

**FIRE PROTECTION AGREEMENT**  
**By and Between Pecan Grove Volunteer Fire Department**  
**and Fort Bend County MUD No. 118**

This Fire Protection Agreement (the "Agreement") is entered into this 14<sup>th</sup> day of September, 2015 by and between Pecan Grove Volunteer Fire Department (the "VFD"), a Texas nonprofit corporation currently recognized by the Internal Revenue Service as exempt from federal income taxation pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended, by reason of being described in Code Section 501(c)(3), and Fort Bend County Municipal Utility District No. 118 (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Texas Constitution and operating pursuant to Chapters 49 and 54 of the Texas Water Code.

RECITALS

The District is located within the extraterritorial jurisdiction of the City of Houston, Texas ("Houston"), but outside its corporate limits. The District includes the subdivisions known as Waterside Estates and Waterside Village (collectively referred to herein as "Waterside"). Waterside receives fire protection services from the VFD and pays voluntary contributions to the VFD. The District desires to contract with the VFD in order to continue to receive fire protection services for Waterside.

The Board of Directors of the District has determined that the VFD can provide reliable and prompt Fire Protection Services to customers within the District located in the Waterside. The Board of Directors believes it is in its best interest of the District to obtain a binding contractual agreement with the VFD for fire protection pursuant to Section 49.351(e) of the Texas Water Code.

The District intends to request the approval by the Texas Commission on Environmental Quality ("TCEQ") of a Fire Plan based on this Agreement and following such approval submit to the District's voters for approval of the Fire Plan and the Agreement.

NOW, THEREFORE, the District and the VFD hereby covenant and agree as follows:

Section 1. Definitions. Unless the context indicates otherwise, the following words and phrases used in this Agreement shall have the meanings ascribed thereto:

"District" means Fort Bend County MUD No. 118.

"Effective Date" means the day the District canvasses election returns which result in an election which passes to approve the Fire Plan. If a Fire Plan election does not pass, this Agreement will automatically terminate with no further obligations on either Party.

"Equivalent Single-Family Connection" or "ESFC" means a single family home or a single apartment unit, or for commercial non-residential accounts means an amount of water capacity used by such user converted into ESFCs by the District.

"Fire Plan" means the fire plan submitted by the District to the TCEQ to approve a mandatory Fire Protection Services Fee and the agreement for Fire Protection Services.

"Fire Protection Services" means fire suppression, protection and rescue, and Medical First Responder services provided by the VFD to persons and property, and may include EMS or ambulance transport services.

"VFD Service Area" means the area described above and as shown on the attached map as **Exhibit "A"**.

"TCEQ" means the Texas Commission on Environmental Quality.

"VFD" means Pecan Grove Volunteer Fire Department.

Section 2. Fire Protection Services.

(a) The Parties acknowledge that the VFD has been providing Fire Protection Services to Waterside. During the term of this Agreement, the VFD will provide Fire Protection Services in the District to persons, buildings, and property located within the VFD Service Area. The VFD will provide Fire Protection Services to the District in the same manner and with the same standard of care.

(b) In providing Fire Protection Services to the District, the VFD will follow its adopted standard operating procedures, subject to its right and discretion, without being in breach of this Agreement and without liability to the District or its occupants or customers, to determine:

- (1) whether Fire Protection Services are needed in a particular case;
- (2) whether and when personnel or equipment are available to respond to a request for Fire Protection Services;
- (3) the order in which to respond to requests for Fire Protection Services; and
- (4) the time in which to respond to a request for Fire Protection Services.

(c) The District assumes no responsibility for the reliability, promptness, or response time of the VFD. The District's sole obligation for provision of Fire Protection Services to its customers is to make monthly payments as described below.

(d) The VFD agrees that during the term of this Agreement, it will conduct an annual audit of its books and records by a competent, independent, third party Certified Public Accountant. Any irregularities or management letter recommendations shall be promptly addressed by the VFD and failure to do so shall entitle the District to terminate this Agreement. The VFD shall provide a copy of the annual audit, including the opinion and management letters, to the District within thirty (30) days following approval. After review of the VFD's audit, the District has the right to hire, at its sole expense, another independent third party Certified Public Accountant to conduct an audit of the VFD. In such event, the VFD shall cooperate with the District and its Certified Public Accountant and shall timely provide records as requested by the District's auditor.

Section 3. Facilities and Equipment.

(a) As of the date of this Agreement, the VFD has two (2) existing fire stations. The VFD currently owns four (4) pumpers (engines that carry the water hoses), one (1) booster truck, two (2) squad trucks, two (2) command vehicles, and other necessary equipment for the operation of its stations and trucks. In providing Fire Protection Services to the District, the VFD shall be solely responsible for the operation and maintenance of its facilities and equipment.

(b) This Agreement shall not obligate the VFD to construct or keep any fire stations, fire trucks, fire equipment or fire personnel within the District or to designate, reserve, or devote all or part of the VFD's Fire Department's trucks, equipment, or personnel exclusively to or for the use of the District in carrying out this Agreement, but the VFD will use its best efforts to comply with State standards regarding fire suppression equipment.

(c) The parties acknowledge that in conducting fire suppression efforts on property located in the District, the VFD will use the fire hydrants, connections, and water supply and distribution systems (the "water distribution system"), and water supply available in the District, but the VFD shall not be responsible for providing for, constructing, inspecting, maintaining, or repairing any part of the water distribution system in the District and the VFD shall not be liable to the District or any District customer for any deficiency or malfunction of the water distribution system located in the District.

(d) The District makes no representations and assumes no responsibility for the type, quality, sufficiency or qualifications of the VFD's Fire Protection Service equipment used to serve the District.

Section 4. Employees and Staffing. The VFD shall provide employees and determine the number and kind of employees in order to meet minimum state qualifications to perform the Fire Protection Services required by this Agreement. The District assumes no responsibility for the actions of the VFD's employees in performing their fire protection duties. The District will make no recommendations and is in no way responsible for the sufficiency or qualifications of the VFD's employees. The VFD's fire stations shall be staffed consistent with State standards to maintain an ISO rating of at least 3 for the area within the District. Failure to maintain such rating shall constitute a default of VFD's duties under this Agreement.

Section 5. Payment for Fire Protection Services.

(a) In general, the District will make monthly payments to the VFD as set forth herein. In consideration of the VFD providing Fire Protection Services, the District agrees to make monthly payments ("Monthly Payments") to the VFD as follows: The District shall pay to the VFD a monthly charge of \$11.00 for each residential ESFC in the District.

(b) The Monthly Payments shall commence within sixty days after the Effective Date, and will remain effective until September 30, 2016, or the first September 30 following approval of the Fire Plan by the District voters, whichever comes later. The monthly fee shall be due by the last day of each month. The District shall deduct from each monthly payment to the VFD the amount of \$300 which shall cover the administrative cost incurred by the District for the services incurred by the District to collect the fee. All monthly payments shall be paid by the

District to the VFD without notice or demand at the offices of the VFD located at 727 Pitts Road, Richmond, Texas, 77406 unless the District is notified otherwise. The monthly fire protection customer fee and the \$300 administrative services fee may be adjusted annually in accordance with this Agreement.

(c) The parties acknowledge that this is a mandatory monthly fee imposed on District customers pursuant to the Fire Plan voted on by the registered voters of the District. The District assumes no responsibility or liability to the VFD or to any District customer as to whether customers are able to deduct the mandatory fee payment to the District from their federal income taxes. The VFD understands and expressly agrees that substantiation of any charitable contribution for federal income tax purposes is entirely the responsibility of the VFD and the District has no responsibility or liability whatsoever there for to the VFD or to any customers. The VFD further understands that the District, as a political subdivision of the State of Texas, even though the District is collecting the approved voted mandatory monthly fee and is making payment to the VFD, the District is not under any circumstances serving as a fiduciary for or to the VFD.

(d) On or before June 30 of each year during the term of this Agreement, the VFD shall prepare a detailed budget to take effect November 1. All revenues received by the VFD shall be budget line items, and the expenses shall include reasonable replacement reserves for fleet and facilities. During July, representatives of the VFD and the District shall meet to discuss the proposed budget and adjust accordingly. Such representatives shall submit for review by the District the budget. The budget shall establish a Fire Protection Services Fee for the next year. The formula for establishing the yearly Fire Protection Services Fee shall be: total expenses in the approved VFD budget divided by the number of ESFCs served by the VFD. At the District's budget workshop the District will review the VFD budget and proposed Fire Protection Services Fee. The VFD shall make every reasonable effort to prevent the annual increase from exceeding the prior year's CPI for the Houston Urban Area percentage increase. If, in any year, the District does not approve the VFD budget, the District shall continue to collect the then-established Fire Protection Services Fee until this Agreement is otherwise terminated. In such event, representatives of the parties shall continue to meet and attempt to re-submit an acceptable budget. The preceding text of this paragraph notwithstanding, the parties agree that the Fire Protection Services Fee paid by District residents served by VFD shall be equal to that paid by residents of Pecan Grove Municipal Utility District.

Section 6. Fire Plan. The parties recognize that before this Agreement becomes effective, the District must develop a fire plan in accordance with Section 49.351, Texas Water Code, and the rules of the TCEQ, submit the plan to the TCEQ for its approval, call an election in the District and obtain voter approval of the plan. The District will use its best efforts to timely develop and obtain TCEQ approval and call an election for voter approval of a fire plan in accordance with the terms of this Agreement.

Section 7. Term and Termination. This Agreement will be in full force and effect upon the Effective Date. Once effective, the Agreement will continue in effect for fifteen (15) years (the "Initial Term") and shall be automatically renewed thereafter for successive one-year terms; provided, however, notwithstanding anything contrary in this Agreement, either party may terminate this Agreement by giving written notice to the other of at least ninety (90) days.

Further, the District may terminate this Agreement as specifically provided for herein, and the VFD may terminate this Agreement if the District fails to pay the monthly fees due herein. This Agreement shall terminate immediately in the event the District is annexed and dissolved by Houston.

Section 8. Default. Either party may declare a default hereunder if either party fails, refuses, or neglects to comply with any of the terms of this Agreement. If a party declares a default of this Agreement, this Agreement shall terminate after notice and opportunity to cure as provided for herein. The party declaring a default shall notify the other party of any default in writing in the manner prescribed herein. The notice shall specify the basis for the declaration of default, and the party shall have thirty days from the receipt of such notice to cure any default (except when curing the default requires activity over a period of time in excess of 30 days, performance shall commence within 30 days after the receipt of notice, and such performance shall be diligently continued until the default is cured). At the end of such 30 day cure period, if the District, in its sole discretion, determines the default is not cured, the District shall give the VFD notice of immediate termination. The District may, in its sole discretion, extend the cure period.

Section 9. Notice. All notices shall be in writing and given by certified mail with return receipt requested, with receipt as of the date of the signed receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, unless changed as hereinafter provided, be as follows:

If to the VFD:                   727 Pitts Road  
  Richmond, Texas 77406  
  Attn: Fire Chief

If to the District:           Fort Bend County MUD 118  
  c/o Smith Murdaugh Little & Bonham, LLP  
  2727 Allen Parkway, Suite 1100  
  Houston, TX 77002-5211

The parties shall have the right to change their respective addresses and each shall have the right to specify their respective new addresses by at least fifteen (15) days written notice to the other party.

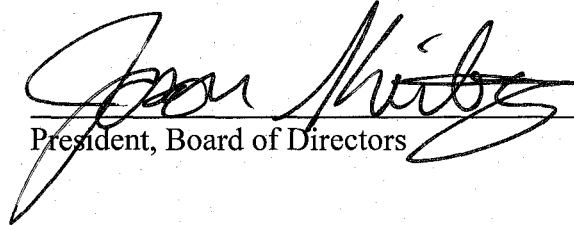
Section 10. No Additional Waiver Implied. No waiver or waivers of any breach or default or any breaches or defaults by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances. The VFD and the District specifically reserve all defenses, immunities and privileges accorded by law.

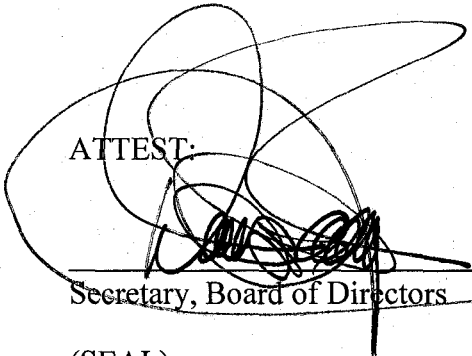
Section 11. Modification. This Agreement shall be subject to change or modification only with the written mutual consent of the parties hereto.

Section 12. Agreement Not for Benefit of Third Parties. This Agreement is not intended to benefit any party other than the parties to this Agreement or to impose any duty upon the VFD or the District toward any person or entity not a party hereto.

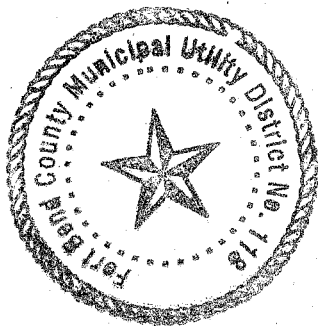
IN WITNESS WHEREOF, the parties have executed this Agreement in multiple copies, each of which shall be deemed an original as of the date and year first written above, to be effective as of the date specified herein.

FORT BEND COUNTY MUD NO. 118

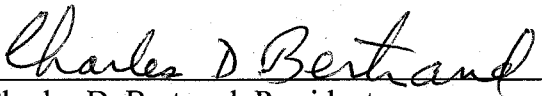
  
\_\_\_\_\_  
President, Board of Directors

ATTEST:  
  
\_\_\_\_\_  
Secretary, Board of Directors

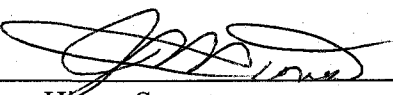
(SEAL)



PECAN GROVE VOLUNTEER FIRE  
DEPARTMENT

  
\_\_\_\_\_  
Charles D. Bertrand, President

ATTEST:

  
\_\_\_\_\_  
James Hines, Secretary

# Exhibit A

## VOLUNTEER FIRE DEPARTMENT SERVICE AREA



1 inch equals 600 feet

Aerial Imagery flown 01/2014

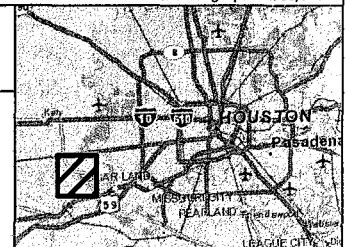
Disclaimer: This product is offered for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property, governmental and/or political boundaries or related facilities to said boundary. No express warranties are made by Jones | Carter, Inc. concerning the accuracy, completeness, reliability, or usability of the information included within this exhibit.



**F.B.C.M.U.D. No. 118**  
FORT BEND COUNTY, TEXAS

### LEGEND

- District Boundary
- FBCAD Parcels



### VICINITY MAP

Scale: 1 inch equals 5 miles



**JONES | CARTER**

Texas Board of Professional Engineers Registration No. F-439