

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CIVIL AIR PATROL BY THE TEXAS WING
AND
GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT, STATE OF TEXAS**

1. Purpose. Governor's Division of Emergency Management (DEM) and Civil Air Patrol (CAP) wish to utilize the services of CAP and its volunteers for the public good. This memorandum of understanding (MOU) describes the procedures by which DEM may request CAP mission support as well as the terms under which missions are authorized, performed, and reimbursed. The memorandum does not, in and of itself, create any legal obligations among the parties or signatories. All previous MOU(s) between CAP and DEM are superseded by this agreement. *NOTE: No Counterdrug (CD) or law enforcement missions are authorized by this MOU.*

2. Parties. This MOU is between CAP, through its Texas Wing and State DEM.

a. Civil Air Patrol. CAP is a federally chartered charitable non-profit corporation. CAP is not a government agency or military service. When used to fulfill the noncombat programs and missions of the Department of the Air Force outlined in paragraph 5, CAP acts as the volunteer civilian auxiliary of the United States Air Force. (36 U.S.C. §§40301 – 40307, 10 U.S.C. §§9441-9448.)

(1) Texas Wing, CAP. Texas Wing is an administrative subdivision of CAP and not a separate legal entity from CAP. The Texas Wing Commander is a CAP corporate officer. CAP is generally organized along geographic lines and Texas Wing's jurisdiction is defined by the boundaries of the state. Missions under this MOU will be performed by Texas Wing. Contact information is included as Attachment A. (The parties may update Attachment A unilaterally by e-mail or other writing.)

(2) CAP Members. CAP members are volunteers in public service. Members pay an annual membership fee to join and participate in CAP. "Members" are not "employees." Although CAP may have employees in the state, their duties as employees are administrative in nature and do not include working on CAP missions. Texas Wing may use CAP members assigned to units from outside the State to perform missions under this MOU. All CAP members shall be deemed members of Texas while performing missions under this MOU and entitled to benefits of such membership that arise under this MOU.

(3) CAP-USAF. Civil Air Patrol - United States Air Force (CAP-USAF) is not a party to this agreement. Nevertheless, the parties acknowledge that CAP-USAF is the Air Force agency responsible for providing advice, assistance and oversight to CAP in its role as the auxiliary of the United States Air Force. DEM's primary point of contact for

CAP-USAF is the CAP-USAF State Director of Liaison Services (SD) assigned to Texas Wing. The SD is responsible for USAF oversight of Texas Wing activities when CAP is functioning as the auxiliary of the United States Air Force. SD contact information is included in Attachment A.

b. The Division of Emergency Management.

(1) DEM. DEM is responsible for coordination of all emergency operations within Texas, including the selection and utilization of available resources and organizations capable of rendering assistance. DEM's contact information provided in Attachment A.

(2) Other State or Local Agencies. Any other agencies of Texas or local government agencies within Texas that request CAP assistance may submit an abbreviated MOU (such as a letter signed by both parties) that incorporates the terms and conditions of this MOU by reference. An abbreviated MOU should refer to the MOU Registration Number on the cover page of this agreement and attach a copy of this MOU.

(3) DEM-Texas Wing Relationship. There is no statutory relationship between DEM and Texas Wing.

3. CAP Mission Capabilities & Limitations.

a. Capabilities.

(1) Objectives. CAP provides an organization of private citizens equipped to respond to local and national emergencies and to serve the public welfare. (36 U.S.C. §40302). CAP can quickly organize large numbers of highly trained volunteers with ready access to up-to-date equipment to provide cost effective support to government agencies.

(2) Operations. Texas Wing assistance to DEM may include, and is not limited to: aerial missions such as reconnaissance to search for victims, damage assessments, or environmental surveys utilizing visual, photographic, digital, and video techniques; airborne communications support; and airlift (subject to regulatory restrictions discussed in paragraphs 3b and 7b and c below). Other support may include: manual labor (e.g. filling sandbags for flood control); radio communications; and ground teams (typically used in search and rescue (SAR) missions). Ground teams are prohibited from participating in CD or other law enforcement missions.

b. Limitations.

(1) Priority of Missions. DEM understands and acknowledges that the USAF may withdraw CAP from missions in progress under this MOU when necessary to pursue higher priority missions. This is because CAP is the official auxiliary of the Air Force, there is a priority for employing CAP resources which may affect availability of

support to state and local authorities. Priority for utilizing CAP resources is as follows: first, USAF, then other DoD departments and agencies, other Federal departments and agencies, state agencies, and finally, local agencies.

(2) Law. CAP does not have any special exemption from civil or criminal law. Nothing in this agreement shall be read to require any party or signatory to act in violation of the law or applicable regulations. Furthermore, none of the provisions in this MOU are intended to conflict with applicable laws, regulations, or directives governing CAP missions/activities, including but not limited to those discussed below.

(a) Federal Aviation Regulations. Civil Air Patrol pilots, most of whom are private pilots, are required to comply with Federal Aviation Regulations (FARs.) The FARs may prohibit private pilots from flying some of the missions (including transport missions except for certain exceptions) contemplated by this MOU. (See Attachment B, CAP Missions and Pilot Limitations.)

(b) Air Force Missions. DEM may request CAP support for emergency and disaster relief missions from the USAF which fall within the categories listed in paragraph 4 below. When CAP performs missions as the auxiliary of the United States Air Force, applicable rules and regulations governing military support to civil authorities apply (See DODD 3025.1; AFI 10-802). Due to regulatory limitations, air transportation may not be available as an Air Force-assigned mission (AFAM). (See DoD 4515.13-R, Air Transport Eligibility). CAP-USAF or its authorized USAF agent must approve all non-CAP personnel flying aboard CAP aircraft in connection with AFAMs (See paragraph 5).

(c) Posse Comitatus. Title 18, United States Code §1385 prohibits the USAF from providing direct or active assistance to law enforcement agencies (“to execute laws”) under the doctrine of *posse comitatus*. (See also 10 U.S.C. §§371-382). These prohibitions are applicable to any support the USAF provides to DEM through its Air Force auxiliary, CAP. Under CAP Regulation 900-3, paragraph 3, CAP corporate activities have been similarly limited. Prohibited activities include, but are not limited to the following: surveillance of persons and/or activities; search and/or seizure; arrest, apprehension or similar activities; interdiction of a vehicle, vessel or aircraft or other similar activity. (See DODD 5525.5, paragraph 4.1.3). No law enforcement missions are contemplated or authorized by this MOU.

(d) CAP Directives. CAP missions and activities are also limited by CAP regulations. CAP personnel are required to comply with CAP regulations. Failure of CAP members to comply with applicable regulations may result in administrative action. (See References below.)

(3) Risk Management. CAP is an organization of non-paid volunteer citizens. As such, CAP members may decline to participate in missions or discontinue

missions at any time. Additionally, CAP (and when performing AFAMs, USAF) may decline or suspend CAP missions for any reason, including but not limited to safety, risk, and liability concerns.

4. Requesting Missions - In General. Any and all mission requests may be submitted to Civil Air Patrol's CAP National Operations Center (NOC) at 888.211.1812. However, the fastest means of obtaining emergency mission authorization is by contacting the Air Force organizations directly using the telephone numbers indicated in paragraphs 5.a, b, and c below.

5. Requesting Missions from the United States Air Force. The following activities are AFAMs when requested by DEM, authorized by designated an Air Force agent for CAP-USAFA as identified below; and assigned an Air Force mission number. For guidelines on reimbursement for mission-related expenses, consult paragraph 9.

a. Air and Ground Search and Rescue (SAR) Operations. When CAP assistance for SAR operations is needed, DEM may contact the Air Force Rescue Coordination Center (AFRCC) at 800.851.3051 to request Air Force mission authorization. CAP SAR resources may be activated and assigned by AFRCC to search for, locate, and relieve a distress situation, including overdue aircraft, emergency locator transmitters (ELTs), and persons in distress. AFRCC will only approve such a mission to support life-saving efforts when DEM has no other adequate resources readily available.

b. Mercy Missions: Mercy missions refer to the transport of blood, organs, serum, and medical equipment necessary to relieve a specific time-critical, life-threatening situation where commercial transportation is unavailable. When CAP assistance is needed to perform such a mission, DEM may contact the Air Force Rescue Coordination Center (AFRCC) at 800.851.3051 to request Air Force mission authorization. AFRCC will approve such a mission for support of life saving efforts only when DEM has no other adequate resources readily available.

c. Disaster Mitigation & Relief (DR) Operations: When CAP assistance is needed for major disasters or emergencies (including all natural and man-made disasters such as hurricanes, floods, tornadoes, major storms, earthquakes, oil spills or other environmental disasters), DEM may contact the Air Force National Security Emergency Preparedness (AFNSEP) duty officer at 800.366.0051 to request Air Force mission authorization. CAP support for disaster relief may include: search for missing aircraft and persons; damage survey and assessment; radio communications support; and air transport of medical and other equipment or supplies. Air Force mission authorization may be granted by AFNSEP in the event of a Presidential Disaster Declaration or when “imminently serious” conditions exist that require immediate action to save lives, prevent human suffering or mitigate great property damage.

d. SAR/DR Training Missions. SAR/DR training missions/exercises with DEM may be performed as AFAMs with advance approval by the appropriate HQ CAP-USAF agent. DEM may request a joint SAR or DR training mission by submitting a CAP Form 10, *Request, Authorization, and Report for Training/Evaluation Missions* to the SD (SD contact information is included in Attachment A.) at least 30 days prior to the activity in order to permit the appropriate HQ CAP-USAF agent to review the training request. Approved missions will be issued an Air Force mission number.

e. Homeland Security (HLS). Department of Defense and Air Force policy on HLS missions CAP may be tasked to perform in support of civil authorities is still evolving. Identifiable missions, tasking procedures, mission authorization, and funding issues will become clearer over time. To obtain the most current information available on policies and regulatory guidance governing CAP HLS missions for the Air Force, DEM may contact CAP-USAF/XO through the CAP National Operations Center (NOC) at 888.211.1812.

6. Corporate Missions. In addition to Air Force authorized missions, Texas Wing may conduct missions for DEM as a federally chartered nonprofit corporation consistent with the purposes set forth in 36 U.S.C. 40302 and 10 U.S.C 9443(a)(1) & (2). Corporate missions include those missions in paragraph 5 that USAF declines, missions that are decertified by USAF, and any other missions that CAP performs consistent with its charter and federal law. CAP's use of resources for corporate missions is subject to the laws and regulations governing the use of federally provided or purchased assets by a nonprofit corporation (10 U.S.C. §9443(b)). For guidelines on reimbursement for mission-related expenses, consult paragraph 9.

7. Requesting Missions from CAP. DEM may request corporate missions by calling the CAP National Operations Center (NOC) at 888.211.1812 and obtaining a corporate mission number. Reimbursement will be made in accordance with this paragraph and paragraph 9. Corporate missions may include, but are not limited to:

a. Aerial Reconnaissance of Ground Conditions and Surface Traffic for DEM. This may include visual or photographic reconnaissance of wildlife, land, forests, roadways and waterways, etc. (Note: in the event of an "environmental disaster," DEM may be able to request Air Force mission authorization in accordance with the procedures under paragraph 5c above). See paragraph 3b(2)(c) above. Participation of DEM personnel in these aerial reconnaissance missions is discussed in paragraph 7b below.

b. DEM Crewmembers. DEM may request CAP aircraft and aircrew as an aerial platform from which DEM officials may perform "aerial work," as "crew members." "Aerial work" includes missions such as aerial reconnaissance of ground conditions (discussed in paragraph 7a above) or operation of an airborne repeater. DEM officials may

be authorized to fly aboard CAP aircraft in accordance with CAPR 60-1, paragraph 2-6(j), CAP Flight Management. DEM officials performing aerial work or duty in the aircraft during flight are crewmembers and not “passengers” (14 C.F.R. §119.1(e)(4).)

c. Air Transportation of Cargo and Passengers. Air transport of cargo and/or passengers on corporate missions shall be in accordance with subparagraphs (1) and (2) below. Such missions shall be performed without reimbursement or payment of any kind from sources outside of CAP due to FAA restrictions. (Note: Transport missions may be funded by the CAP pilot or Texas Wing but such missions may be limited due to availability of funding):

(1) Human Organs, Tissues, and Medical Supplies. If AFRCC is unable to issue Air Force mission authorization under paragraphs 5b or c above, CAP may still perform missions to transport organs, tissues, medical supplies at request of DEM for humanitarian reasons without accepting reimbursement or payment of any kind from outside sources.

(2) DEM Officials/Other Non-CAP Passengers. CAP may transport DEM officials and other non-CAP passengers approved in accordance with CAPR 60-1, paragraph 2-6, *CAP Flight Management*.

8. Command, Control, Coordination and Cooperation:

a. Immediate command and control over all CAP resources and personnel employed in accordance with this MOU, shall rest with CAP at all times. Mutual consent should be the norm; nevertheless, any party to this agreement may suspend or terminate CAP missions conducted pursuant to this MOU without cause.

b. Both Texas Wing and DEM agree to maintain continual and effective communication and coordination among themselves, Texas's Adjutant General's Air Force Emergency Preparedness Liaison Officer (EPLO), and, when performing AFAMs, the CAP-USAFA SD. This coordination should facilitate the training necessary for effective CAP participation with DEM emergency service personnel in disaster relief missions.

9. Reimbursement. Reimbursement to Texas Wing for missions will be as follows:

a. Reimbursement for Air Force Missions: Missions assigned to CAP by the Air Force in accordance with paragraphs 5a-d will be reimbursed with Federal appropriated funds in accordance with established procedures. Unless agreed in writing, Homeland Security missions assigned under paragraph 5e will be reimbursed by DEM as discussed in paragraph 9b below.

b. Reimbursement for Corporate Missions. When DEM reimbursement is required by Texas Wing for missions performed under paragraphs 5e and 6, such reimbursement shall be limited to the rates established in the current Civil Air Patrol Regulation 173-3, *Payment for Civil Air Patrol Support* Attachment 1 (a copy of which is provided as Attachment C and incorporated herein by reference). The parties agree that Attachment C, as revised from time to time by Civil Air Patrol and approved by CAP-USAF and the FAA, will be the basis for determining reimbursement. Additionally, aircraft and automobile fuel and oil will be reimbursed at actual cost.

c. Restrictions on Billing. Dual payment/compensation or double billing is prohibited and may not be requested or accepted. For example, if Texas Wing receives or is offered state funds for aircraft operating expenses (fuel, oil, maintenance), Texas Wing may not seek or accept reimbursement for the same expense from CAP National Headquarters, or from any other source (i.e. another federal agency).

10. Liabilities: Insurance, Workers Compensation & Related Matters. There are no DEM benefits afforded CAP and its members such as workers compensation or liability protection. CAP third party liability and personal injury coverage available to the corporation and its members are generally outlined in CAP Regulation 900-5.

a. Performance of Air Force Assigned Missions. CAP “shall be deemed to be an instrumentality of the United States with respect to any act or omission of the Civil Air Patrol, including any member” in carrying out a noncombat mission assigned by the Air Force. (10 U.S.C. §9442(b)(2).) When performing an AFAM, CAP and members are afforded protections under the Federal Tort Claim Act (FTCA)(10 U.S.C. 9442(b)(2); 28 U.S.C. 2671 *et. seq.*) and Federal Employees Compensation Act (FECA)(5 U.S.C. 8151). All claims for personal injury, damage, and/or death arising from an AFAM are subject to administrative claims procedures set forth in applicable federal statutes and regulations. CAP is not deemed an instrumentality of the United States for any missions which are not Air Force-assigned.

b. Performance of Corporate Missions. CAP and its members are not deemed to be instrumentalities of the United States while performing corporate missions. Therefore, FTCA and FECA do not apply. During these missions, CAP and its members are protected by liability insurance policies as well as member benefits described in CAP Regulation 900-5, *Civil Air Patrol Insurance/Benefits Program* and 112-10, *Indemnification*.

11. Effective Date, Term, Termination, and Approval Provisions.

a. Effective Date. The terms of this MOU will become effective as of the date signed by both parties.

b. Term. This MOU is an interim agreement between the parties which shall be effective for a period of five years from its effective date. The parties acknowledge this MOU may be amended based on issuance of further policy and guidance concerning mission support to civil authorities, especially with regard to HLS missions and funding.

c. Amendment. This MOU embodies the entire terms and understanding of the parties, and no other agreements exist between the parties except for those expressly stated herein, to include attachments cited below and executed by the parties. This MOU may be amended by written notice of either party, which expressly identifies itself as a part of this agreement and is signed by an authorized representative of each of the parties.

d. Termination. The parties may terminate this MOU at any time upon sixty-day (60) day advance written notice of termination signed by their designated representatives. Copies of the termination notice shall be mailed to the designated representatives of each of the parties at addresses shown below. (See Attachment B and the addresses below).

National Headquarters, Civil Air Patrol
Attention: DO
105 So. Hansell Street
Maxwell AFB, AL 36112

IN WITNESS WHEREOF, this MOU has been executed by the parties herein:

Texas Wing, CAP

**State of Texas,
Division of Emergency Management**

BY: //SIGNED//

BY: //SIGNED//

ROBERT F. ELDRIDGE
Colonel, CAP
Commander

Dated: 7/24/04

JACK COLLEY
State Coordinator

Dated: 6/30/04