

STATE OF TEXAS §

COUNTY OF GALVESTON §

AN AGREEMENT
BETWEEN THE GALVESTON COUNTY FIRE FIGHTER'S ASSOCIATION
AND THE CITY OF TEXAS CITY, TEXAS

WHEREAS the Galveston County Firefighter's Association, a Texas Corporation, hereinafter called "the Association", and the City of Texas City of Texas City, Texas, hereinafter called "the City" desire to make this agreement, and,

WHEREAS the Association has entered into a contract with the County of Galveston to administer funds which the County has earmarked for the purchase of firefighting equipment for residents of the county that live outside municipalities within the county, pursuant to §352 of the Texas Local Government Code, and,

WHEREAS the Association wishes to further its goal of improving the education and training of firefighters within Galveston County, and,

WHEREAS the City wishes to avail itself of the opportunities for training and equipment purchases.

WHEREAS the City pledges to use the funds solely and exclusively within the budget for the Texas City Fire Department and for the purposes stated in Exhibit A;

THEREFORE the Association and the City agree to the following terms.

1 - TERM OF AGREEMENT

1.1 This agreement shall be effective from June 1, 2010 through May 31, 2011

1.2 The portions of this agreement which require reporting of activities shall remain in effect for a reasonable period after the term of this contract, to allow compilation of the necessary information.

2 - RESPONSIBILITIES OF THE ASSOCIATION

2.1 The Association shall administer the funds provided by the County as recited in the contract made effective October 1, 2009 between the Association and the Galveston County Commissioners' Court.

2.2 The Association shall administer the capital improvement fund created by the above-noted contract. The Association will promulgate a policy and procedure for requests for grants from this capital improvement fund.

2.3 The Association shall provide to the Department, at no cost, classroom training seminars in fire protection techniques, an annual "Field Day" to provide actual field training in fire control techniques, and Critical Incident Stress Debriefing services.

2.4 The Association shall make a cash distribution to the Department in the amount of Seven Thousand Six Hundred Dollars (\$7,600.00) upon the signing of this agreement. This cash distribution is limited to use for purchase of firefighting equipment pursuant to §352 of the Texas Local Government Code and such funds shall be used by the City of Texas City wholly within the budget of the Texas City Fire Department..

2.5 The Association will provide the Department with appropriate forms to comply with reporting requirements of this agreement.

3 - RESPONSIBILITIES OF THE DEPARTMENT

3.1 The City will maintain adequate records to provide the Association with an annual report by April 1, 2010

3.2 The City will report to the Association in a format specified by the Association, a list of all equipment purchased with the (\$7,600.00) cash distribution.

3.3 The City will complete an annual survey form provided by the Association.

3.4 The City will provide an activity report to the Association which includes operating expenses, revenues and response data. This report shall be made in the format provided by the Association.

3.5 The City shall meet the "Five Point Contract Requirements" that are attached to this agreement as Exhibit A.

4 - RELATIONSHIP BETWEEN THE PARTIES

4.1 It is agreed and understood between the parties that the Association shall have no right at any time to supervise, manage, direct or control the City or its members in the performance of its services. The City shall be solely responsible for the manner, means and methods by which it operates.

4.2 It is further agreed and understood between the parties that the acts of any agent, employee, volunteer, or member of the City, or any person assisting the City while fighting fires, traveling to and from calls for service, training, or in any manner providing

fire protection services to citizens in the unincorporated areas of the county, may not be considered an agent of the Association or County in any respect.

4.3 The Association shall not be held liable for the acts of the City, any of its agents, employees, volunteers, members, or any person assisting it at any time.

5 - MISCELLANEOUS ITEMS

5.1 This Agreement is not binding until it is executed by all parties to this Agreement.

5.2 This Agreement represents the entire agreement by and between the parties except as otherwise provided in this Agreement. It may not be changed except by written agreement duly executed by all of the parties.

5.3 Neither party shall have the right to transfer or assign his or her interest in this Agreement without the prior written consent of the other party. The parties agree that such consent shall not be unreasonably withheld.

5.4 The captions, numbering sequences, titles, paragraph headings, punctuation, and organization used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it.

5.5 Use of the neuter or the singular to refer to the parties described in this Agreement shall be deemed a proper reference whether a party is an individual, partnership, corporation, association, trust, a group of two or more individuals, partnerships, or corporations, or a joint venture.

5.6 Any grammatical changes required to make the provisions of this Agreement applicable to corporations, associations, partnerships, trusts, individuals, or groups of individuals, and changes required to make the provisions apply to females as well as males shall, in all instances be assumed as though each case were fully expressed. The agreement may contain the wording "he or she" or "his or her". The use of such expressions shall allow the agreement too apply to the masculine or feminine gender as the individual circumstances may require.

5.7 If any word, phrase, clause, or paragraph, or other provision of this Agreement is adjudicated or otherwise found to be against public policy, void, or unenforceable, then those words or provisions shall be deleted or modified in keeping with the express intent of the parties as necessary to render this Agreement valid and enforceable. All such deletions or modifications shall be the minimum required to effect the foregoing and the intent of the parties to this Agreement.

5.8 By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement. This

Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

5.9 If any party to this Agreement is a legal entity, including, but not limited to, an association, corporation, joint venture, limited partnership, partnership, or trust, that party represents to the other that this Agreement and the transactions contemplated in this Agreement and the execution and delivery hereof have been duly authorized by all necessary corporate, partnership, or trust proceedings and actions including, but not limited to, action on the part of the directors, officers and agents of the entity. Furthermore, a corporate party represents that all appropriate corporate meetings were held to authorize the aforementioned obligations and certified copies of all corporate meetings or minutes and corporate resolutions authorizing this transaction have been delivered to all parties to this agreement prior to or at the time of execution of this Agreement.

5.10 This Agreement shall become effective upon its execution by all of the parties. Thereafter, all obligations contained in this Agreement shall be conclusive and binding upon all of the parties. Accordingly, this Agreement shall no longer be considered executory as of the date that all parties have affixed their signatures to it.

5.11 Neither party shall be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "force majeure." The term "force majeure," as used in this Agreement, shall include the following: an act of God, strike, act of a public enemy, war, mines or other items of ordinance, blockage, public rioting, lightning, fire, storm, hurricane, flood, explosions, inability to obtain materials, supplies, labor permits, servitudes, or rights of way, acts or restraints of any governmental authority, epidemics, landslides, lightning storms, earthquakes, washouts, arrests, restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment, and any other cause, whether of the kinds specifically enumerated above or otherwise, which is not reasonably within the control of the parties and which by the exercise of due diligence could not reasonably be prevented or overcome. Events reasonably within the control of the party having the difficulty shall not constitute "force majeure" and shall be remedied with the exercise of due diligence. In the event time limits are not met under this Agreement as a result of "force majeure," the parties agree to an extension of the time limit or deadline for the number of days for which the "force majeure" condition existed. After the "force majeure" condition has ended, the contract shall continue under the same operations and circumstances as existed prior to the "force majeure" event.

5.12 Each party further agrees that it shall take any and all necessary steps and sign and execute any and all necessary documents or agreements required to implement the terms of the agreement of the parties contained in this contract, and each party agrees to refrain from taking any action, either expressly or impliedly, which would have the effect of prohibiting or hindering the performance of the other party to this Agreement.

5.13 It is agreed and understood that any work requested by the parties to this agreement shall be performed under the terms of the Agreement and that all parties are considered independent contractors. Each party is interested only in the results obtained hereunder and has the general right of inspection and supervision in order to secure the satisfactory completion of the work. Neither party shall have control over the other party with respect to its hours, times, employment, or the like. Under no circumstances shall either party be deemed an employee of the other, nor shall either party act as an agent of the other party. Furthermore, the parties to this Agreement warrant that all obligations imposed on them by this Agreement shall be performed with due diligence in a safe, competent, workmanlike manner and in compliance with any and all applicable statutes, rules and regulations. Any and all joint venture or partnership status is hereby expressly denied and the parties expressly state that they have not formed, either expressly or impliedly, a joint venture or partnership.

5.14 This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which when taken together shall constitute but one and the same Agreement. In the event that a comparison of the multiple agreements reveals that the Agreements contain differences or inconsistencies, then the Agreement which is first executed and signed by all of the parties shall be deemed the original Agreement and all other agreements, although duly signed by the parties, shall be deemed inferior and subordinate to the first signed Agreement.

5.15 The failure or delay of either party in the enforcement of the rights detailed in this Agreement shall not constitute a waiver of the rights nor shall it be considered as a basis for estoppel either at equity or at law. That party may exercise its rights under this Agreement despite any delay or failure to enforce those rights at the time the cause of action or right or obligation arose.

5.16 Any and all notices or other communications required or permitted to be given pursuant to this agreement shall be in writing and shall be considered as properly given if sent by facsimile transmission or mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

To: The Galveston County Firefighter's Association
P.O. Box 549
La Marque, Texas 77568

To: The City of Texas City, Texas
Attn: Texas City Fire Department
1801-9th Avenue North
Texas City, Texas 77592-2608

Either party hereby reserves the right to designate in writing to the other party any change of name, change of person, or address to which the notices shall be sent.

5.17 This Agreement and the exhibits attached hereto and incorporated herein, if any, contain the entire Agreement of the parties and there are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the parties to this Agreement other than those set forth herein and duly executed in writing. No agreement of any kind shall be binding upon either party unless and until the same has been made in writing and duly executed by both parties. Upon execution of this Agreement by all parties, all previous agreements, contracts, oral understandings, representations, arrangements, or undertakings of any kind relative to the matters contained in this Agreement are hereby superseded and canceled and all claims and demands not contained in this agreement are deemed fully completed and satisfied.

5.18 This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, executors, administrators, legal representatives, successors and assigns. The parties to this Agreement expressly agree that in the event a party seeks to or does transfer part or all of its assets to a separate entity, not a party to this Agreement, the party shall be liable under this Agreement as if the transfer had not occurred.

5.19 No representations, promises, guarantees or warranties were made to induce either party to execute this Agreement other than those stated in the Agreement.

5.20 If any provision of this Agreement is for any reason held violative of any applicable law, governmental rule or regulation, or if the provision is held to be unenforceable or unconscionable, then the invalidity of that specific provision shall not be held to invalidate the remaining provisions of this Agreement. All other provisions and the entirety of this Agreement shall remain in full force and effect unless the removal of the invalid provision destroys the legitimate purposes of this Agreement, in which event this Agreement shall be cancelled and terminated.

5.21 This Agreement shall be subject to and governed under the laws of the State of Texas. Any and all obligations and payments are due and performable and payable in Galveston County, Texas. The parties agree that venue for purposes of any and all lawsuits, causes of action, arbitrations, or other disputes shall be in Galveston County, Texas.

This Agreement is signed, accepted and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Agreement and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

Galveston County Firefighter's Association

By:

Mike Wisko, *Chairperson* Date

ATTEST:

Joel Sumrall, *Secretary*

City of Texas City, Texas

By:

Matthew T. Doyle, *Mayor* Date

ATTEST:

Pamela Lawrence, *City Secretary*

Joseph A. Gorman, *Fire Chief*

FIVE POINT CONTRACT REQUIREMENTS EXHIBIT "A"

POINT 1: Active Internal Training Program

- Equivalency: Training program must be equivalent to the certification program offered by the State Firemen's and Fire Marshal's Association of Texas.
- Progress Report: The Fire Chief shall submit to the Association an annual progress report of training activities.
- Minimum Number of Drills: The Fire Department must provide a minimum of two (2) drills per month for a minimum of two (2) hours each.

POINT 2: Liability Insurance

- Automobile Liability Insurance: The Fire Department shall provide emergency vehicle insurance coverage for each fire apparatus or vehicle owned and/or operated by the fire department.
- Personal Injury Insurance: The Fire Department shall provide personal injury insurance for all members.
- Certificate of Insurance: The Fire Department shall provide the Association a certificate of insurance as proof of liability insurance.

POINT 3: Annual Report

- Emergency Responses: Provide the Association with a calendar year report of fire responses. Such report shall include a separate report for both incorporated and unincorporated responses.
- Annual Survey: Each department shall complete an annual survey of equipment and resources on a form provided by the Association.
- Annual Financial Report: Each department shall annually provide the Association with a financial cost of services report.
- Projected Budget: Each department shall provide a fiscal projected budget. Such budget shall be divided into EMS and Fire Service.
- Tax Exemption: Each department shall provide the Association with a certification of tax exempt status.

POINT 4: Active in the County Association

- Attendance: Each department shall attend 50% of Association monthly meetings and not be absent more than three (3) consecutive meetings during the term of this contract.
- Attendance: Each department shall attend 50% of Association monthly meetings and not be absent more than three (3) consecutive meetings during the term of this contract.

- Third Party Training: Each department shall provide the Association proof of training by a person or organization not a member of or associated with the Department. Such Training shall be approved by the Training Commissioner.
- New Member Training: Each department shall implement training to all new members with in one year of hire date, an introductory firefighter course that is equivalent to the "Introductory Firefighter" from State Firemen's and Fire Marshals' Association (SFFMA). Proof of compliance shall be in the form of a certificate of completion from the College of the Mainland, a certificate of completion from an approved training academy, or a certificate issued by the SFFMA or Texas Commission on Fire Protection.

POINT 5: Firefighter Safety

- Incident Command: Each department shall implement and provide a current copy of the department's SOG for incident command at emergency incidents.
- Two-In-Two Out: Each department shall implement and provide a current copy of the department's SOG for two-in-two out at emergency incidents.
- Accountability: Each department shall implement and provide a current copy of the department's SOG for personnel accountability at emergency incidents.
- Safety Officer: Each department shall implement and provide a current copy of the department's SOG for safety officers at emergency incidents.