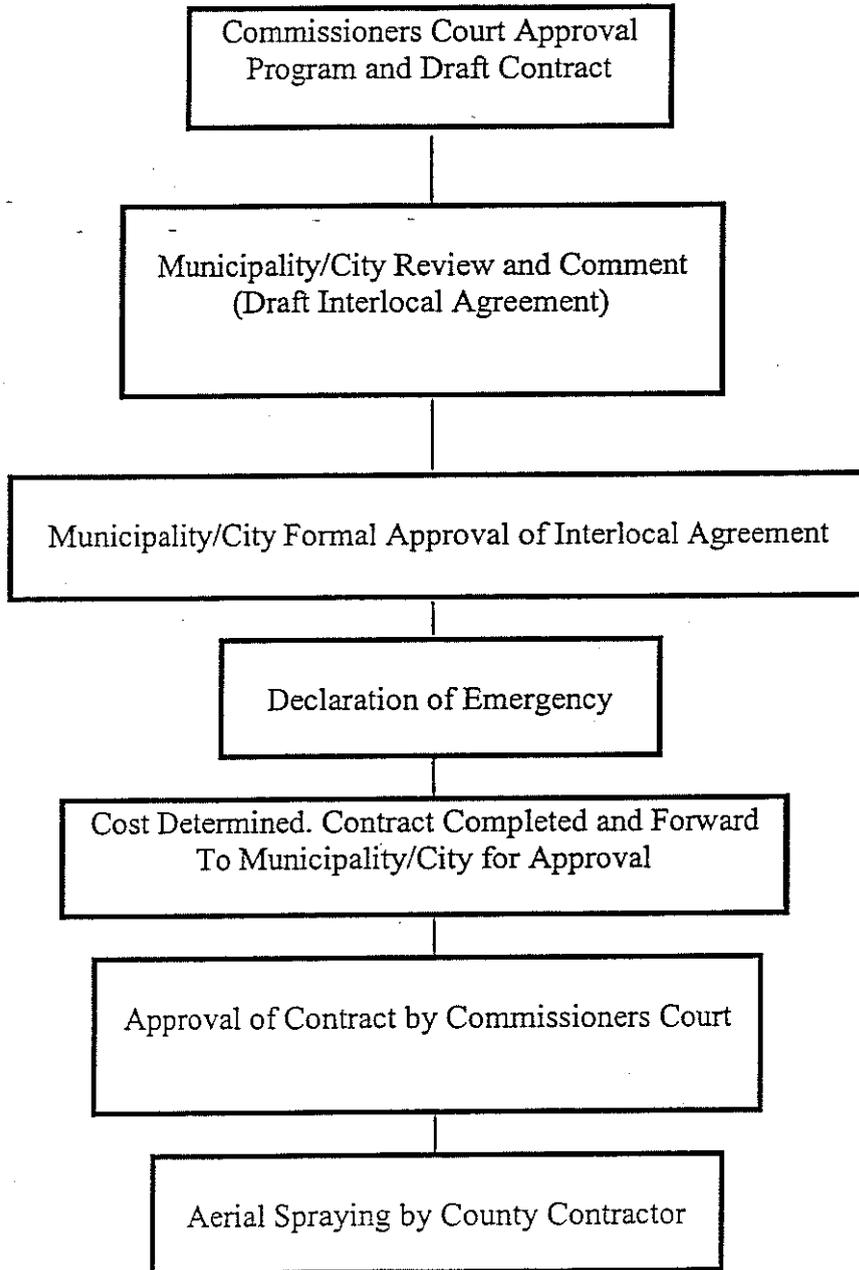


EXHIBIT "A"

The following Company, _____ has entered into a contract with the County of Dallas to provide aerial spraying services of insecticides or chemicals for the control of mosquito populations at a cost of \$ _____ per acre sprayed. Aerial spraying contractor and County of Dallas has agreed that the total number of acres to be sprayed under this interlocal agreement is _____ acres. The cost of aerial spraying is therefore the cost per acre of \$ _____ times the number of acres, _____ acres for a cost of \$ _____.