

PROFESSIONAL SERVICES AGREEMENT WITH KERRI FOLEY

This Agreement is dated as of the ____ day of ____, 2018 (the "Agreement") between the City of League City, Texas (the "City"), a home rule city, and Kerri Foley ("Foley").

WHEREAS, the City and Foley (the "Parties") desire to enter into this Agreement to memorialize their respective obligations and responsibilities; and

NOW, THEREFORE, in consideration of the aforementioned premises and the mutual independent agreements hereinafter set forth, the parties agree as follows:

1. QUALIFICATIONS

Foley declares that she is qualified to serve as the Associate Judge of the Municipal Court of Record in the City of League City, Texas ("Court") in that she is a citizen of the United State and the State of Texas and that she is a licensed attorney in good standing with the State Bar of Texas.

2. DUTIES AND RESPONSIBILITIES UNDER THIS AGREEMENT

Foley has been appointed and shall serve as the Associate Judge of the Court. She shall be primarily responsible for presiding over trial proceedings in the Court. In that capacity, she shall have exclusive jurisdiction over judicial proceedings concerning the alleged violation of ordinances of the City, whether civil or criminal, and imposing fines and sentences.

Essential and other responsibilities and duties include, but are not limited to:

- (a) arraignment of prisoners and magistrate warnings;
- (b) assisting the Presiding Judge of the Court with the responsibilities of the Presiding Judge;
- (c) requesting and accepting pleas from criminal defendants;
- (d) interpreting and administering state laws, traffic laws, City ordinances and codes in proceedings before the Court;
- (e) issuing and executing arrest warrants, summons, subpoenas and bonds;
- (f) setting, forfeiting, and remitting bail;
- (g) along with the Presiding Judge of the Court, presiding over misdemeanor criminal trials, jury trials, and evening court within the jurisdiction of the City that concern the violation of ordinances of the City, both civil and criminal, and which includes, without limitation, hearing trials, issuing rulings on laws and/or facts, reviewing warrants or inventories, and other matters which relate directly to jury trials and evening court;
- (h) conducting legal research, notarizing legal documents and administering oaths;
- (i) coordinating and cooperating with the Municipal Court Clerk to assure the orderly, efficient, and effective conduct of the Court;
- (j) serving in the absence of the Presiding Judge;
- (k) performing such additional judicial functions as shall be prescribed by the City Council.
- (l) Foley shall not have any supervisory or budgetary duties with regard to the operation of the Court;

- (m) keeping abreast of State law and local ordinances, included State mandated fees, as applicable to Texas Municipal Courts, as well as criminal laws applicable to magistration duties, and issuance of warrants;
- (n) maintain good standing with the State Bar of Texas at all times during the term of this Agreement; and
- (o) ensure that all documents are properly completed to ensure the enforceability of same and that no information is omitted on judgments, orders or other documentation.

3. CONTINUING EDUCATION

Foley shall be required to attend the Texas Municipal Court Training Center's Judges Seminar on an annual basis.

4. TERM

Foley shall serve as Associate Judge until her term of office ends on October 10, 2018 unless Foley resigns from her position, is too ill to serve, refuses to serve, or is removed from her position by the City Council of the City of League City, Texas. In addition, pursuant to Article V, Section 4 of the City Charter, which provides that the Municipal Court Judge "shall hold office during the pleasure of the City Council," Foley agrees that she may be removed from office, without a hearing, by an affirmative vote of the City Council in accordance with law.

5. INDEPENDENT CONTRACTOR

Foley shall serve in her position under the terms of this Agreement as an independent contractor of the City, using her own means and methods without submitting herself to the control of the City in respect to all of the details of her performance of the responsibilities specified in Section 2 of this Agreement. Foley shall pay all applicable local, state, federal taxes, including income taxes, withholding tax, social security tax, and pension contribution, if any.

6. LIABILITY INSURANCE

The City shall provide professional errors and omissions insurance coverage for Foley during the term of this Agreement.

7. COMPENSATION

During the term of this Agreement, the City shall pay Foley an hourly rate of One Hundred Fifty Dollars (\$150.00) for her performance of the duties and responsibilities described in Section 2 herein. The total compensation under this agreement shall not exceed Thirty Thousand Dollars (\$30,000.00). At the sole discretion of the City, the aforementioned compensation may be increased during the term of this Agreement if the City Council determines that Foley expects to perform additional services not specified in Section 2 of this Agreement or that the cost of living has materially increased. Such adjustment in compensation, if any, shall be made only for the

remaining term of this Agreement and shall not be made retroactively for any services already rendered by Foley. Foley shall waive all claims for compensation if not claimed within thirty (30) days from the date of the termination of this Agreement.

8. TERMINATION

Foley shall serve at the pleasure of the City Council. The City may terminate Foley at any time without cause with 30 days written notice. Foley may terminate this Agreement at any time without cause with 30 days written notice.

9. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter hereof, shall supersede all other agreements or understandings with respect thereto and no amendment, modification, termination, or waiver of any provision of this Agreement nor consent to any departure by any party here from shall in any event be effective unless the same shall be in writing and signed by the other party hereto, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given. No party other than the City or Foley shall be entitled to rely on this Agreement.

10. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the Charter of the City of League City, Texas and laws of the State of Texas with venue in Galveston County, Texas.

11. SEVERABILITY

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

12. CONTINGENCY

This entire Agreement is expressly contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If at any time during the period of performance under this Agreement, the City does not make sufficient appropriations and authorizations, this Agreement shall terminate upon written notice being given by the City to Foley. The City's decision as to whether sufficient appropriations are available shall be accepted by the Associate Judge and shall be final.

13. LIMITATION ON LAW PRACTICE

Foley agrees that she shall not engage in the practice of law in an adversarial capacity before the City of League City, before any of its courts, agencies, boards or commissions, or in any other court or administrative proceeding involving the City during her tenure in office.

14. SOVEREIGN IMMUNITY

By this Agreement, the City does not consent to litigation and expressly revokes any consent to litigation that it may have granted by the terms of this Agreement, any charter, or applicable state law. Furthermore, nothing contained herein shall be construed so as to limit or waive the City's sovereign immunity.

15. NO ASSIGNMENT

Foley shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the City.

16. AMBIGUITY

In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party either did or did not author the same.

SIGNED on the _____ day of _____, 2017. *(date to filled in by City Secretary)*

KERRI FOLEY

CITY OF LEAGUE CITY, TEXAS

John Baumgartner, City Manager

ATTEST:

Diana Stapp, City Secretary

APPROVED AS TO FORM:

Nghiem V. Doan, City Attorney