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**Consent-County Attorney
Precinct 3**

Commissioners Court-Regular Meeting

TO: Montgomery County Commissioners Court

FROM: BD Griffin, County Attorney

DATE: 01/12/2021

SUBJECT: Accept and record fully executed Interlocal Cooperation Agreement between Montgomery County, Texas and The Woodlands Township for Law Enforcement Services in the Event of Incorporation.

Attachments

Incorporation

INTERLOCAL COOPERATION AGREEMENT
Between Montgomery County, Texas and The Woodlands Township
for Law Enforcement Services in the Event of Municipal Incorporation

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into by and between Montgomery County (“County”), a political subdivision of the State of Texas, acting through its Commissioners Court, and The Woodlands Township, a special purpose district and political subdivision of the State of Texas, duly created and operating pursuant to Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended (“Township”), acting through its Board of Directors (“Board”) on behalf of itself and a municipality that may be formed in the future substantially comprising the area within the Township to be named the City of The Woodlands or other named municipality (“City”). The County and the Township are hereinafter collectively called the “Parties.”

Recitals

- A. This Agreement sets forth the terms and understanding between the County and the Township regarding the supplemental law enforcement services currently provided by the County to the Township and the transfer and assumption of such services by the incorporated municipality as the successor to the Township in the event that the residents of the Township vote to incorporate all or substantially all of the area of the Township as a municipality.
- B. Residents of the Township may consider incorporation of the Township area at a future date. The County does not advocate for or against any proposed incorporation, and maintains that the decision to incorporate rests with the voters and constituency of the Township.
- C. The Township commissioned studies regarding the process and costs of incorporation, including the costs for governmental services that are currently provided by the County but which will be required to be provided by a municipality upon incorporation.
- D. As of the date of this Agreement, there is no date set for an election for the residents of the Township to consider incorporation. The County and the Township enter into this Agreement to aid the Township and its residents in the determination of if, when and how the ballot for incorporation may be presented to the Township residents.

AGREEMENT

NOW THEREFORE, in consideration of their mutual covenants and agreements, the Parties agree as follows:

Section 1. Definitions

- 1.01. "County" means Montgomery County, Texas, a political subdivision of the State of Texas.
- 1.02. "Township" means The Woodlands Township, a special purpose district and political subdivision of the State of Texas, duly created and operating pursuant to Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended.
- 1.03. "City" means a municipality that may be formed in the future substantially comprising the area within the Township to be named the City of The Woodlands or other named municipality.
- 1.04. "Incorporation" or "Date of Incorporation" means the date upon which the Township Area, or any part thereof, becomes a municipality under the laws of the State of Texas.
- 1.05. "MSCO" or "Sheriff" means Rand Henderson, Sheriff of Montgomery County, Texas, and his successors in office.
- 1.06. "Supplemental Law Enforcement Positions" means the full-time commissioner contract personnel from the MSCO providing supplemental law enforcement services to the Township pursuant to the Law Enforcement ILA in effect on the date of Incorporation.
- 1.07. "Direct Law Enforcement Positions" means the MCSO positions directly assigned to the Montgomery County Sheriff's District 6 – The Woodlands Operations funded directly by the County without supplemental contribution by the Township and excludes the Supplemental Law Enforcement Positions.
- 1.08. "Township Area" means the geographical limits of the Township as the same may exist in the future.
- 1.09. "Law Enforcement ILA" means the Interlocal Cooperation Agreement, if any, pertaining to supplemental law enforcement services between the County and the Township in effect on the date of Incorporation.
- 1.10. "Current LE Agreement" means the Interlocal Cooperation Agreement pertaining to supplemental law enforcement services between the County and the Township in effect on the date of this Agreement.
- 1.11. "Law Enforcement Incorporation Transition Period" means the period of time beginning with the incorporation of the City as a general law city and continuing until September 30th of the fifth calendar year after the Date of Incorporation; for example, if Incorporation occurs in November 2022, the Law Enforcement Incorporation Transition Period will end September 30, 2027.

1.12. "Direct Personnel Costs" means (1) the base salary of each deputy or commissioned personnel comprising the Supplemental Law Enforcement Positions and/or Direct Law Enforcement Positions as set by the County (including certificate, STEP and longevity pay), in the County's sole discretion; (2) the cost of any overtime incurred will be paid as agreed between the MCSO and the Township up to the authorized overtime budget; (3) FICA at the applicable rate, currently 7.65% of gross salary on each contracted County employee regardless of position; (4) retirement benefits which are currently 12.27% of gross salary on each contracted County employee, but subject to annual modification as approved by the Montgomery County Commissioners Court during' the term of this Agreement; (5) medical, life, and worker's compensation insurance premium on each contracted County employee, plus an unemployment compensation fee, currently \$207 per County employee per year but subject to annual modification as approved by the Montgomery County Commissioners Court during the term of this Agreement; and (6) Cost of changes to the listed benefits paid and granted to contracted County employees which may be adopted by County during the term of this Agreement.

1.13. "County Fiscal Year" means the time in each calendar year from October 1st to September 30th of the following calendar year.

1.14. "Effective Date" means the last date this document is executed by all the parties.

Section 2. Incorporation as Municipality

2.01. Requirement of Election: Pursuant to the general laws of the State of Texas and the Township's enabling legislation, in order for the Township to become a municipality the registered voters of the Township must elect to incorporate as a general law city and to approve a maximum initial tax rate at a duly called election on a general election date.

2.02. Agreements effective upon affirmative votes to incorporate: The provisions of this Agreement pertaining to the continuation and transition of services provided by the County to the Township and to the residents of the Township prior to incorporation of the City are contingent upon affirmative votes to incorporate and to set the maximum initial tax rate for the City.

2.03. City bound by Agreement of Township: Throughout this Agreement, the City will be for all purposes recognized as the Township's legal successor-in-interest in accordance with Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended, such that upon incorporation as a municipality, (a) the City will be bound to this Agreement the same as if the City was a party to this Agreement; (b) the obligations of the Township under this Agreement will be assumed by the City, and (c) the obligations of the County under this Agreement will inure to the City.

Section 3. Law Enforcement Services

3.01. Law Enforcement Positions subject to Agreement. As of the date of this Agreement, the Current LE Agreement provides for ninety-two (92) Supplemental Law Enforcement Positions and nineteen (19) Direct Law Enforcement Positions. This Agreement includes and affects the

Supplemental Law Enforcement Positions and the Direct Law Enforcement Positions in existence at the time of Incorporation regardless of the then current number of respective positions.

3.02 Law Enforcement Positions not subject to Agreement. This Agreement does not include or affect any MCSO positions not included as a Supplemental Law Enforcement Position or Direct Law Enforcement Position.

3.03. Transition of Direct Law Enforcement Positions. Upon Incorporation, the County's Direct Personnel Costs associated with the County's Direct Law Enforcement Positions will be transitioned to the City during the Law Enforcement Incorporation Transition Period, as follows:

- 1) From the Date of Incorporation to the end of the then current County Fiscal Year, the County will continue to fund one hundred percent (100%) of the personnel costs of the Direct Law Enforcement Positions;
- 2) The City will fund one hundred percent (100%) of the personnel costs of the Direct Law Enforcement Positions beginning with the County Fiscal Year following Incorporation.
- 3) Prior to the County adopting its budget for each year within the Law Enforcement Incorporation Transition Period, the Parties will agree to reduced staffing of County provided Direct Law Enforcement Positions, if appropriate, based on the City's internal hires in accordance with Section 3.05 hereof.

3.04. Transition of Supplemental Law Enforcement Positions. Upon Incorporation, the County's Direct Personnel Costs associated with the County's Supplemental Law Enforcement Positions will continue to be paid by the City during the Law Enforcement Incorporation Transition Period in the same manner as the Law Enforcement ILA.

3.05. Reduction of Supplemental Law Enforcement Positions. As of the date of this Agreement, the Township Board of Directors selected a "Hybrid Model" for the transition of Law Enforcement Services. The schedule below restricts the number of Supplemental Law Enforcement Positions that can be unilaterally reduced by the City during the Law Enforcement Incorporation Transition Period. After Incorporation, the City will not unilaterally reduce the number of Supplemental Law Enforcement Positions by more than the positions shown in the following schedule:

- (a) The City will continue to fund 100% of the Supplemental Law Enforcement Positions in the County Fiscal Year in which Incorporation occurs and in subsequent years subject to the provisions of this section;
- (b) The City may reduce a maximum of twenty percent (20%) of the Supplemental Law Enforcement Positions in first County Fiscal Year following Incorporation;
- (c) The City may reduce a maximum of an additional thirty percent (30%) of the Supplemental Law Enforcement Positions (cumulative 50%) in the second County Fiscal Year following Incorporation;

- (d) The City may reduce a maximum of an additional thirty percent (30%) of the Supplemental Law Enforcement Positions (cumulative 80%) in the third County Fiscal Year following Incorporation;
- (e) The City may reduce a maximum of an additional twenty percent (20%) of the Supplemental Law Enforcement Positions (cumulative 100%) in the fourth County Fiscal Year following Incorporation;

The Chart below provides an example of the maximum Supplemental Law Enforcement Positions which the City can remove in any given year.

County Fiscal Year	Number of Personnel	Maximum Reduction by percent	Remaining in Agreement if all prior reductions made
1 (Year of Incorporation)	92	0%	92
2	92	20% = 18	74
3	74	30% = 28	46
4	46	30% = 28	18
5	18	20% = 18	0

In the Fifth Year immediately following Incorporation, the Hybrid Model will be fully implemented by the City, and the City shall no longer be responsible for funding any of the Supplemental Law Enforcements Positions and the County and/or Sheriff will not be supplying any supplemental law enforcement services other than those specified in Section 3.09 hereof and those generally provided by the County in incorporated areas of the County, unless a separate interlocal cooperation agreement is signed.

The City is not obligated to reduce any number of Supplemental Law Enforcement Positions. The City may not exceed the maximum reductions in any single year regardless of whether the City did not make any reductions or did not make the maximum reductions in any prior County Fiscal Year, i.e. the City's right to remove Supplemental Law Enforcement Positions from the Interlocal Cooperation Agreement for law enforcement services is not cumulative. Notwithstanding the foregoing, the City and County may mutually agree to reductions of Supplemental Law Enforcement Positions in excess of the amounts provided hereinabove.

The City shall provide written notice to the County and the Sheriff of the number of Supplemental Law Enforcement Positions the City will be reducing or eliminating in the following County Fiscal Year. The notice must be received by the County and the Sheriff on or before June 1st preceding the County Fiscal Year in which the reductions will be made. The notice shall provide the number of Supplemental Law Enforcement Positions to be reduced or eliminated and the date on which the City desires the reduction to be effective.

3.06. Agreement subject to ILA for Law Enforcement. This Agreement, including the provisions of Section 3, is contingent upon the Incorporation. As a result, the Parties anticipate that the County and the Township and/or the County and the City will have an Interlocal

Cooperation Agreement for law enforcement services in effect at the time of Incorporation and during the Law Enforcement Incorporation Transition Period. The example in the chart shown in Section 3.5 above is an example only. The maximum number of Supplemental Law Enforcement Positions that may be unilaterally reduced by the City is subject to the number of Supplemental Law Enforcement Positions provided by the Interlocal Cooperation Agreement for law enforcement services in effect at the relevant time.

3.07. County Personnel. Notwithstanding any assumption of or payment of the Direct Personnel Costs for the Direct Law Enforcement Positions and/or the Supplemental Law Enforcement Positions by the City or any other provision of this Agreement, all law enforcement personnel filling such positions subject to this Agreement shall remain County employees under the direct supervision of the Sheriff of Montgomery County, Texas.

3.08. Continued Employment and Future Employment. Nothing contained in this Agreement shall be construed to provide continued employment or future employment by the County, the Township, the City or any combination thereof to personnel who currently, or in the future, fill the Direct Law Enforcement Positions and/or the Supplemental Law Enforcement Positions. Nothing contained in this Agreement shall be construed to require any specific number of Direct Law Enforcement Positions and/or the Supplemental Law Enforcement Positions to be maintained or provided by the County, the Township, the City or any combination thereof; provided, however, the County shall not reduce the number of Direct Law Enforcement Positions below the number specified in the Law Enforcement ILA. The number of Direct Law Enforcement Positions and/or the Supplemental Law Enforcement Positions will be determined by the Law Enforcement ILA.

3.09. Jail; Specialty Services. From and after the date of Incorporation, the County will house City detainees in the County Jail upon the same terms and conditions as the County provides for other municipalities in Montgomery County. From and after the date of Incorporation, the County will provide the following specialty law enforcement services in the Township Area to the extent and upon the conditions as the County provides for other municipalities in Montgomery County:

- Communications / Law Enforcement Dispatch
- Detectives / Major Crimes
- K9 Unit
- SWAT Team
- Crime Scene Investigation
- Crime Lab
- Auto Theft Task Force
- Hostage Negotiation

Section 4. General Provisions

4.01. Applicable Law; Venue. The construction, enforcement, interpretation and validity of this Agreement shall be governed by the laws of the State of Texas. The obligations of the

parties are performable and venue for any legal action arising out of this Agreement shall lie in Montgomery County, Texas.

4.02. Headings; Construction. The headings which have been used throughout this Agreement have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "*herein*," "*hereof*," "*hereunder*" and other similar compounds of the word "*here*" when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the County and the Township have contributed substantially and materially to the preparation of this Agreement.

4.03. Invalid Provisions. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.

4.04. Litigation. In the event of litigation between the parties with respect to this Agreement, the performance of the obligations hereunder or the effect of a termination under this Agreement, each party shall bear its own costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees and costs.

4.05. No Waiver of Immunity. Neither the execution of this Agreement nor any other conduct of any Party relating to this Agreement shall be considered a waiver by the Party of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas.

4.06. Legal Holidays. If any date herein set forth for the performance of any obligations by the County, the Township, or the City or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "*legal holiday*" means any federal holiday for which financial institutions or post offices are generally closed for observance thereof and any county or state holiday recognized by the County.

4.07. Nonwaiver. Except as otherwise specifically provided for hereunder, no party shall be deemed to have waived any of its rights hereunder unless such waiver is in writing and signed by the party waiving such right. Except as otherwise specifically provided for hereunder, no delay or omission by any party in exercising any right shall operate as a waiver of such right or of any other right. A waiver on any one occasion shall not be construed as a bar to, or waiver of, any right or remedy on any future occasion. All rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, will be cumulative and may be exercised separately or concurrently.

4.08. Integration; Modification. This Agreement constitutes the entire and final expression of the agreement of the parties hereto and supersedes all previous agreements and understanding of the parties, either oral or written. There are no other agreements, oral or written, between the parties regarding the Property, and this Agreement can be amended only by written agreement signed by the parties hereto and by reference made a part hereof.

4.09. Counterparts; Facsimile or Email Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile or email counterparts of the signature pages.

4.10. Term and Termination. This Agreement will terminate at the earlier of (a) sixty-two (62) months after the Incorporation; or (b) December 31, 2029. Notwithstanding the foregoing, the County may terminate this Agreement on sixty (60) days written notice to the Township if: there is no election for the Township to incorporate as a municipality and to set the maximum tax rate for the City held before December 31, 2024, or 2) there is no election held before December 31, 2024 which results in the incorporation the Township as a municipality.

4.11. Notices and Contact Information.

All notices, requests, demands and other communications under this Agreement shall be given by electronic mail and either (i) overnight courier or (ii) hand delivery addressed as follows:

Montgomery County, Texas:

Mark J. Keough, County Judge
501 N. Thompson St., Ste. 401
Conroe, TX 77301
(936) 539-7812
Mark.keough@mctx.org

With a copy to:

B. D. Griffin, County Attorney
501 N. Thompson St., Suite 300
Conroe, Texas 77301
(936) 539-7828
Bd.griffin@mctx.org

Rand Henderson, Sheriff
1 Criminal Justice Dr.
Conroe, Texas 77301
(936) 538-3457
Rand.Henderson@mctx.org

The Woodlands Township:

Jeff Jones, President/General Manager
2801 Technology Forest Blvd.

The Woodlands, Texas 77381
jjones@thewoodlandstowship-tx.gov

With a copy to:

Roberta Cross, Township Attorney
2801 Technology Forest Blvd.
The Woodlands, Texas 77381
RCross@thewoodlandstowship-tx.gov

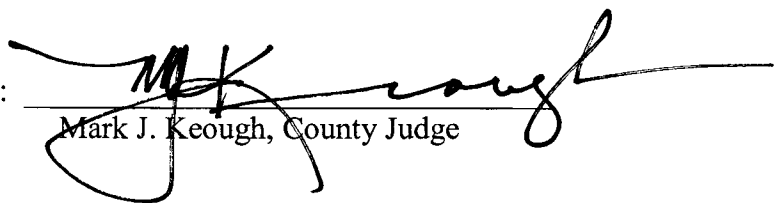
Gordy Bunch, Township Board Chairman
2801 Technology Forest Blvd.
The Woodlands, Texas 77381
gbunch@thewoodlandstowship-tx.gov

4.12. Entire Agreement. This Agreement contains the entire agreement between the Parties relating to its subject matter. Any oral representations or modifications concerning this Agreement shall be of no force and effect. Any subsequent amendment or modification must be in writing, duly authorized and executed by both Parties.

Executed on the respective dates shown below to be effective upon the Effective Date.

MONTGOMERY COUNTY, TEXAS

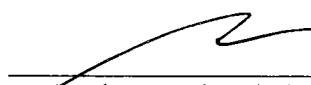
By: _____


Mark J. Keough, County Judge

Date: 12-15, 2020.

THE WOODLANDS TOWNSHIP

By: _____


Gordy Bunch, Chairman

Date: 12/18, 2020.