

## DONATION AGREEMENT

This Donation Agreement Regarding Dam Repair, Design, Maintenance, Operation, Financing, and Bond Elections, (the "Agreement") is entered into as of this 14 day of ~~April~~<sup>May</sup>, 2020 (the "Effective Date"), by and between LAKE MCQUEENEY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, a political subdivision of the State of Texas organized pursuant to Article XVI, Section 59, of the Texas Constitution, and Chapter 51, Texas Water Code, as amended (the "District"), and LAKE MCQUEENEY PROPERTY OWNERS ASSOCIATION, INC., d/b/a FRIENDS OF LAKE MCQUEENEY, a Texas non-profit organization ("FOLM"). The District and FOLM may be individually referred to herein as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, the District was created by the Guadalupe County Commissioners Court on December 17, 2019 and is organized for the general purpose of participating in the repairing of the Lake McQueeney dam and the maintenance and operation of Lake McQueeney within its boundaries; and

WHEREAS, the District, upon confirmation by the voters, will be authorized to issue bonds for the purpose of participating in the repairing, acquiring, and constructing of dam facilities and related improvements (the "Facilities"), but does not have funds on hand for such repairs or associated District operations at the present time; and

WHEREAS, FOLM and the Board of Directors of the District (the "Board") have determined that it is in the best interest of the District to provide for the operation of the District and to participate in the design, construction oversight, and financing of the Facilities although the District does not have sufficient bond funds at this time to provide for such operation or participation; and

WHEREAS, FOLM wishes to donate \$465,000 to the District (the "Donation") for the purposes of the operation of the District and financing the Facilities; and

WHEREAS, pursuant to Section 49.229, Texas Water Code, the District is authorized to accept grants and gratuities from any source and may make and enter into contracts and agreements the Board considers appropriate in connection with acceptance of such grants or gratuities; and

WHEREAS, the District desires to accept the Donation from FOLM pursuant to the terms and conditions set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties contract and agree as follows:

### ARTICLE I DEFINITIONS

**Section 1.01: The Project.** The "Project" shall include assisting in the design, oversight, and financing of the Facilities, whether designed and constructed in phases or at one time, including specifically, but not limited to, all engineering and legal fees and expenses related to the Project and all operating costs of the District.

**Section 1.02: Project Costs.** The "Project Costs" shall mean all costs or expenses associated with the Project, including but not limited to, the costs of overseeing repair design, materials, labor, construction, and inspection; engineering fees and expenses; costs of easements and sites arising in connection with the Project; all payments arising under any contracts entered into with public or private entities as a part of the Project; all costs incurred in connection with obtaining governmental approvals, certificates or permits required as a part of the Project, and all out-of-pocket expenses incurred in connection therewith.

**Section 1.03: Donation Condition.** The "Donation Condition" is the condition that the Donation be applied solely to the Project and Project Costs, as defined above.

### ARTICLE II FUNDING DONATION

**Section 2.01: Donation.** The District hereby accepts the Donation of Four Hundred and Sixty-Five Thousand dollars (\$465,000) from FOLM subject to the Donation Condition.

**Section 2.02: Acceptance of Donation Condition.** The District represents to FOLM that the Board has determined that the Donation amount and the Donation Condition as described in the Recitals hereto and Section 2.01 above are reasonable.

**Section 2.03: Funding Considerations.** The Donation shall be utilized by the District solely to pay expenses related to the Project and Project Costs. The District agrees that it plans to proceed with the confirmation, directors, bond, operation and maintenance tax elections for the District in November of 2020 (the "November 2020 Election"). In the event that the November 2020 Election is unsuccessful, and the District does not call another election, any unspent portion of the Donation shall be refunded to FOLM within 60 days after the failed election and the District's decision not

to proceed with a new election. Should the District go forward with an additional election after an unsuccessful November 2020 Election, and the additional election fails, any unspent portion of the Donation shall be refunded to FOLM within 60 days after the second failed election.

### **ARTICLE III** **MISCELLANEOUS**

**Section 3.01: Recitals Confirmed.** The matters set forth above in the Recitals of this Agreement are found to be true and correct and constitute the agreement of the Parties.

**Section 3.02: Representations.** Each Party represents that it has the full legal authority to enter into this Agreement and that the person signing below on behalf of each Party has full authority to bind such Party by executing this Agreement.

**Section 3.03: No Partnership or Joint Venture.** This Agreement shall not be deemed to create a partnership or joint venture of any sort between the Parties

**Section 3.04: Successors.** This Agreement shall be binding upon the successors or assigns of the Parties upon notice to the other party.

**Section 3.05: Parties in Interest.** This Agreement shall be for the sole and exclusive benefit of the Parties and the public generally and their respective legal successors and assigns, and shall not be construed to confer any benefit or right upon any other party.

**Section 3.06: Interpretations.** This Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement. The Parties agree that this Agreement shall not be construed in favor of or against any Party on the basis that the Party did or did not author the Agreement. Nothing in this Agreement shall be construed to violate any state or federal statutory provision or any provision of the state or federal Constitutions and all acts done pursuant to this Agreement shall be performed in such manner as to conform thereto whether expressly provided or not.

**Section 3.07: Severability.** The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

**Section 3.08: Notices and Addresses.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (a) depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (b) by delivering the same in person to such party; or (c) by sending same by facsimile. Notice given by mail shall be effective three (3) days after deposit in the United States mail, and notice delivered in person or sent by facsimile shall be effective upon receipt. For the purpose of notice, addresses and facsimile numbers of the Parties shall, until changed as hereinafter provided, be as follows

Friends of Lake McQueeney  
P.O. Box 781  
McQueeney, TX 78123  
Attn: Bob Spalten

With a copy to:  
Lake McQueeney Water Control and Improvement District No. 1  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, TX 77027  
Attn: Stephen M. Robinson

The Parties have the right from time to time to change their respective addresses and each has the right to specify as its address any other address upon at least fifteen (15) days written notice to the other Parties.

**Section 3.09: Entire Agreement; Modification.** This Agreement is the entire agreement between the Parties concerning the Donation and other matters covered hereby, and there are no prior effective representations, warranties, or agreements among the Parties with respect thereto. No modification hereof or subsequent agreement relative to this Agreement shall be binding on any Party unless reduced to writing and signed by all of the Parties.

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


FRIENDS OF LAKE MCQUEENEY

By: 

Name:

Title: President

LAKE MCQUEENEY WATER  
CONTROL AND IMPROVEMENT  
DISTRICT NO. 1

By:  \_\_\_\_\_