

## AGREEMENT

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

THIS AGREEMENT entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF EL LAGO, a municipal corporation (hereinafter sometimes referred to as the "City"), located in Harris County, Texas, and the SEABROOK VOLUNTEER FIRE DEPARTMENT, a private non-profit state chartered corporation (hereinafter referred to as the "SVFD" or the "Department"), with operating facilities in Harris County, Texas.

WHEREAS, the CITY OF EL LAGO desires to continue to obtain the services of the SVFD to provide fire protection, medical first responder and emergency rescue services within the corporate limits of the CITY OF EL LAGO; and

WHEREAS, the SVFD desires to continue to provide fire protection, medical first responder and emergency rescue services to the CITY OF EL LAGO; and

WHEREAS, it is the desire of both parties that the SVFD receive adequate compensation to provide the necessary personnel and equipment to be used in providing this service within the corporate limits of the CITY OF EL LAGO; and

WHEREAS, it is the desire of both parties to work to improve the ISO rating for the CITY OF EL LAGO; and

WHEREAS, it is the desire of the parties hereto to evidence herein their agreement:

NOW THEREFORE, this Agreement for services and compensation is entered into by and between the CITY OF EL LAGO, acting by and through its duly constituted and acting representatives, and the Seabrook Volunteer Fire Department's duly constituted and acting representatives

1. The SVFD agrees to provide effective and efficient fire service twenty-four (24) hours per day, seven (7) days per week within the corporate limits of the CITY OF EL LAGO, consistent with the SVFD responsibility to provide the service to other contributing surrounding communities during the period of the Agreement. Existing mutual aid agreements shall be acceptable substitutes if the SVFD units are engaged.
2. The SVFD agrees to respond to Medical First Responder Calls. Medical First Responder Calls include but are not limited to: Cardiac Arrests, Respiratory Distress, Chest Pains, Unconscious, Major Vehicle Collisions, Aero Medical Transport, Falls Greater than 6', Penetrating Trauma, Choking, Drownings, and any other calls that the EMS Provider Requests First Responder Assistance.

3. Reporting of Performance. The Department will make quarterly written reports to the Mayor of El Lago.
4. In consideration for the SFVD's provision of the services herein described, the CITY OF EL LAGO agrees to compensate the SFVD the sum of \$154,310.16 per year for each year that this Agreement is in effect (the "Annual Payment"), payable in equal monthly installments of \$12,859.18 (the "Monthly Installments"), each Monthly Installment due on or before the 10<sup>th</sup> day of each month during the term of this Agreement.
5. For the Annual Payment beginning on the first anniversary of this Agreement and for each Annual Payment thereafter, there will be an increase in the payment amount of three percent (3%) per year to compensate for inflation, said increase to be reflected in equal amounts on each of the twelve Monthly Installments for that year.
6. Term. The parties agree that this agreement shall begin on the 1<sup>st</sup> day of February, 2018 and shall continue thereafter for a period of five (5) years unless terminated as provided herein. If no contract replacing this Agreement is entered into between the parties prior to the completion of the term, this Agreement shall continue on a month-to-month basis, unless terminated as provided herein.
7. Termination. It is agreed that on or after the 31<sup>st</sup> day of January, 2023, either party may terminate this agreement by giving notice in writing to the other party at least three hundred sixty five (365) days prior to the date of the proposed termination by United States Mail. Certified, and Return Receipt Requested.
8. The parties agree that should the SVFD decide to terminate this Agreement with the CITY OF EL LAGO for any reason, the CITY OF EL LAGO will be entitled to a pro-rata refund of any prepaid portion of a Monthly Installment as of the date of termination.
9. Audit. Each year the Department, at its expense, shall have an audit made covering its fiscal year ending September 30, by a certified public accountant of the Department's choice and shall furnish to the City by delivery to its Mayor a true copy of such annual audit within six (6) months after the end of the Department's fiscal year. The City shall have the right to conduct its own audit should it so elect, at its own expense, and the Department agrees to make all its financial records available to the City within thirty (30) days after receipt of written request.
10. Reporting Default. In the event of default by the Department of the provisions in Sections 3 or 9 above, such default shall constitute grounds for the City, at its election, to suspend payment of Monthly Installments under this agreement until the default is corrected. Once the default has been cured, the City shall pay to the Department, within fifteen (15) days of the cure of such default, all Monthly Installments which have been suspended.
11. Insurance. During the term of this agreement and any renewal or extension thereof, the Department agrees to obtain and maintain general liability insurance coverage in the amount of at least \$1,000,000.00 and agrees to provide the City, upon written request, a certificate evidencing such insurance coverage.

12. The SVFD agrees to protect and save the CITY OF EL LAGO, its agents and employees harmless from and against all claims, demands, and causes of action of every kind and character as a result of any injuries or damages received or sustained by any person or property caused by or in any way resulting from the willful or negligent acts or omissions of the SVFD, its agents, employees, members, representatives, or subcontractors. The SVFD shall be responsible for all damages and losses sustained by the SVFD to its equipment utilized in the performance of the service hereunder. NOTWITHSTANDING THE FOREGOING, THE CITY AND ITS PERSONNEL MAY ASSERT ALL LEGAL DEFENSES AVAILABLE TO IT AND ITS PERSONNEL AGAINST ANY THIRD PARTIES BRINGING ANY SUCH CLAIMS, DEMANDS, OR CAUSES OF ACTION AGAINST ANY PARTY TO THIS AGREEMENT.
13. Force Majeure. Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while, and to the extent such default or delay is caused by acts of God, acts of domestic or foreign terrorism, fires, floods, riots, sabotage, strikes, or any other cause beyond the reasonable control of such party. Force majeure does not include economic or market conditions that affect a party's cost but not its ability to perform. The party invoking force majeure shall give prompt, timely, and adequate notice to the other party by facsimile transmission or by telephone confirmed promptly thereafter in writing and shall use due diligence to remedy the event of force majeure as soon as reasonably possible. In the event of default or delay in Agreement performance due to any of the foregoing causes, then the time for completion of the service(s) will be extended by a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.
14. This Agreement shall be binding upon and inure to the benefit of the CITY OF EL LAGO and its respective successors.
15. No Assignment. This Agreement is personal in nature and the rights hereunder cannot be assigned without the written consent of each party hereto.
16. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall be in full force and effect and enforceable in accordance with its terms.
17. Independent Contractor. The parties recognize and agree that they are independent contracting entities, that neither is the agent, employee or representative of the other and that the Department is an independent contractor and no employment, partnership, joint venture or other relationship exists between the parties.
18. Modifications. This Agreement is the entire agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto.

19. No Implied Waivers. The failure of any party hereto to require performance by any other party of any provision hereof will in no way affect the right to require such performance at any time thereafter, nor will the waiver by any party of a breach of any provision hereof.
20. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter. All prior agreements are superseded hereby and no amendment or modification of this Agreement shall be effective unless it is in writing and signed by all parties.
21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
22. Notices. All notices, requests, demands and other communications under this Agreement or any instrument contemplated hereby shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the address of the respective parties hereto as shown under their names on the signature page hereof and shall be deemed given on the earlier of actual receipt or the date three (3) days after mailing. Any party hereto may change its address for such notices by giving notice of such change pursuant to this paragraph.
23. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas, and venue for any action arising out of this Agreement shall lie exclusively in Harris County, Texas.
24. Attorney's Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

SIGNED in duplicate at El Lago, Texas, effective the date first shown above.

CITY OF EL LAGO

SEABROOK VOLUNTEER  
FIRE DEPARTMENT

By: \_\_\_\_\_  
Name: Mark Briggs  
Title: Mayor  
Address: 411 Tallowood Drive  
El Lago, Texas 77586

By: \_\_\_\_\_  
Name: Garry Mack  
Title: President  
Address: P.O. Box 98, 1850 N. Meyer  
Seabrook, Texas 77586

Attest:

\_\_\_\_\_  
Secretary: William Grigsby  
City of El Lago

\_\_\_\_\_  
Secretary: Willetta Boss  
Seabrook Volunteer Fire Department