

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

**INTERLOCAL AGREEMENT FOR
THE PROVISION OF FIRE PROTECTION SERVICES WITHIN THE SERVICE AREA
OF HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15**

This INTERLOCAL AGREEMENT FOR THE PROVISION OF FIRE PROTECTION SERVICES AND THE USE OF TWO FIRE STATIONS FOR FIRE PROTECTION, FIRE SUPPRESSION AND EMERGENCY RESCUE SERVICES (herein after “Agreement”) is entered into as the effective date of this signed contract by and between the **CITY OF TOMBALL** (hereinafter referred to as “City”), and **HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15** (hereinafter referred to as “District”), for the mutual covenants and agreements herein contained, and other good and other good and valuable consideration. Accordingly, the District and the City agree to the following:

**I.
PARTIES**

The District is a political subdivision of the State of Texas, organized and operating in a portion of Harris County, Texas under Chapter 775 of the Texas Health & Safety Code. The City is a home-rule municipality organized and operating under the laws and Constitution of the State of Texas. Both the District and City propose to enter into an Agreement pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

The purpose of the Agreement is to facilitate the City’s Fire Department providing services to the District and City. Pursuant to this Agreement, the City shall provide, to the persons and commercial interests located within the geographic boundaries of the District (herein the “Service Area”) fire protection and suppression services to protect life and property from fire and to provide emergency medical first responder and rescue services (all collectively referred to herein as “Emergency Services”). The “Service Area” is described and set forth in Exhibit “A”, attached hereto and incorporated by reference. Within the Service Area, the boundaries of the City, as well as the City’s Extra Territorial Jurisdiction area, the City’s Fire Department shall provide the Emergency Services as it shall determine in its sole and exclusive discretion. Furthermore, nothing in this Agreement shall prohibit the City Fire Department from providing mutual aid and automatic aid pursuant to those separate agreements made and entered into by the City.

The City acknowledges and represents that it is familiar with the Service Area under Exhibit “A” and agrees to provide the fire/rescue emergency services in accordance with the Agreement. The parties agree that the City’s Fire Department shall perform and deliver said emergency services to the District and City. The parties also both agree and acknowledge that the District has built and constructed and will provide a fire station to be located 19900 Telge Road, Tomball, Texas 77377 (the “Telge Station”) and a new fire station to be constructed at 10333

Mahaffey Road and FM 2920, Tomball, Texas 77375 (the “Mahaffey Station”) for use by the City’s Fire Department.

In consideration of the District providing the Fire Stations contemplated under this Agreement, the City agrees to utilize the Fire Stations to provide emergency services to the District and the City to operate the Fire Stations in a manner that the City determines to be in the best interests of the City and the District. The District and the City mutually agree that it is in the interest of the citizens of the District and the City that the City provide fire protection services to the District and the City and the District mutually find that entering into this Agreement serves a public purpose of both the City and the District.

NOW, THEREFORE, the terms of this Agreement are as follows:

II. DEFINITIONS

“Firefighter” refers to a City-employed firefighter, of any rank, certified and assigned to perform the duties of a firefighter per this Agreement.

“Battalion Chief” refers to a City-employed Chief who supervises firefighters in day to day operations.

“Overtime” refers to any hours worked by a firefighter of any rank during any Fair Labor Standards Act-defined workweek, which exceed one-hundred six (106) hours in a 14-day period.

“Regular Work Hours” refers to the normal workday or work schedule assigned to any firefighter. A regular work week is typically a 48-hour shift, with an average of 53 hours per week.

“Salaries and Benefits” refers to the regular annual salary and employer paid benefits for firefighters. Benefits include federal income taxes, including Social Security and Medicare, Texas Municipal Retirement System contributions, medical, dental, and vision insurances, employer-paid life insurance, and any other employer-paid benefits offered to firefighters as part of their employment compensation.

III. TERM OF THE AGREEMENT

3.1. The term of this Agreement begins on February 24, 2023 and ends on September 30, 2030, unless terminated sooner in accordance with **Section XI** of this Agreement.

IV.
PROVISION OF FIREFIGHTERS

4.1. The City will assign three (3) firefighters per shift for a total of nine (9) firefighters to serve at each of the District's two (2) Fire Stations beginning February 24, 2023, for a total of eighteen (18) firefighters. Both the City and the District may reevaluate at any time during the term of this contract if more firefighters are needed to be staffed at any of the two (2) Stations and if it is feasible.

4.2 The City shall assign one (1) of the City's three (3) Battalion Chiefs to the District for cost sharing measures only. This Battalion Chief will respond to all calls for service that require a Battalion Chief within the jurisdiction of the District. The physical location of the assignment of the Battalion Chief shall be at the discretion of the City Fire Chief.

4.3 The City and the District may, at any point during the term of this Agreement, mutually agree that additional firefighters are needed. If the Parties agree that additional firefighters are needed, the Parties will seek to amend this Agreement as outlined in **Section VIII. Any amendment must be in writing, signed and approved by the Parties governing entities and mutually agreed to by the Parties.**

4.4. For the purpose of this Agreement, any working time, whether regular time or overtime, that a firefighter spends in the provision of fire protection services on behalf of the District, including training, meetings, or other duties assigned by the Fire Chief, is counted as hours worked. Firefighters will primarily spend their Regular Work Hours devoted to the responsibilities outlined in **Section V.**

V.
DUTIES OF FIREFIGHTERS

5.1. While on duty, a Tomball Firefighter, of any rank, shall perform the following duties:

- Protect the safety and welfare of any person in the jurisdiction of the District;
- Protect and Maintain the property of the District;
- Respond to calls for service within the District;
- Work and collaborate with outside agencies;
- Perform firefighting operations including deploying and operating hoses, pumping apparatus, directing water streams or other chemicals and raising and climbing unsupported ladders, including ground and aerial of up to 100 feet;
- Perform search and rescue for trapped or injured persons to include swift water rescue work with and without use of boat;
- Administer first aid and emergency medical service to injured persons to level authorized by Emergency Medical Technician (EMT) or Paramedic Certification;

- Work under dangerous conditions and in hostile environments during fire suppression or emergency medical activities, aircraft emergency and incidents involving hazardous chemicals;
- Wear department supplied safety equipment and personal protective equipment at emergency scenes and during training exercises that require the use of such equipment;
- Respond to fire/rescue calls as part of an engine or truck company and provide Basic Life Support as a member of the TFD First Responder program;
- Inspect and perform routine maintenance on rescue equipment, fire apparatus, hydrants, hoses, and other support equipment;
- Participate in regular training and drills for fire suppression, prevention and inspection through both simulated and on-the-job exercises;
- Clean and maintain station facilities, grounds, equipment, apparatus and hydrants;
- Participate in department committees and attends staff meetings as required;
- Provide fire station tours, present information to students at local schools and assist in providing public fire prevention and education programs;
- Drive various fire apparatus to incident scenes in response to calls for service including fires, fire alarms, emergency medical service, and any other type of call;
- Operate apparatus and numerous types of rescue, salvage, emergency and fire suppression equipment;
- Maintain all assigned apparatus to include all equipment on board, and maintain proper stock of supplies on apparatus;
- Communicate with dispatch and command personnel through the use of specialized communications equipment such as a two-way radio system, data link in stations to administration and dispatch;
- Conduct pre-fire planning, prepare reports regarding hazardous materials, emergency and non-emergency incidents and building surveys;
- Coordinate fire suppression and emergency medical services activities with those of other fire stations, outside agencies and organizations;
- Maintain required inventory levels of supplies and materials;
- Prepare reports regarding building surveys and completes incident response reports; and
- Perform any other duties as directed by the Fire Chief.

5.2. All firefighters are required to follow policies and procedures of the District and the City. If any District policy or procedure directly conflicts with a policy or procedure of the City, the firefighter shall follow the City's policy and procedure, and report the conflict in policy and procedure to his/her supervisor as outlined under **Section VIII**.

VI. CITY'S RIGHTS AND OBLIGATIONS

6.1. The City will assign nine (9) firefighters to serve at the Telge Station and nine (9) firefighters to serve at the Mahaffey Station when the station is completed. Three (3) firefighters in shifts of

three (3) will serve at each Station and both Stations will be manned twenty-four (24) hours a day, seven (7) days a week. The firefighters shall begin serving at the Mahaffey Station as soon as feasible on the effective date of this contract following the recruitment and hiring process of the nine (9) firefighters for the Mahaffey Road Station as it is within six (6) months prior to the completion of the Mahaffey Station. The City will carry the appointment of the firefighters and be responsible for ensuring compliance with all applicable licensure requirements as defined by the Texas Occupations Code and the Texas Commission on Fire Protection.

6.2. For the entirety of the term of this Agreement, the firefighters assigned to District fire stations are the employees of the City and not the District. The City shall be responsible for the hiring, discipline, and dismissal of City employees. The City shall also be responsible for all compensation, including salary, benefits, sick leave, vacation, and any other obligations associated with full-time employment for all firefighters, except as may otherwise be provided herein.

6.3. The Fire Chief shall retain control and supervision of all firefighters assigned to the District to the same extent he or she does for all other firefighters employed by the City. The rules, regulations, procedures, and policies of the City shall govern the performance of duties rendered pursuant to this Agreement. All firefighters shall also abide by the policies, procedures, and rules of the District in accordance with **Section 5.2**.

6.4. The City shall be responsible for the provision of any equipment necessary for any firefighter to fulfill the role as a firefighter. Equipment for which the City is responsible for furnishing maintaining, and replacing includes but is not limited to, uniforms, personal protective equipment, hand-held radios utilized to communicate with the Tomball Fire Department and outside agencies, vehicles, and fuel.

6.5. The City and the District may, at any point during the term of this Agreement, mutually agree that additional firefighters are needed. If the Parties agree that additional firefighters are needed, the Parties will seek to amend this Agreement as outlined under **Section VIII**.

VII. DISTRICT'S RIGHTS AND OBLIGATIONS

7.1. The District shall provide access and maintenance of the District's facilities located at the Telge Station and the Mahaffey Station when completed, a networked computer for firefighters assigned to a shift at each of the District's locations, and general office supplies needed for the firefighters to perform their duties.

7.2. The District will notify the City regarding any concerns, questions, or issues with firefighters in a timely manner. Notification shall be provided to the City by the District in writing. The District reserves the right to request removal or reassignment of any firefighter whose assignment it deems not to be in the best interests of the District. The City shall work to accommodate the District's request to the extent feasible.

7.3. The District will be responsible for the payment of one hundred percent (100%) of the actual costs associated with hours worked by firefighters in the provision of fire protection services as outlined in this Agreement. Any Overtime hours worked by firefighters not in connection with firefighter duties at the District, as determined by the City, shall be paid in full by the City.

7.4 The District will be responsible for the payment of one hundred percent (100%) of the actual costs associated with hours worked by one (1) Battalion Chief in the provision of fire protection services as outlined in this Agreement. Any Overtime hours worked by the Battalion Chief in support of the District shall be the responsibility of the District. Any Overtime hours worked not in connection with the Battalion Chief's duties to support the District, as determined by the City, shall be paid in full by the City.

7.5. The District will pay one hundred percent (100%) of the costs associated with any training which is mandated by the Texas Commission on Fire Protection (TCFP) and the Texas Department of State Health Services. Any training outside the City's budget must be approved by the District Board at least sixty (60) days prior to the training or to the extent that is feasible. The City shall provide monthly reports to the District Board of any training.

7.6. The District will pay the proportional support costs as outlined in Section IX of this Agreement necessary for the provision of fire protection services to the District, including human resources, information technology, telecommunications/dispatch services, fire administration, and city management.

7.7. The District will pay one hundred percent (100%) of the allocated direct costs of materials and supplies, services, personal protective equipment, and/or maintenance necessary for the provision of fire protection services within the District.

7.8 The District shall purchase their own apparatus for fire protection services. The District shall be responsible for apparatus insurance and reimbursing the City of the actual amount of the insurance coverage costs for District owned vehicles, should the apparatus or vehicles be covered under City insurance.

VIII. MUTUAL OBLIGATIONS OF THE PARTIES

8.1. The Parties agree that any conflicts, questions, or interpretations of this Agreement will be addressed between the District's President, designee, or District Counsel and the City Manager, or designee. Any clarifications or amendments resulting from those conflicts, questions, or interpretations will be made in writing and signed by both parties, and the President and the City Manager are authorized to execute agreements acknowledging the clarifications or amendments.

8.2. The Parties agree that this Agreement is not intended, nor shall it be construed, to obligate the City in any manner whatsoever to assign any firefighter to devote any portion of his or her working time to the provision of fire protection services. However, if for any reason, the City does not provide fire protection services as described in this Agreement, then the District is entitled to pay the City only a proportionate share of the identified costs identified in this Agreement. If the amount paid to the City exceeds the proportionate amount of services received, the District is entitled to a refund equal to the proportionate amount of excess paid.

8.3. The Parties agree to meet no less than quarterly to discuss issues and concerns relative to fire protection services as agreed upon herein. These discussions should include an analysis of District growth, reports of incidents, trends, needs, and any other information deemed necessary to evaluate the continued effectiveness of firefighters, promote safety within the District, identify opportunities for efficiencies, and resolve potential conflicts.

8.4. The Parties agree that the number of firefighters outlined in this Agreement are based on projections, including projections of District growth, response statistics, and staffing models employed by the City of Tomball. The Parties agree that they will work together to resolve any issues and conduct joint analyses when necessary to ensure that the obligations of this Agreement can be met. If at any point during the term of this Agreement, either party desires to make a change to the number of firefighters, duties of firefighters, or other Agreement obligations, that Party is required to notify the other Party as soon as feasible, provide a detailed analysis of facts used to come to the conclusion, and meet with the other Party to discuss the potential changes to the Agreement.

8.5. The Parties agree that any amendment to this Agreement must be made in writing, and approved by both the City Council of the City of Tomball and the District's Commissioners.

8.6. The Parties agree that any Overtime related to the provision of fire protection services will be approved by the shift Battalion Chief and/or Fire Chief.

8.7. The Parties agree that the Fire Chief shall submit to the District his/her recommendations for firefighter staffing and assignments, including, but not limited to the rank and proposed assigned location of each firefighter, for the following City Fiscal Year no later than June 1 of each year in the contract term. The Parties agree that the District may object to any recommendations and those objections will be evaluated by the Fire Chief. The Parties agree that this list is to be provided for budget planning purposes and the Fire Chief has the right to assign firefighters of any rank to fulfill the obligations of this Agreement as he/she deems appropriate.

IX.
CONTRACT AMOUNT

9.1. The District shall pay the City an amount equal to one hundred (100%) of the cost of the actual Salaries and Benefits of the firefighters for each year in the term of this Agreement, as outlined in **Section IV**.

9.2. Because Salaries and benefits will change annually due to raises, promotions, personnel changes, benefit changes, the calculation of the total amount the District shall remit to the City for the provision of fire protection services will be based on the actual costs of Salaries and Benefits of the firefighters in those fiscal years.

9.3. The District will pay one hundred percent (100%) of any Overtime costs incurred by firefighters acting in the course and scope of their primary duties while assigned to District Fire Stations, including, but not limited to, overtime incurred through administrative tasks required by the District or the City, including but not limited to report completion, required meetings, and training.

9.4. The District will pay one hundred percent (100%) of the costs associated with any training which is mandated by the Texas Commission on Fire Protection (TCFP) and the Texas Department of State Health Services, in accordance with **Section 7.8**.

9.5. The District will pay one hundred percent (100%) of the operating costs of the District's Stations to include, but not limited to the following;

- Office, computer, educational, janitorial and food supplies.
- Uniform purchase as outlined in City's Budget presented to the District and allowance for each firefighter in the amount of \$500 in each calendar year for their uniform if outside the City approved Budget by the District.
- Chemical supplies, SCBA supplies and parts, radio supplies, firefighter tools and parts.
- Maintenance of aforementioned items.
- Vehicle and building maintenance.
- Vehicle and equipment insurance.

9.6. The District will pay twenty five percent (25%) of the costs of actual salaries and benefits of the Fire Department Administration for each year in the term of this Agreement.

9.7. The District will pay a proportion of support services provided by the City required to operate fire protection services in the District. **The District shall no longer be obligated to provide any portion of its tax rate (previously three cents (\$0.03) per one hundred dollars (\$100.00) valuation) to the City.** The Parties have instead decided to apportion the costs of certain services as follows:

- Twenty-five percent (25%) of the City’s cost to operate its telecommunications and dispatch services;
- Ten percent (10%) of the City’s cost to operate Information Technology services;
- Fifteen percent (15%) of the City’s cost to operate Human Resources services;
- Five percent (5%) of the City’s cost to operate Finance Department services; and
- One percent (1%) of the City’s cost to provide City Management.

**X.
PAYMENT PROVISIONS**

10.1. The District agrees to pay the City for the provision of fire protection services as outlined in this Agreement in **Section IX**.

10.2. Payments will be made quarterly in arrears, based upon the reasonable actual expenditures made by the City on behalf of the District. The City shall provide appropriate and reasonably requested documentation of its expenditures to the District. The District shall be entitled to review reports, budgets, expenditures, financial statements and other such similar types of documents to substantiate the payment being made.

10.3. Any payment remitted by the District to the City should be made via check and payable to the “City of Tomball”. The District shall also be entitled to make such payment via wire transfer or other funds transfer should it desire to do so.

10.4. If this Agreement is terminated at any time other than the scheduled termination date, payments under this Contract shall be prorated as needed and approved by the City and District.

10.5. If the District fails to make a payment within forty-five (45) days after the date the payment is presented and due, the City is authorized to terminate this Agreement by providing the notice specified herein. In the event of overdue payment, the City shall immediately notify the District in writing after the due date for failure of payment and such notice shall require payment by the District within thirty (30) days of the date of the second notice provided. Upon receipt from the City of a written notice of failure of payment, the District shall have thirty (30) days to cure the failure or rejection of payment. If the District cures the payment within the time allotted, the City shall not be entitled to terminate this Agreement except as otherwise permitted by Section 11.1. Further, the City’s failure to make demand for payments due is not a waiver of the District’s obligation to make timely payments.

10.6. If, at any time, the City fails to provide firefighters in accordance with **Section IV.**, the District is entitled to a prorated reimbursement of all costs and expenses paid under the terms of this Agreement which will be calculated and agreed to in writing by both Parties.

10.7. The Parties agree that this Agreement is a commitment of the District’s current revenue only. Notwithstanding anything to the contrary in this Agreement, the District is obligated to make

payments only as approved each year by the District's Commissioners. The District retains the right to terminate the Agreement as outlined in **Section XI**.

**XI.
TERMINATION AND DEFAULT**

11.1. Prior to the expiration of the term, either Party is authorized to terminate this Agreement without cause by giving to the other party at least three-hundred sixty-five (365) days advance written notice of its intention to do so, specifying therein the effective date of such termination. If such termination occurs, a copy of written notice must be provided to the Harris County Fire Marshal's Office.

**XII.
NOTICE**

12.1. Any notice permitted or required to be given to City may be given by registered or certified United States Mail, postage prepaid, return receipt requested, addressed to:

**Tomball Fire Department
Attn: Fire Chief
1200 Rudel Dr.
Tomball, Texas 77375**

Notice shall be deemed given upon deposit of the notice in the United States Mail as aforesaid.

12.2. Any notice permitted or required to be given to the District may be given by registered or certified United States Mail, postage prepaid, return receipt requested, addressed to:

**Harris County Emergency Services District No. 15
Attn: President
P.O Box 1215
Tomball, Texas 77375**

Any formal notice to the District required under this Agreement shall be copied to **Coveler & Peeler, P.C., Attn: Krystine Ramon, 820 Gessner, Suite 1710, Houston, Texas 77024**. Notice shall be deemed given upon deposit of the notice in the United States Mail as aforesaid.

12.3. Either Party may designate a different address by giving at least ten (10) days written notice in the manner provided above.

XIII.
MISCELLANEOUS

13.1. The terms and provisions of this Agreement constitute the entire Agreement between the City and the District, and no modification of this Contract is effective unless in writing and executed by both Parties.

13.2. Notwithstanding anything to the contrary contained in this Agreement, City and District agree and acknowledge that the District is entering into this Agreement in reliance on City's ability to provide fire protective services to the District. The City covenants with the District to use its best efforts, skill, judgment, and abilities to perform the services outlined herein and to further the interest of the City and the District in compliance with all applicable federal, state, and municipal laws, regulations, codes, ordinances, and orders and with those of any other body having jurisdiction. The City warrants, represents, covenants, and agrees that all work to be performed by the City under or pursuant to this Agreement shall be of the standard and quality which prevail among similar entities and organizations of superior knowledge and skill engaged in providing similar services in major urban areas within the United States under the same or similar circumstances and involving the scope of services to be performed in accordance with this Agreement.

13.3. The provisions of this Agreement are severable and if, for any reason, a clause, sentence, paragraph, or any other part of this Agreement shall be determined to be invalid by a court or federal or state agency, board, or commission having jurisdiction over the subject matter thereof, shall not affect other provisions which can be given effect without the invalid provision.

13.4. The failure of either Party to insist upon the performance of any term or provision of the Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment to any extent of either Party's right to assert or to rely upon such term or right on any future occasion.

13.5. Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, attempted performance or nonperformance of the Agreement, the venue for said action shall lie solely in Harris County, Texas.

13.6. This written instrument and any exhibits hereto which are incorporated by reference and made a part of this Agreement for all purposes, constitute the entire agreement between the Parties hereto concerning the work and services to be performed hereunder and any prior contemporaneous oral or written agreement which purports to vary from the terms hereof shall be void. Any amendments to the terms of this Agreement must be in writing and must be approved by both Parties.

13.7. The Parties agree and understand that each Party will be responsible for its own actions or omissions, including the acts or omissions of its employees, officers, trustees, and agents. If any negligence occurs by either Party, the Parties agree to abide by comparative negligence under the

Texas Civil Practice and Remedies Code in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity. The District and City agree that each Party will be individually responsible for responding to all complaints or causes of action resulting from the provision of services pursuant to this Agreement.

13.8. The Parties expressly acknowledge that both the City and the District are governmental entities of the State of Texas, and nothing in this Agreement, including but not limited to its execution and the performance by the Parties of their respective functions or obligations hereunder, is intended to waive or relinquish, or shall waive, relinquish, or be considered as a waiver or relinquishment by the City or by the District of the right to claim any exemptions, privileges, rights, defenses, or immunities, including without limitation any governmental, sovereign immunities or defenses, from or to the liability or prosecution available to either Party, or to their respective trustees, officers, employees, or agents under federal or Texas laws, including without limitation the Texas Constitution or the laws of the State of Texas.

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[Signature page(s) follow(s)]***

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this 24th day of February, 2023.

CITY OF TOMBALL

Tracylynn Garcia, City Secretary

David Esquivel, City Manager

HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15

Terry Whistler, President

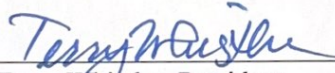
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