

# **AGREEMENT FOR PERSONNEL, VEHICLES, FACILITIES, EQUIPMENT, AND INVESTMENTS**

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This Agreement for Personnel, Vehicles, Facilities, Equipment, and Investments (the “Agreement”) is made as of the 1st day of October, 2016, by and between the CITY OF DEER PARK, a municipal corporation located in Harris County, Texas, (the “City”) and the DEER PARK FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, a fire control, prevention, and emergency medical services district created under Chapter 344 of the Texas Local Government Code, as amended, (the “Act”) and located in Harris County, Texas, (the “District”). For and in consideration of the mutual covenants herein contained, it is agreed as follows:

## **Section 1. Representations and Warranties of District.**

- a) The District is engaged in an on-going effort to provide new resources to finance programs of the District consistent with Section 344.151 of the Act.
- b) The District covenants that it shall actively work to productively coordinate its activities with the City in an effort to reduce duplication of services.
- c) The District represents and warrants that it has been properly created and is duly authorized pursuant to the Act to enter into this Agreement.

## **Section 2. Description of Programs.**

The City, with the assistance of the District as herein specified, agrees to develop, organize and manage, including entering into and administering all contracts incident thereto, all the costs of a fire control, prevention, and emergency medical services district program, including costs for personnel, administration, expansion, enhancement, and capital expenditures.

Election and audit expense. This District will provide reimbursement to the City for the costs incurred by the City in conducting the election for the District and for annual audit fees.

Persons filling any of the positions created, in part, by the District’s programs mentioned hereinabove shall be employees of the City; and, therefore, subject to the City’s personnel policies and procedures and entitled to the benefits offered by the City to other similarly situated employees, as determined by the City in its sole discretion. As such, the City shall be responsible for the supervision and control of such employees.

### **Section 3. Program Reports.**

The City shall prepare and submit to the District within 30 days after the end of the fiscal year during the term of this Agreement a verbal or brief written report describing the services performed by the City pursuant to this contract during the previous year along with a summary of expenditures for the previous fiscal year.

### **Section 4. Funds to be provided by the District.**

For and in consideration of the services to be provided by the City in furtherance of the District's programs identified in Section 2, the District shall provide the funds to the City for the actual costs of such programs. A summary of the funds to be provided by the District for FY 2016-17 is below. The adopted budget for FY 2016-17 is included in the attached Exhibit A.

<b>Type of Expenditure</b>	<b>Fire Services</b>	<b>EMS</b>	<b>Fire Marshal</b>	<b>Total</b>
Personnel & Related	\$0.00	\$565,740.00	\$84,276.00	\$650,016.00
Services	106,000.00	84,330.00	36,300.00	226,630.00
Supplies	113,100.00	63,066.00	2,000.00	178,166.00
Repairs & Maint.	94,000.00	45,500.00	7,000.00	146,500.00
Capital Outlay	256,000.00	168,000.00	11,000.00	435,000.00
<b>Total Expenditures</b>	<b>\$569,100.00</b>	<b>\$926,636.00</b>	<b>\$140,576.00</b>	<b>\$1,636,312.00</b>

Unless otherwise provided, all payments required to be made herein shall be payable on or before 30 days after the District receives the sales and use tax levied pursuant to the provisions of the Act from the State comptroller. While the District receives such funds from the State on a monthly basis, the District's obligations under this Agreement are on a yearly basis. As such, any funds received by the District during an agreement year and/or any prior year shall be applied to the actual expenses incurred during each year, regardless of when they are received.

The City understands and agrees that the District's obligation for payment under this Agreement shall at no time exceed the amount of sales and use tax revenue received by the District in any agreement year. If adequate funds are not received, the District shall have the obligation to pay the revenues actually received and the City shall be obligated to expend only to the extent that such revenues cover the programs enumerated hereinabove.

### **Section 5. Term.**

This Agreement shall be effective for a period commencing on October 1, 2016, and ending on September 30, 2017, unless sooner terminated by either party hereto pursuant to the terms hereof. The parties reserve the right to extend the term or amend this agreement upon mutual consent of the governing bodies of both parties. Any such extension or amendment of this agreement will be in writing.

## **Section 6. Investments**

The District has adopted an investment policy in compliance with the Texas Public Funds Investment Act, Government Code Ch. 2256 as amended (the "Investment Act"). This investment policy may be amended from time to time but any such amendments shall be in compliance with the Investment Act. The District and the City agree that the City's Director of Finance shall be designated as the investment officer for the District and that all investments of District funds shall be in compliance with Ch. 363, Section 363.206 of the Texas Local Government Code and the Investment Act.

## **Section 7. Termination for Cause.**

A party may terminate its performance under this contract only upon default by the other party. Default by a party shall occur if the party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred shall have the right to terminate all or part of its obligations under this contract as of the 30<sup>th</sup> day following the receipt by the defaulting party of a notice describing such default and intended termination, provided: (1) such termination shall be ineffective if within said 30-day period the defaulting party cures the default, or (2) such termination may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default.

Upon the termination of this Agreement, both parties shall be relieved of their respective obligations herein stated. This Agreement shall not be subject to termination for convenience.

## **Section 8. Force Majeure.**

Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for the period of any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Agreement for the payment of funds allocated for the District's programs. The causes referred to above are strikes, lockouts, labor disputes, failure of power, acts of God, acts of public enemies of this State or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls, casualties or other causes beyond the reasonable control of the party obligated to perform.

## **Section 9. Refund and Payment upon Termination.**

Upon termination of this Agreement pursuant to Section 7 hereof due to an uncured default by the City, the City hereby agrees to refund all unexpended, unappropriated monies previously paid by the District to the City pursuant to this Agreement. If at the time of termination the District owes the City monies, the District shall remit to the City the appropriate amount computed as of the effective date of the termination.

**Section 10. Parties in Interest.**

This contract shall bind and benefit the City and the District and shall not bestow any rights upon any third parties.

**Section 11. Non-waiver.**

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce, by an appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

**Section 12. Compliance with Applicable Laws.**

The parties hereto shall comply with all rules, regulations, and laws of the United States of America, the State of Texas, and all laws, regulations, and ordinances of the Deer Park as they now exist or may hereafter be enacted or amended.

**Section 13. Choice of Law; Venue.**

This contract is subject to and shall be construed in accordance with the laws of the State of Texas, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction. This contract is performable in Harris County, Texas.

**Section 14. Notices.**

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address described below or at such other address as the receiving party may have theretofore prescribed by notice to the sending party:

District

Deer Park Fire Control, Prevention, and Emergency Medical Services District  
Attn: President, Board of Directors

City  
City of Deer Park  
Attn: City Manager  
P. O. Box 700  
Deer Park, Texas 77536-0700  
Fax: (281) 478-7218

**Section 15. Ambiguities.**

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

**Section 16. Captions.**

The captions of the sections and subsections, if any, of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any part or parts of this Agreement.

**Section 17. Entire Agreement.**

This Agreement contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties. Any oral representations or modifications concerning this instrument are of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

**Section 18. Assignment or Transfer of Rights or Obligations.**

The City shall not sell, assign, or transfer any of its rights or obligations under this Agreement in whole or in part without prior written prior consent of the District.

**Section 19. Severability.**

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

**Section 20. Authority.**

The officers executing this Agreement on behalf of the parties hereby represent that such officers have full authority to execute this Agreement and to bind the party he/she represents.

IN WITNESS WHEREOF, the parties have made and executed this contract in multiple copies, each of which shall be an original.

**CITY OF DEER PARK**

**DEER PARK FIRE CONTROL,  
PREVENTION AND EMERGENCY  
MEDICAL SERVICES DISTRICT**

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JERRY MOUTON, Mayor

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SAM PIPKIN, President

ATTEST:

ATTEST:

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SANDRA WATKINS, City Secretary

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