

**INTERLOCAL CONTRACTUAL AGREEMENT
CONCERNING BREATH ALCOHOL TECHNICAL SUPERVISOR**

This is an Agreement entered into on the ____ day of _____, 2009, by and between the CITY OF LEAGUE CITY, TEXAS, a home rule City existing in Galveston County, Texas, (hereinafter sometimes called "COLC") and the following governmental entities: THE COUNTY OF GALVESTON, TEXAS, acting on behalf of the offices of its Criminal District Attorney and its Sheriff a Texas County, CITY OF KEMAH, TEXAS, a general law City in Galveston County, Texas, CITY OF WEBSTER, TEXAS, a home rule City in Harris County, Texas, CITY OF SEABROOK, TEXAS, a home rule City in Harris County, Texas, CITY OF SOUTH HOUSTON, TEXAS, a home rule City in Harris County, Texas, CLUTE, TEXAS , a home rule City in Brazoria County, Texas, TEXAS CITY, TEXAS, a home rule City in Galveston County, Texas, PEARLAND, TEXAS, a home rule City in Brazoria County, Texas, pursuant to the Interlocal Cooperation Act of Texas (Chapter 791, Texas Government Code).

WITNESS:

WHEREAS, all of the contracting parties hereto have need for the services of a certified (by the Scientific Director, Alcohol Testing Program, Texas Department of Public Safety) Breath Alcohol Technical Supervisor, hereinafter sometimes collectively called "Breath Alcohol Technical Supervisor", and for an Evidential Breath Alcohol Instrument (also certified by the same Texas DPS Scientific Director) for use in law enforcement and prosecution of Driving While Intoxicated (hereafter "DWI") arrests; and

WHEREAS, each party shall provide its own certified Evidential Breath Alcohol Instrument including all enhancements, betterments or upgrades selected by COLC during the term of this agreement at its own cost but COLC has committed to providing the Breath Alcohol Technical Supervisor for the provision of services described herein for COLC and all the collective governmental entities named herein, using and supervising the use of said in house Evidential Breath Alcohol Instrument at the offices of the various contracting parties. That employee/Breath Alcohol Technical Supervisor of COLC shall be a Breath Alcohol Technical Supervisor at the COLC, whose job description shall be that he/she shall, in a capable and professional manner:

1. Comply with and meet all Breath Alcohol Testing Regulations set forth in the Texas Breath Alcohol Regulations Title 37 Public Safety and Corrections, Part 1 Texas Department of Public Safety Chapter 19, Breath Alcohol Testing Regulations, Subchapter A, Breath Alcohol Testing Regulations attached hereto and incorporated herein by reference as Exhibit "A" is a recitation of said regulations.
2. Perform any other duties by the Scientific Director, Alcohol Testing Program, Texas Department of Public Safety, which are either required now or in the future as a predicate to admissibility of evidence related to the Evidential Breath Alcohol Instrument equipment or the methods, processes or procedures utilized or followed by each entity.
3. Provide all breath testing needs including mouthpieces and all other collateral supplies [except an ample supply of blood tubes and all State mandated and

required paperwork for filing as part of a Driving While Intoxicated (DWI) arrest which shall be provided by the applicable governmental entity].

4. Recognize that he/she is an employee at will of COLC who has no express or implied contract of employment and whose employment may be terminated at any time for any lawful reason; and

WHEREAS, there are significant savings by the various contracting parties hereto if this service provided by the employee/Breath Alcohol Technical Supervisor of one entity for the joint use of all named entities herein on a collective cost sharing basis; and

WHEREAS, COLC shall hire the employee/Breath Alcohol Technical Supervisor ~~for its own purposes and for purposes of this agreement and all other duties as required~~; and

WHEREAS, all other entities named herein seek the benefit of such services from COLC and understand that in return COLC requires the predictability of a minimum term for the agreement and a predictable allocation of the costs receivable over that term, but not thereafter unless renewed and agreed in writing; and

WHEREAS, COLC has (or shall have by the time the program is initiated) adequate personnel for this service and it would be more cost efficient for the other entities; to share in the subject costs, as made the basis of this agreement; and

NOW THEREFORE, for the consideration hereinafter stated the parties do hereby agree as follows:

I.

The terms of this contract shall be for a period of sixty (60) months commencing _____ 1, 2009, and continuing until _____, 2014. Any Renewal and/or Proposals concerning this, or subsequent, contract(s), shall be submitted to all parties in contract form, ready for signature no later than sixty (60) days prior to the ending date of this contract.

II.

The objective of this contract is to achieve economies of scale by reducing the cost of multiple Breath Alcohol Technical Supervisors for the respective governmental entities.

III.

The recitals in the preamble are incorporated herein as findings and terms. Each entity shall purchase and make available the standardized Intoxylzer hardware called for in the preamble herein. COLC shall provide the Breath Alcohol Technical Supervisor more particularly described in the same preamble. The job performance, duties and responsibilities of the certified Breath Alcohol Technical Supervisor shall be the responsibility of COLC because the certified Breath Alcohol Technical Supervisor shall be an employee of COLC, shall be subject to COLC employee benefits, job performance standards and merit raises and the cost of same has been estimated and calculated to be a gross annual amount of \$45,925.00 for the first year including start up costs and \$77,877.00 for each year after for the cost to COLC to provide this employee

to meet the objectives contained herein. That cost shall be prepaid annually to COLC by each contracting party in an amount equal to a fraction determined by a numerator of the total or gross cost indicated and a denominator of the total signatory parties to this agreement. In the first quarter of the year after each full year is experienced, the real costs actually incurred shall be calculated and compared to the amount prepaid for the year in question and the pro rata cost (and the new prepaid estimate to be charged) shall be adjusted accordingly. The obligation to pay an equal share for the full five year term shall be enforceable by COLC against any other party whether or not that party decides to withdraw during the term. Such a take or pay provision shall expire after the first five year term unless agreed otherwise in writing.

IV.

All parties shall abide by reasonable ~~the~~ Rules and Regulations established by COLC concerning maintenance of the Evidential Breath Alcohol Instrument equipment, record keeping, documentation or the upgrades or changes to standard equipment and the procedures to follow in the implementation of this contract. COLC agrees that, at a minimum, all Rules and Regulations it establishes will be in strict compliance with Texas Department of Public Safety Rules and Regulations. COLC shall notify all parties in writing, as to any changes to such Rules and Regulations. No changes in Rules and Regulations shall be implemented without the notification of all parties prior to the effective date of such changes. Should any party disagree with or object to the proposed Rules and Regulations, COLC will meet with such party and attempt to reach a mutually agreed upon solution to the disagreement or objection.

V.

Should any party to this Agreement note any material deficiency in the performance of services provided by the Breath Alcohol Technical Supervisor, such deficiency will be reported to the COLC City Manager. The City Manager shall ensure such deficiencies are corrected within ten (10) days. If however, the deficiencies are not corrected, the reporting party may terminate its further involvement in this Agreement with no further obligations.

VI.

This contract may be terminated by COLC upon sixty (60) days written notice. Upon the effective date of such termination, all prepaid but unused payments for services will be refunded by COLC to each party. Any other party may terminate its participation in this agreement upon thirty (30) days written notice to the other parties. Upon termination by a party no prepaid but unused payment for services shall be refunded. Unless a withdrawing party terminates its participation in this Agreement in accordance with Article V, the withdrawing party shall pay as it accrues the pro rata share of the withdrawing party for the remainder of the full five (5) year term. There shall be no refunds.

To the extent permitted by the laws and Constitution of the State of Texas, all parties shall be obligated to make payments under this contract from funds budgeted and appropriated for that purpose. Should a party be delinquent in any payment during the first five (5) year term or should a party fail to appropriate funds to make payments during any fiscal year during the term of this contract, COLC shall cease to be obligated to provide the services unless and until the delinquency is cured but the obligation of the party to pay shall not expire.

In conformance with Texas Government Code Section 791.011(d)(3), each payment due from a party to COLC for services provided for herein are payable from the party's then current revenues.

This Contract is hereby signed and fully executed in multiple parts, on this ____ day of _____ 2009.

CITY OF LEAGUE CITY, TEXAS

By: Toni Randall, MAYOR

CITY OF KEMAH, TEXAS

By: Greg Collins, MAYOR

ATTEST:

City Secretary, City of Kemah, Texas

CITY OF PEARLAND, TEXAS

By: Tom Reid, MAYOR

ATTEST:

City Secretary, City of Pearland, Texas

CITY OF CLUTE, TEXAS

By: Calvin Shifflet, MAYOR

ATTEST:

City Secretary, City of Clute, Texas

CITY OF SEABROOK, TEXAS

By: Gary Renola, MAYOR

ATTEST:

City Secretary, City of Seabrook, Texas

CITY OF WEBSTER, TEXAS

By: Floyd Myers, MAYOR

ATTEST:

City Secretary, City of Webster, Texas

CITY OF TEXAS CITY, TEXAS

By: Matthew Doyle, MAYOR

ATTEST:

City Secretary, City of Texas City, Texas

GALVESTON COUNTY, TEXAS

CITY OF SOUTH HOUSTON, TEXAS

James D. Yarbrough
County Judge

By: Joe Soto, MAYOR

Attest:

Attest:

Mary Ann Daigle, County Clerk

City Secretary, City of South Houston, Texas

EXHIBIT "A"

Texas Breath Alcohol Regulations Title 37 Public Safety and Corrections Part 1, Texas Department of Public Safety Chapter 19, Breath Alcohol Testing Regulations, Subchapter A, Breath Alcohol Testing Regulations

- (a) Certification.
- (1) Prior to certification an applicant must establish proof of participation in a breath test program meeting the requirements set forth in §19.4 of this title (relating to Approval of Techniques, Methods, and Programs).
 - (2) Conviction history:
 - (A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified operator;
 - (B) persons convicted of a Class B misdemeanor within the last ten years shall not be eligible to be a certified operator;
 - (C) persons receiving a driver license suspension for refusal to submit to a chemical test as per the provisions of Chapter 724 or Chapter 522, Texas Transportation Code within the last ten years shall not be eligible to be a certified operator.
 - (3) Prior to initial certification as a breath test operator an applicant must successfully complete a course of instruction meeting the criteria set forth in §19.7 of this title (relating to Approval of Courses of Instruction).
 - (4) Prior to certification as an operator of a breath alcohol testing instrument, an applicant must satisfactorily complete examinations, prepared and given by the scientific director or a designated representative, which shall include the following:
 - (A) a written examination;
 - (B) a practical examination establishing proficiency in the operation of the instrument and reference sample device on which the operator is to be certified and the proper completion of all required reports and records. The practical examination will involve the completion of simulated subject analyses and/or practice test (s). If the simulated subject analyses and/or practice tests are not completed correctly and/or there are one or more errors in the reports or records the applicant will be offered a second set of simulated subject analyses. Any error(s) in the second set of analyses will result in a failure of the practical examination;
 - (C) failure of the written and/or practical examination will cause the applicant to be ineligible for reexamination for a period of 30 days. A subsequent failure will require that the candidate attend and satisfactorily complete the initial course of instruction for certification of a breath testing operator.
 - (5) Upon successful completion of the requirements for certification, the scientific director will issue the individual an operator certificate valid for a period of time designated by the scientific director or until the next examination for renewal unless inactivated or suspended.
 - (6) If an operator is certified to operate a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the scientific

director may waive portions of this section and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

- (b) **Renewal of current certification.** In order to maintain current certification, the operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:
 - (1) A practical examination in accordance to subsection (a)(4)(B) of this section establishing proficiency of the operator in the operation of the instrument and reference sample device on which the operator is certified and the proper completion of all required reports and records. The operator will be evaluated on the basis of ability to:
 - (A) use proper techniques;
 - (B) follow established procedures including, but not limited to, the operation of the instrument and reference sample device and the proper reporting procedures for analysis results;
 - (2) The satisfactory biennial completion of a course of instruction, the contents of which should include, but not be limited to, topics such as:
 - (A) a brief review of the theory and operation of the breath alcohol test equipment;
 - (B) a detailed review of the breath alcohol analysis and reporting procedures;
 - (C) a discussion of procedural updates resulting from recent court decisions and legislation;
 - (D) a discussion of current issues in the field of breath alcohol testing;
 - (E) a written examination
 - (3) Renewal of certification will be denied and current certification will be inactivated in accordance with subsection (d) of this section when the operator:
 - (A) fails to follow established procedures;
 - (B) uses other than proper technique;
 - (C) fails the practical examination; or
 - (D) fails the written examination.
 - (4) An operator who fails renewal will be given the reason for failure and is not eligible to be reexamined for a period of 30 days. Reexamination will be pursuant to subsection (a)(4) of this section. A resulting failure will require that the operator attend and satisfactorily complete the initial course of instruction for certification of a breath test operator in order to regain current certification.
 - (5) Upon successful completion of the requirements for renewal of certification, the scientific director will issue the individual an operator's certificate valid for a period of time designated by the scientific director or until next renewal unless inactivated or suspended.
- (c) **Proficiency requirements.**
 - (1) The scientific director or a designated representative or the operator's technical supervisor may at any time require an operator to demonstrate proficiency and ability to properly operate the instrument and reference sample device.
 - (2) It is the responsibility of the individual operator to maintain proficiency.
 - (3) Failure to pass a proficiency test will result in the suspension of the operator's certification for 30 days.

(d) Certification inactivation and suspension.

(1) Inactivation may be initiated by the certified operator in case of voluntary surrender of certification or by anyone having authority to suspend. The technical supervisor or operator shall, without delay, notify the office of the scientific director of any such inactivation. Challenges to involuntary inactivation will be resolved at the discretion of the scientific director. Inactivation will be utilized in, but not limited to the following situations:

- (A) an operator transfers to a position where certification as a breath test operator is no longer desired;
- (B) an operator fails to renew certification prior to its expiration;
- (C) an operator terminates employment under which certification was acquired;
- (D) administrative program control to safeguard the scientific integrity of the breath alcohol testing program.

(2) Suspension of certification will be utilized when the scientific director and/or a technical supervisor determines an operator intentionally or purposefully disregards or violates these regulations, or commits a violation of law relating to breath testing, or falsely or deceitfully obtains certification, or for malfeasance or noncompliance with any provision of these regulations, or when in the technical supervisor's judgment the operator's performance is unreliable or the operator is incompetent.

- (A) The technical supervisor shall, without delay, notify the scientific director in writing of any such suspension and furnish a copy of such notice to the suspended operator and the operator's appropriate supervisor or department head. The suspended operator shall not be permitted to operate the instrument until such time as certification has been restored pursuant to subsection (e) of this section.
- (B) Upon receipt of the notification of suspension, the scientific director shall initiate, if not previously completed, an inquiry culminating in sustaining the suspension, or setting aside the suspension.
- (C) The minimum period of suspension as determined by the scientific director will be for a period of time not less than 30 days. The technical supervisor or a designated representative of the scientific director may recommend a specific period of suspension to the scientific director.
- (D) Due to the immediate nature and the procedure for appeal, the individual initiating the suspension shall not be required to confer, consult, or obtain permission or approval from anyone prior to the initiation of the suspension. However, all suspensions must be consistent with procedures outlined in this title.

(3) An operator whose certification has been suspended may appeal such action in writing to the director, Texas Department of Public Safety, who will determine if the action of the scientific director will be affirmed or set aside. The director may reinstate the certification under such conditions as deemed necessary and notify the scientific director in writing.

(e) Recertification.

(1) Certification that has been inactivated or suspended must be regained before evidential analyses may be administered. It will be the responsibility of the inactivated or suspended operator to notify the scientific director in writing of such intent. Recertification shall take place pursuant to the following:

- (A) recertification after inactivation for the failure to complete the renewal process prior to the expiration of current certification will be pursuant to subsection (a)(4) of this section;
 - (B) recertification after inactivation or suspension will be pursuant to subsection (a)(4) of this section;
 - (C) recertification after an inactivation or suspension period of greater than five years the operator must attend and satisfactorily complete the initial course of instruction for certification of a breath test operator pursuant to subsection (a) of this section.
 - (D) recertification after a change in instrumentation or testing methodologies will be at the discretion of the scientific director, pursuant to subsection (a)(6) of this section.
- (f) Certificate. The issuance of a certificate to the breath test operator shall be evidence that the operator has met the requirements for initial certification and/or renewal of certification.
- (g) Verification. The technical supervisor, when required, shall provide direct testimony or by written affidavit verifying all aspects of certification of operators within an assigned area.

§RULE 19.6 TECHNICAL SUPERVISOR CERTIFICATION

- (a) The primary function of the technical supervisor is to provide the technical, administrative and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to assure the breath alcohol testing program's acceptability for evidential purposes. The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:
- (1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of forms and records and operator's compliance with the provisions stated in these regulations;
 - (2) supervision of certified instrumentation, reference sample devices and affiliated equipment in an assigned area;
 - (3) supervision of data gathered for initial certification and/or approval of individual instruments and reference sample devices in an assigned area;
 - (4) supervision of techniques of testing, maintaining scientific integrity and upholding these regulations as they apply to the certification of a total testing program;
 - (5) selection and supervision of a site location as it applies to security and technical suitability for testing;
 - (6) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment;
 - (7) all technical, administrative and regulatory aspects of breath alcohol testing within a designated area; and
 - (8) expert testimony by direct testimony or by written affidavit concerning all aspects of breath alcohol testing within an assigned area.

- (b) The minimum qualifications for certification as a technical supervisor are:
- (1) a baccalaureate degree from an accredited college or university with a major in chemistry, or as an alternative, a major in another scientific field with sufficient semester hours in chemistry or other qualifications as determined by the scientific director (For the purposes of these regulations, sufficient hours in chemistry shall be defined as successful completion of the equivalent of a minimum of 18 semester hours of chemistry, no more than 8 of which may be freshman level.);
 - (2) satisfactory completion of a course of instruction as set forth in §19.5(a)(3) of this title (relating to Operator Certification);
 - (3) satisfactory completion of technical supervisor training that is approved by the scientific director, the content of which shall include, but not be limited to:
 - (A) advanced survey of current information concerning alcohol and its effects on the human body;
 - (B) operational principles and theories applicable to the program;
 - (C) instrument operations, maintenance, repair and calibration;
 - (D) legal aspects of breath alcohol analysis;
 - (E) principles of instruction;
 - (4) knowledge and understanding of the scientific theory and principles as to the operation of the instrument and reference sample device;
 - (5) prior to receiving certification, a technical supervisor candidate must establish proof of engagement in an approved program or a certified school of instruction or proof of pending engagement upon receipt of certification. If the technical supervisor candidate or certified technical supervisor cannot establish proof of being actively engaged in an approved program or approved school of instruction, certification will, at the discretion of the scientific director, be denied or inactivated;
 - (6) Conviction history:
 - (A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified technical supervisor;
 - (B) persons convicted of a Class B misdemeanor within the last ten years shall not be eligible to be a certified technical supervisor;
 - (C) persons receiving a driver license suspension for refusal to submit to a chemical test as per the provisions of Chapter 724 or Chapter 522, Texas Transportation Code, within the last ten years shall not be eligible to be a certified technical supervisor.
- (c) Certification.
- (1) Upon satisfactory proof to the scientific director by the applicant that the minimum qualifications set forth in subsection (b) of this section has been met, the scientific director will issue certification that will be valid for a period of time designated by the scientific director unless inactivated or suspended.
 - (2) Technical supervisor certification may be voluntarily inactivated when it is no longer needed or inactivated at the discretion of the scientific director if the technical supervisor is no longer actively engaged in an approved program or certified school of instruction.
 - (3) Technical supervisor certification may be suspended only by the scientific director for malfeasance, falsely or deceitfully obtaining certification or failure to carry out the responsibilities set forth in this title.

- (4) A technical supervisor whose certification has been suspended may appeal such action in writing to the director, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The director may reinstate certification of the technical supervisor making such appeal under such conditions deemed necessary and notify the scientific director in writing.
- (d) Certificate. The issuance of a certificate to the technical supervisor shall be evidence that the technical supervisor has met the requirements for certification.
- (e) Renewal of current certification and recertification. In order to maintain current certification, the Technical Supervisor is required to renew certification prior to its expiration. The scientific director shall determine the minimum requirement for renewal of technical supervisor certification and for recertification after inactivation or suspension.