



1. Findings. The facts and matters set forth in the preamble of this Agreement are hereby found to be true and correct.
2. Purpose. The purpose of this Agreement is to promote and protect public health, safety, and welfare by obtaining real-time data on water levels in order to minimize public and private losses resulting from flood conditions through the area.
3. City's Responsibilities.
  - 3.01 The City shall, by this Agreement, provide the District the use of the Property for the purposes of installing, maintaining, and removing the Gauges and grant the District the temporary rights of entry onto the Property to fulfill the District's construction, maintenance, and removal obligations hereunder.
  - 3.02 The City's Director of Engineering shall timely review the specifications provided by the District pursuant to Section 4.01 of this Agreement.
4. District's Responsibilities.
  - 4.01 Prior to the District's use of the Property as contemplated herein, the District shall provide the specifications of the Gauges, including the mounting hardware, to the City's Director of Engineering for his review and approval.
  - 4.02 After receipt of the City's written approval of the specifications, the District shall, at its sole cost and expense and in compliance with all applicable laws, rules and regulations, install and maintain the Gauges on the Property.
  - 4.03 The District will cause any contractor it uses for the installation, repair or removal of the Gauges on the Property to indemnify, defend, protect, covenant not to sue, release, and save and hold harmless the District and the City as well as their respective officers, agents, and employees from all suits, actions, or claims of any character arising out of or in connection to the use of the Property. Such indemnity shall be approved by both the District and the City. The District will also require any such contractor to carry insurance of the type and limits approved by the Parties and to name the District and the City, as well as their respective officers, agents and employees, as additional insureds.
  - 4.04 The District shall provide prior written notification to the City's Director of Engineering of the District's installation, maintenance, or removal activities on the Property and shall likewise notify the City's Director of Engineering when such activities are complete. Such notification of the commencement of such activities shall include proof of the indemnity and insurance requirements specified in Section 4.03, if applicable.
  - 4.05 During the installation of the Gauges and throughout the term hereof, the City shall have access at all reasonable times to the Property to verify that the Gauges are installed, maintained, and/or removed in compliance with this Agreement.
  - 4.06 In consideration for the privilege of use of the Property, the District specifically assumes any and all liability that may arise due to any site or property defects or other defects arising out of or relating to its use of the Property. The District undertakes and assumes for its officers, agents, and employees, all risk of dangerous conditions, whether patent or latent, obvious or undiscoverable, known or unknown, if any, on or about the Property.

- 4.07 The District shall not allow any lien to be filed against the Property for work, labor, materials or supplies provided or supplied to the District concerning the installation, maintenance, removal, or use of the Gauges on the Property. Should such claim or lien be filed, the District, upon the written request of the City, shall cause such claim or lien covering the Property to be discharged or bonded within thirty (30) days following such request to the satisfaction of the City Manager.
- 4.08 If the City desires to perform any work on the Property, which the City determines, in its sole discretion, requires the removal of a Gauge, the District shall be required to remove the same either:
- (a) within twenty-four (24) hours of receipt of notice from the City to do so for emergency repairs or
  - (b) within two (2) weeks of receipt of notice from the City to do so for non-emergency repairs.

However, notwithstanding these timeframes, if the City is unable to provide notice for an emergency repair, no notice shall be required and the City may remove the Gauge(s) at the District's sole cost and expense and without liability for any damage to the Gauge(s) caused by such removal.

- 4.09 At the end of the useful life, or after non-use of any of the Gauges for a period of thirty (30) days, or after termination of this Agreement, the District shall remove such Gauge(s) and restore the Property to the condition it was in at the time of this Agreement. If the District fails to repair the Property, the City may repair the same at the District's sole cost and expense.
- 4.10 Amounts invoiced by the City pursuant to this Agreement that are not paid within thirty (30) days of the District's receipt will accrue interest at the rate specified in Section 2251.025 of the Texas Government Code.
- 4.11 The District shall pay all costs in the performance of this Agreement and shall make those payments from its current, available revenues.

5. Term. The term of this Agreement is for the useful life of the Gauges unless earlier terminated.

6. Termination.

- (a) Automatic Termination. This Agreement shall terminate if the Gauges are not installed within one (1) year of the Effective Date hereof, unless otherwise extended in writing signed by the Parties hereto.
- (b) Termination. In the event of either Party's failure to comply with any provision of this Agreement, the non-breaching Party may, at its option, terminate this Agreement for cause after giving the breaching Party notice of the breach and a thirty (30) day period to cure the same. If the default remains after the expiration of such thirty (30) day period or any additional period afforded, the non-breaching Party may terminate this Agreement. Within fourteen (14) calendar days of termination, the District shall, at its sole cost and expense, remove the Gauges from the Property and restore the Property in accordance with Section 4.09.

7. Notice. Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been mailed by certified mail, return receipt requested, in a United States Post Office, addressed to the Parties at the following addresses:

City:

City of Friendswood  
910 S. Friendswood Drive  
Friendswood, TX 77546  
Attn: City Manager

District:

Galveston County Consolidated Drainage District  
1605 Whitaker Drive  
Friendswood, TX 77546-4178  
Attn: CEO/General Counsel

8. Complete Agreement. This instrument contains the entire agreement between the City and the District relating to the rights herein granted and the obligations herein assumed. Any modifications concerning this instrument shall be of no force or effect, excepting a subsequent modification in writing, signed by both the City and the District.
9. Severability. If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the provisions hereof. The illegal or invalid provisions will be deemed stricken from this Agreement and deleted to the same extent and effect as if never incorporated herein.
10. No Joint Venture; No Third-Party Beneficiary. This Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture, or trust. Nothing in this Agreement shall entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third-party beneficiary contract.
11. Force Majeure. Neither Party shall be liable for any damage, delay or loss due to Force Majeure. The term "Force Majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the federal or state government, or any civil or military authority, insurrection, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, the partial or entire failure of a Party, or any other causes not reasonably within the control of the Parties.
12. Immunity. It is expressly understood and agreed that, in the execution of this Agreement, the Parties do not waive any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
13. Authority to Bind. Each Party represents and warrants that it has been authorized to enter into this Agreement by its respective governing body. Each Party represents and warrants for itself that the individual executing this Agreement on its behalf has the full power and authority to do so and to legally bind the Party to all the terms and provisions of this Agreement and that this Agreement constitutes the legal, valid, and binding agreement of each Party hereto.
14. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas, and the venue for any cause of action brought shall be in Galveston County, Texas.

EXECUTED in duplicate originals on the dates indicated below. This Agreement shall become effective on the date of the last signature of the Parties hereto (the "Effective Date").

CITY OF FRIENDSWOOD

GALVESTON COUNTY CONSOLIDATED  
DRAINAGE DISTRICT

\_\_\_\_\_  
MORAD KABIRI, City Manager (Date)

\_\_\_\_\_  
RUSTY BURKETT, President (Date)

ATTEST:

ATTEST:

\_\_\_\_\_  
RAQUEL MARTINEZ, City Secretary

\_\_\_\_\_  
JASON JONES, Secretary

## Exhibit "A"

### Description:

Unit:           Simplicity Unit 1  
Size:   13.25 inch tall, 4.625 inch at widest.  
Weight: 4.45 lbs

Mounting Hardware: bolting to bridge railing

### Example of Installed Gauge:

