

**STATE OF TEXAS**

**COUNTY OF HARRIS/  
GALVESTON**

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**INTERLOCAL COOPERATION CONTRACT**

**BETWEEN THE CITY OF FRIENDSWOOD AND  
THE CITY OF LEAGUE CITY**

This Contract is entered into and effective the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Friendswood, Texas, a Texas Municipal Corporation, hereinafter called "FRIENDSWOOD" and the City of League City, Texas, a Texas Municipal Corporation, hereinafter called "LEAGUE CITY" pursuant to the Interlocal Cooperation Act, Art. 791.001, et seq., Texas Government Code.

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, to contract with each other to perform governmental functions and services that each party to the contract is authorized to perform individually, and

WHEREAS, Hurricane Harvey caused catastrophic flooding and damage to the Public Works building and equipment such as the crane truck and the sewer push camera which are needed for the water and sewage operations and services; and

WHEREAS, to help FRIENDSWOOD, LEAGUE CITY agrees to provide temporary emergency relief by providing the use of its crane truck and sewer push camera and any other equipment needed for water and sewer services and their operators; and

WHEREAS, a cooperative contract between the parties will provide a mutual benefit to both entities and to those persons served by each entity, and serve a governmental purpose by providing use of equipment and operators for water and sewer services until Friendswood replaces its truck crane and sewer push camera; and

WHEREAS, LEAGUE CITY and FRIENDSWOOD desire to work together to carry out various functions for the mutual benefit of both parties; and

WHEREAS, the governing bodies of the Cities of LEAGUE CITY and FRIENDSWOOD agree that it is in the best interest of the taxpayers of both municipal corporations to enter into this Interlocal Cooperation Contract.

NOW THEREFORE, be it known that LEAGUE CITY and FRIENDSWOOD enter into this interlocal Cooperation Contract under the following terms and conditions:

**1.0 CONTRACTUAL RELATIONSHIP.**

1.1 The parties to this Contract are governmental entities that are entering into this contract pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Contract, to include but not be limited to landlord-tenant, employer-employee, or principal-agent. No provision of this Contract that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

## 2.0 SCOPE OF SERVICES.

2.1 The parties acknowledge and expressly agree that, in all things relating to this Contract, LEAGUE CITY and FRIENDSWOOD are performing governmental functions, as defined by the Texas Torts Claims Act. The parties hereby agree that LEAGUE CITY and the FRIENDSWOOD enter into this Contract as governmental entities for the purpose of performing a governmental function.

2.2. During the time FRIENDSWOOD is without a crane truck and a sewer push camera, LEAGUE CITY agrees to provide the equipment and operators of said equipment and any other equipment relating to water and sewer services that they are willing to provide to perform these governmental functions. The City of Friendswood employees will be conducting the physical part of the needed repairs while LEAGUE CITY employees operate the equipment.

2.3 All parties intend that FRIENDSWOOD and LEAGUE CITY, in performing such services, shall each act as an independent contractor and each City shall have control of its own work and the manner in which it is performed. FRIENDSWOOD and LEAGUE CITY are not to be considered an agent or employee of the other City.

## 3.0 TERM.

3.1 This Interlocal Cooperative Contract shall be in effect until the City of Friendswood attains a crane truck and a sewer push camera, unless terminated by either party in accordance with the provisions of paragraph 4.1 below.

## 4.0 TERMINATION

4.1 The LEAGUE CITY or FRIENDSWOOD may cancel this Contract at any time upon thirty (30) days written notice via certified mail, return receipt requested or hand-delivery. The obligations of FRIENDSWOOD, including its obligations to pay the LEAGUE CITY for all costs incurred under this Contract prior to such cancellation notice, shall survive such cancellation until performed.

4.2 To the extent LEAGUE CITY is wholly or partially prevented from performance any obligation or duty placed on LEAGUE CITY pursuant to this contract, by reason of strikes; stoppage of labor; riot; fire; flood; earthquake; acts of war; insurrection; accident; judgment; act of God; or other cause reasonably beyond LEAGUE CITY's control, in such event the time and performance of such obligation or duty shall be suspended until such disability to perform is removed.

## 5.0 GOVERNMENTAL FUNCTION AND IMMUNITY.

5.1 Governmental Function. The LEAGUE CITY and FRIENDSWOOD expressly agree that, in all things relating to this Contract, the parties enter into this Contract for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or

omission of each party, which in any way pertains to or arises out of this Contract, falls within the definition of governmental function.

5.2 Sovereign Immunity. LEAGUE CITY and FRIENDSWOOD reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules or regulations.

## 6.0 RISK ALLOCATION- LIMITATION OF LIABILITY

6.1 Liability. This Contract is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

6.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Contract, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish, emotional distress and attorneys fees as a result of breach of any term of this Contract, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein.

6.1.2 Intentional Risk Allocation. LEAGUE CITY and FRIENDSWOOD each acknowledge that the provisions of this Contract were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Contract. The disclaimers and limitations in this Contract are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

6.1.3 No Indemnification. To the extent provided by law, the Parties expressly agree that, except as provided herein, neither Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, damages, causes of action of any nature or kind, for loss or damage to property, or for injury or death to persons arising in any manner from the performance of the above referenced services, directly or indirectly arising, in whole or part, from this Contract.

## 7.0 GENERAL PROVISIONS

7.1 Compliance with Laws. In the performance of their obligations under this Contract, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

7.2 Governing Law. This Contract shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law and the respective Charters of each party.

7.3 Venue. The parties hereto agree that this Contract shall be enforceable in Friendswood, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Galveston County, Texas. Should the need for dispute resolution arise, venue is in Galveston County, Texas.

7.4 Current Revenues. Pursuant to Section 791.001(d)(3), Texas Government Code, each party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party.

7.5 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Contract shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Contract shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Contract.

7.6 Amendment; Assignability. This Contract and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party. The City Manager or his designee has the authority to make amendments to this contract without subsequent City Council approval.

7.7 Severability. All contracts and covenants contained in this Contract are severable. Should any term or provision of this Contract be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Contract, a provision which preserves the intention of the unenforceable provision, but which complies with the law.

7.8 Section Headings. The paragraph or section headings contained in this Contract are for reference purposes only and shall not in any way control the meaning or interpretation of this Contract.

7.9 Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Contract. This Contract shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

7.10 Notices. Any notice, demand, request, consent or approval that either party may or is required to provide to the other, shall be in writing and either personally delivered or sent via United States Postal Service certified mail return receipt requested, addressed to the other party at the following address(es) provided below or by hand-delivery:

LEAGUE CITY: City of League City  
Attention: City Manager  
300 W. Walker  
League City, Texas 77573

FRIENDSWOOD: City of Friendswood  
Attention: City Manager  
910 S. Friendswood Drive  
Friendswood, Texas 77546-4856

Changes may be made to the above addresses and addressees through timely written notice provided to the other party.

7.11 Execution and Counterparts. This Contract may be executed in any number of counterparts; each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Contract, and no party shall be required to produce an original or all of such counterparts when making such proof.

7.12 Complete Contract. This Contract supersedes any and all other contracts, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and this Contract, together with any Attachment(s) attached hereto, constitutes the entire contract between the parties relating to the terms and conditions of the Contract. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, contracts or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Contract confers no rights on any person(s) or business entity(s) that is not a party hereto.

7.13 Authorized by Governing Body; Warranty of Capacity to Execute Contract. This Contract is authorized by the governing body of each party. The person signing this Contract on behalf of each party warrants that he/she has the authority to do so and to bind each party to this Contract and all the terms and conditions contained herein.

IN WITNESS WHEREOF, this Contract has been executed by the parties named hereinabove as of the date, month and year first written above.

CITY OF FRIENDSWOOD

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KEVIN HOLLAND, MAYOR

APPROVED AS TO FORM:

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Mary Kay Fischer, City Attorney  
City of Friendswood

CITY OF LEAGUE CITY

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PAT HALLISEY, MAYOR

ATTEST:

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Diana Stapp, City Secretary  
City of League City

APPROVED AS TO FORM:

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Nghiem Doanl, City Attorney  
City of League City