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FOR IMMEDIATE RELEASE:

City of Piney Point Village sabotages City of Hunters Creek Village's
Storm Drainage System

During the rain event of January 9, 2012 that caused severe flooding on Kemwood Drive in Hunters Creek Village, Hunters Creek discovered that a portion of its multi-million dollar drainage sewer system was malfunctioning. On Monday, January 23, 2012, Hunters Creek began the process of cleaning the recently built storm sewer. It was then that Hunters Creek discovered the extent of Piney Point Village's secret attempt to intentionally plug a major storm drainage system servicing Kemwood Drive. After Hunters Creek vacuumed and cleaned the debris from a drainage pipe approximately 36 inches in diameter and 30 feet in length, Hunters Creek officials discovered that Piney Point had intentionally built an underground brick wall within the 36 inch drainage pipe to block any storm water drainage flowing from Hunters Creek. This blockage reduced the opening of the drainage pipe from its original 36 inches down to just 8 inches. Piney Point's poor design and construction of the brick wall now causes the pipe to become continuously clogged with debris which effectively blocks most of the storm water drainage from entering the system. As a result of Piney Point's intentional actions, the storm drainage system no longer works as it was designed or intended.

As confirmed by Piney Point's Engineer, the Mayor of Piney Point (Peter Nemeth) ordered the secret underground installation with the support of certain Piney Point City Council members. Piney Point has admitted in Court that the underground installation was done in October 2011 without notice to Hunters Creek. As a result of Piney Point's blatant disregard for the health and safety of the residents of Kemwood and Timberglen Drive and the general public who travel Hedwig Road, Hunters Creek filed a lawsuit against Piney Point to remove the blockage. Despite Hunters Creek officials' repeated requests, Piney Point continues to refuse to remove the blockage while admitting that Piney Point would remove the restrictor if Hunters Creek would approve Piney Point's misleading drainage study that is to be filed with the Harris County Flood Control District.

With the flood today, January 25, 2012, Hunters Creek was forced to spend tax dollars pumping water out of the blocked storm sewer onto Hedwig Road and back into the 6 foot by 10 foot box culvert to bypass the blocked drainage pipe.

This dispute goes all the way back to a joint project between Hunters Creek and Piney Point in 2002 where Piney Point requested to build the Soldiers Creek Relief Project through Hunters Creek at substantial savings to Piney Point. In exchange for the drainage route, Piney Point agreed to allow Hunters Creek to connect adjacent streets like Kemwood Drive to the project. Piney Point first proposed an unrestricted 24 inch diameter storm sewer connecting Kemwood

Drive to the drainage system but later agreed to increase it to an unrestricted 36 inch pipe which Piney Point later constructed. Now that Hunters Creek has connected Kemwood Drive to the 36 inch drainage that was built to accommodate the storm water drainage, Piney Point now claims that the pipe should be reduced to 4 inches at least until Hunters Creek Village approves Piney Point's drainage study.

Hunters Creek intends to aggressively pursue its legal rights to have the full unrestricted flow on Kemwood Drive restored.

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CAUSE NO. _____

THE CITY OF HUNTERS CREEK VILLAGE, TEXAS	§	IN THE _____ JUDICIAL DISTRICT
	§	
	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	OF
	§	
THE CITY OF PINEY POINT VILLAGE, TEXAS by and through, THE CITY COUNCIL OF THE CITY OF PINEY POINT VILLAGE and PETER G. NEMETH IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF PINEY POINT VILLAGE, TEXAS	§	
	§	
	§	
<i>Defendants.</i>	§	HARRIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL VERIFIED PETITION FOR BREACH OF INTERLOCAL
CONTRACT, NUISANCE, AND APPLICATION FOR TEMPORARY AND PERMANENT
INJUNCTION**

COMES NOW, the City of Hunters Creek Village, Texas (“Hunters Creek”), Plaintiff in the above-styled and numbered cause, and files this, its Original Verified Petition for Breach of Interlocal Contract, Nuisance, and Application for Temporary and Permanent Injunction complaining of the Defendants, City of Piney Point Village, Texas (“Piney Point”), by and through the City Council of the City of Piney Point Village, Texas (“the Council”), and Mayor Peter G. Nemeth (“the Mayor”), in his official capacity as Mayor of the City of Piney Point Village, Texas, and for cause of action would respectfully show unto the Court the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery, if any, under Level 2 of Rule 190, Texas Rules of Civil Procedure.

II. PARTIES; SERVICE OF PROCESS

2. Plaintiff Hunters Creek is a duly organized Type A, general law municipality located within the state of Texas.

3. Defendant Piney Point is a duly organized Type A, general law municipality located within the state of Texas and may be served with process at 7676 Woodway Drive, Suite 300, Houston, Harris County, Texas 77063-1523 by serving its mayor, Peter G. Nemeth or the City Secretary, Amanda Davenport.

4. Defendant Peter G. Nemeth is the duly elected mayor of the City of Piney Point Village, Texas, and may be served, in his official capacity, with process at 7676 Woodway Drive, Suite 300, Houston, Harris County, Texas 77063-1523 or at his place of business at 5 Houston Center, 17th Floor, 1401 McKinney Street, Suite 1700, Houston, Harris County, TX 77010.

III. JURISDICTION, VENUE, AND STANDING

5. Venue is mandatory in Harris County, Texas, because all of the events giving rise to this litigation occurred in Harris County. TEX. CIV. PRAC. & REM. CODE § 15.003(a)(1)-(3). Piney Point is a political subdivision located in Harris County, Texas, and the Mayor of Piney Point resides in Harris County. *Id.*

IV. SUMMARY

6. In December 2011 Piney Point installed a restrictor on a jointly shared storm sewer which Piney Point knew would cause flooding within the City of Hunters Creek Village and which did cause extensive flooding on January 9, 2012. Hunters Creek requests that (1) Piney Point be enjoined from interfering with the Hunters Creek drainage system, that (2) a mandatory injunction issue to Piney Point to remove the restrictor located in the vicinity of Kemwood Drive, and (3)

Piney Point be enjoined from interfering with Hunters Creek's inspection of the storm sewer at the location within Piney Point through which Hunters Creek's storm sewer drains off of Kemwood Drive.

V. FACTUAL BACKGROUND

7. This dispute stems from a flood control improvement project known as the "Soldiers Creek Relief Project" (hereinafter "the Project"). The Project consists of flood control improvements designed to reduce the flooding potential in a substantial portion of the Soldiers Creek watershed. Piney Point approached Hunters Creek to install a storm sewer system from Piney Point through Hunters Creek with such storm sewer eventually emptying into Soldiers Creek. Hunters Creek obtained storm water drainage capacity, a portion of which is capacity held in reserve to serve Hunters Creek's future drainage needs. Piney Point gained needed sewer improvements at a less expensive cost by being able to go through Hunters Creek rather than around Hunters Creek.

8. The Project is the subject of an Interlocal Agreement (hereinafter "the Contract") pursuant to the authority granted by TEX. GOV'T CODE Chapter 791 executed February 12, 2002, between the Harris County Flood Control District (hereinafter "Flood Control District"), and the cities of Piney Point and Hunters Creek. Paragraph I of the Interlocal Agreement specifically states "if Hunters Creek desires to have constructed certain add-ons to the Project, including interconnection from cross streets to improve drainage within Hunters Creek, the construction plans for such add-ons shall be submitted to Piney Point in a timely fashion and shall be included in the construction plans prior to bidding." Further, paragraph XVI, states specifically that "Piney Point shall not undertake, or cause to be undertaken, any alterations or modifications of improvements constructed pursuant to this Agreement without first securing the approval of the Flood Control

District of the plans and specifications for the same, and the approval of Hunters Creek, where the Project improvements affected are within the corporate limits of Hunters Creek.”

9. The contract was a culmination of negotiations between Hunters Creek and Piney Point that began with a drainage report in 2001, drafted by Roy Dobson. After the contract between Hunters Creek, Piney Point and the Flood Control District was executed, Klotz & Associate Engineers prepared a preliminary engineering report (PER) in April 2003 that excluded some, but not all of Kemwood Drive from the drainage area. In June 2003 interim construction plans of the Project were drawn, which included a 24 inch storm sewer stub into Kemwood Drive to be constructed by Piney Point into Hunters Creek.

10. In December 2004 after 1 ½ years of extensive negotiations, final plans for the Project were made. The 24 inch storm sewer stubbed into Kemwood Drive from Piney Point was increased to a 36 inch storm sewer with an additional nine feet of 36 inch pipe stubbed from the manhole cover further into Hunters Creek. This pipe was to drain Kemwood west into the 6' x 10' box culverts trunk sewer. The final engineering drawings did not contain the PER. This 36 inch pipe is the subject of this litigation.

11. In March 2007 “as built drawings” aka Record Drawings for the Project reflected a 36 inch storm sewer stub constructed into Kemwood’s right-of-way within Hunters Creek’s city limits, as directed by Piney Point.

12. In July 2010 Hunters Creek completed its drainage improvement project drawings to tie Kemwood into the 36 inch storm sewer pipe that had been placed there by Piney Point for the benefit of Hunters Creek.

13. In July 2010 without notice to Hunters Creek, Piney Point submitted a drainage study to the Flood Control District for its drainage improvements seeking to claim all remaining

capacity in the 6' x 10' box culvert available under the Project. Piney Point withheld a copy from Hunters Creek.

14. In December 2010 Piney Point submitted a revised study to the Flood Control District. Piney Point withheld a copy from Hunters Creek.

15. Around January 25, 2011, John Peterson, Piney Point's City Engineer, wrote to Charles Eastland, Hunters Creek's City Engineer, regarding the drainage project on Kemwood, which is a cross street connecting to the Project. In Peterson's email, he stated "Piney Point Village City Council has requested the information identified in the above items numbered 1 - 4 be submitted for review and a properly sized restrictor be installed within ten days. If the City of Piney Point does not receive the requested information and the properly sized restrictor is not installed, the City will install its own restrictor inside the City limits to regulate the flow to the original amount identified and approved in the PER. The proposed (and installed) 36" RCP will be restricted to a 4" pipe to limit the additional amount of flow into Soldiers Creek Bypass."

16. On February 1, 2011, the undersigned attorney sent a demand letter to Piney Point to cease and desist from interfering with the work of Hunters Creek and stated if Piney Point attempted to install or restrict the Kemwood sewer, a lawsuit would immediately be filed against Piney Point seeking to enjoin the installation of the restrictor.

17. Also, on February 1, 2011, Hunters Creek filed an Open Records Request to Piney Point for copies of the studies affecting the Soldiers Creek Bypass. Simultaneously with the Open Records Request to Piney Point, Hunters Creek filed an Open Records Request to the Flood Control District seeking the same information. Although Piney Point had previously filed an original drainage study with the Flood Control District in July 2010 and an amended one in December 2010,

on February 7, 2011, Piney Point replied to Hunters Creek that it had no open records responsive to the request. This was a blatant falsehood.

18. On February 9, 2011, Piney Point filed a retaliatory Open Records Request to Hunters Creek requesting copies of construction plans and “as built” for April Way, another street located within Hunters Creek and connected to the Soldiers Creek Bypass. Pursuant to the Public Information Act, Hunters Creek timely responded.

19. On February 10, 2011, the Flood Control District referred Hunters Creek’s Open Records Request to the Harris County County Attorney seeking to withhold the drainage model.

20. On February 16, 2011, Piney Point submitted an Open Records Request for another street, Inwood Oaks within Hunters Creek and connected to the Soldiers Creek Bypass. Pursuant to the Public Information Act, Hunters Creek timely responded.

21. After the drainage improvements were completed, Hunters Creek reconstructed Kenwood Drive and extended the street cut to the expansion joint located in Hedwig Road in Piney Point. Piney Point issued a verbal stop work order to the Hunters Creek contractor in January 2011. Hunters Creek ceased work at that time. All work had been completed on the Kenwood Drive installation with the exception of a small portion of curb and landscaping. The lack of curb presented an imminent danger to passing vehicles, bike riders, and pedestrians because exposed rebar jettied out from the street. Moreover, a trench several feet wide, also presented an imminent danger because the landscaping was missing.

22. Hunters Creek requested a permit from Piney Point to complete the curb installation but Piney Point never issued such a permit. In order to resolve the imminent dangers that existed, Hunters Creek completed the Kenwood Drive street installation on February 23, 2011, by installing a curb and landscaping.

23. Because Hunters Creek completed pouring the approximate 13 feet of curbing, Piney Point issued a criminal municipal court citation to the mayor and contractor for placement of curb without a Piney Point permit and attempted to prosecute them in Piney Point's municipal court.

24. Notwithstanding previous Open Records Requests to Piney Point, Hunters Creek first learned on March 2, 2011, when the Flood Control District forwarded a letter appealing the Open Records Request to the Texas Attorney General referencing the 2010 model, that a model had been filed with the Flood Control District, but which Piney Point previously had stated that there were no such responsive documents.

25. On March 7, 2011, a joint meeting was held between Hunters Creek and Piney Point. Hunters Creek properly noticed the meeting under the Texas Open Meetings Act by posting an agenda. Piney Point did not post an agenda and a quorum of its council and mayor appeared at the joint meeting in violation of the Texas Open Meetings Act. In that meeting, Piney Point's Mayor, Peter Nemeth, disingenuously stated that they did not produce the modeling reports because they were not available at City Hall; they were at the City Engineer's office. This is a violation of the Public Information Act.

26. On March 15, 2011, Piney Point filed a third version of its drainage model with the Flood Control District and once again withheld a copy from Hunters Creek. On that same day, Piney Point sent a letter to Hunters Creek demanding approval of its drainage study within 15 days. On April 25, 2011, the Flood Control District mistakenly sent a letter to the City of Hedwig Village referencing a third version of the Piney Point drainage study. Piney Point withheld a copy from Hunters Creek.

27. In September 2011 Piney Point submitted the fourth version of its drainage study to the Flood Control District and sent a copy to Hunters Creek because the Flood Control District

previously stated that any approval of Piney Point's study would require the agreement of Hunters Creek. Hunters Creek is the flood plain administrator for water flowing through Hunters Creek, therefore, Piney Point was forced to seek Hunters Creek's approval. At that time, Hunters Creek informed Piney Point that because it had already cost the City of Hunters Creek approximately \$100,000 in engineering and legal fees, that it had no money left in the then budget to review the current project until January 2012 when the new tax payments would come into the City's coffers. As an alternative, Hunters Creek suggested Piney Point pay \$2500 toward the cost of the engineering review and Hunters Creek would expedite the review. Piney Point refused.

28. Without posting a sufficient agenda item, on information and belief, Piney Point met in an illegal executive session in December 2011 and ordered its City Engineer to have constructed a restrictor to plug or reduce the 36 inch drainage pipe on Kemwood Drive.

29. On January 9, 2012, the first significant rain event during the recent drought occurred over the Memorial Villages. Approximately 6 inches of rain fell in a very short period of time. What proved to be an adequate drainage system on the streets constructed with the same methodology as Kemwood, namely April Way and Inwood Oaks, Kemwood, however, had significant flooding. At some points the water was three to six feet deep from the crown of the road and popped manhole covers out of their receptacles. Because of the wisdom and foresight of the engineer for Hunters Creek during the dispute with Piney Point over the drainage, a small relief pipe was connected onto the Kemwood drainage system to drain to the Timberglen drainage system. Otherwise homes would have been flooded, automobiles lost and property damaged.

30. The City engineer and City administrator inspected the flooding on Kemwood and attempted to inspect the adjacent manhole that was within the jurisdiction of Piney Point for the Soldiers Creek Bypass system partially paid for by Hunters Creek. A member of Piney Point City

Council, Dale Dodds, appeared and refused to allow the inspection and ordered Hunters Creek City engineer and City administrator out of the Piney Point drainage system.

31. Coincidentally, on the same date as the “flood event” rainfall, Piney Point’s engineer sent an email to Hunters Creek’s engineer requesting approval of the drainage model. This was an attempt to extort approval of Piney Point’s drainage plan.

32. On January 10, 2012, a telephone call was held between the City engineers of Hunters Creek and Piney Point. When asked directly if a restrictor had been installed in the Kemwood drainage system, John Peterson of HDR/Claunch & Miller Engineering Consultants, (the engineer for Piney Point) admitted that in mid-December he had been given an order by the Mayor and City Council of Piney Point to install a restrictor. Although Peterson had previously threatened to place a restrictor restricting the drainage to a 4 inch orifice, Mr. Peterson claimed that they only reduced it to 12 inches. Against best engineering practices which required the installation of a restrictor at a manhole to allow for easy access and for clean out, the installation was done, on information and belief, by having the workers walk up the 6’ x 10’ box culverts and install it at the joint between the box culvert and the 36 inch pipe. Because of the significance of the flooding, it is believed that the orifice is clogged. No easy access to inspect the restrictor is obtainable because of its location.

33. On information and belief, Piney Point had a meeting to discuss the installation of the restrictor without notice or approval from Hunters Creek or the Flood Control District and Piney Point ordered the installation of the restrictor without notice to Hunters Creek or the Flood Control District. It is believed that Piney Point had to construct the restrictor, not through the manhole cover, which would be open and obvious to the residents of Hunters Creek, but underground and secretively, through the box culvert. Piney Point, upon completion of the restrictor, intentionally

did not notify Hunters Creek, and waited for the next heavy rainfall, thereby endangering life and property of the residents of Hunters Creek and to the general public who traverse Hedwig Road and Kemwood Drive.

VI. APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT RELIEF

34. Hunters Creek seeks and is entitled to have Piney Point, and all persons acting in concert with it, enjoined from installing any type of restrictor on the currently existing 36 inch RCP located at Kemwood and Hedwig that in any way limits Hunters Creek's drainage capacity or the amount of storm water drainage flow into the Soldiers Creek Bypass.

35. Hunters Creek seeks and is entitled to have Piney Point, and all persons acting in concert with it, enjoined to immediately remove any restrictor or other type of device currently existing in the 36 inch RCP located at Kemwood and Hedwig that in any way limits Hunters Creek's drainage capacity or the amount of storm water drainage flowing into the Soldiers Creek Bypass. Plaintiff Hunters Creek and its residents will suffer and have suffered irreparable injury because its storm water drainage system will not function properly and will flood the streets and ultimately cause flooding to one or more residents of Hunters Creek.

36. Consequently, Plaintiff Hunters Creek seeks the following types of injunctive relief: (1) a temporary injunction to restrict and prevent Piney Point from interfering with the inspection of the Soldiers Creek Bypass; (2) a mandatory injunction to remove the restrictor placed therein; and (3) a permanent injunction preventing Defendant Piney Point from installing any similar type of restrictor in the future.

37. Plaintiff Hunters Creek asks that the temporary injunction be set for hearing as soon as possible. Plaintiff Hunters Creek can show as the facts referenced above prove: (1) The existence of a wrongful act; (2) the existence of imminent harm; (3) the existence of irreparable

injury; and (4) the absence of an adequate remedy at law. Any delay which Defendant Piney Point might encounter as a result of the relief requested is nominal, if nonexistent, when compared to the substantial and significant injury Plaintiff Hunters Creek will experience.

38. If Plaintiff Hunters Creek is correct that the existing 36 inch RCP located at Kemwood and Hedwig should not be restricted such that Plaintiff Hunters Creek's storm water drainage capacity is reduced, then Defendant Piney Point will have suffered no injury because it was restrained from enforcing an invalid right.

39. On the other hand, if Defendant Piney Point demonstrates that its attempt to install a 4 inch restrictor at the existing 36 inch RCP at Kemwood and Hedwig is valid and enforceable, then the restrictor can then be reinstalled with no damage or injury to the Defendant Piney Point.

VII. VIOLATION OF THE INTERLOCAL CONTRACT

40. An Interlocal contract was entered into between Harris County Flood Control District, the City of Piney Point Village and the City of Hunters Creek Village on February 12, 2002. Pursuant to paragraph I of the Contract, Hunters Creek paid for the construction of interconnections from cross streets into the improved Soldiers Creek Bypass. Hunters Creek timely paid for these constructions and Piney Point thereby had constructed a 36 inch inlet pipe nine feet into Hunters Creek jurisdiction along with many other streets. Further, pursuant to paragraph 16 of the Contract, Piney Point altered and modified the improvements constructed pursuant to the Contract without notification to Hunters Creek. Piney Point has breached the Contract by installing the restrictor and failing to notify Hunters Creek. Hunters Creek requests that Piney Point be enjoined from further breaching the Contract and to allow the interconnection between Kemwood and the Soldiers Creek Bypass to proceed unimpeded.

41. Piney Point has a duty to perform with care, skill and reasonable expedience the construction, maintenance and operation of the drainage system. Piney Point intentionally failed to observe any of these conditions. The special relationship between Piney Point, the general public and Hunters Creek arose from the element of trust necessary to accomplish the goals of the Contract to properly drain the Soldiers Creek Bypass. Hunters Creek would show that it does not have an adequate remedy at law for damages; and damages would be inadequate compensation. Hunters Creek has performed its part of the bargain and Contract and has paid for the interconnections. To allow Piney Point to continue the restriction of the 36 inch pipe would make it impossible for Hunters Creek to drain Kemwood though it has paid for the privilege.

VIII. PUBLIC NUISANCE

42. Piney Point's actions rise to the level of a public nuisance. By placing a restrictor in Hunters Creek's drainage system, Piney Point created a condition that resulted in an unreasonable interference with a right common to the general public; i.e., to drain Kemwood Drive. To have free access to the public streets of the City of Hunters Creek is a public right available to all members of the general public. Piney Point's actions subvert public health and public order and constitute an obstruction of public rights. Such conduct of Piney Point was unreasonable and was a significant interference with the public health, safety, peace, comfort and convenience of the general public, and specifically, the residents of Hunters Creek. By interfering with the right to traverse the streets of Hunters Creek, Piney Point's conduct is continuing and long lasting and Piney Point knew or should have known its actions would have a significant effect on the drainage of Hunters Creek. Because of the public nuisance caused by the flooding of Kemwood Drive, Hunters Creek seeks to enjoin Piney Point from interfering from Hunters Creek's drainage system, requiring Piney Point to

remove the restrictor placed in the drainage system and enjoin Piney Point from interfering with Hunters Creek's inspection of the Soldiers Creek Bypass.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff City of Hunters Creek requests that Defendants be cited to answer herein and that on final trial of this matter:

- a. Defendants be cited to appear and show cause, and after hearing, a temporary injunction be issued enjoining the Defendants, until a trial on Hunters Creek's request for permanent injunction, prohibiting Piney Point from interfering with the inspection of Piney Point's drainage system on the Soldiers Creek Bypass.
- b. That a mandatory, temporary injunction be issued requiring Piney Point to remove the restrictor it has placed that interferes with Hunters Creek's drainage.
- c. Hunters Creek has a permanent injunction on final trial of this cause enjoining Piney Point from interfering with Hunters Creek's drainage system.

Respectfully submitted,

RANDLE LAW OFFICE LTD., L.L.P


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VERIFICATION

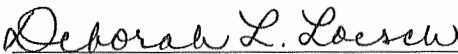
BEFORE ME, the undersigned notary, on this day, personally appeared David A. Wegner, the person whose identity is known to me. After I administered an oath of him, upon his oath, he swore to the following:

1. My name is David A. Wegner. I have never been convicted of any crime or offense.
I am over the age of twenty-one years and am otherwise competent to testify to the facts set forth in this Verification.
2. I am the Mayor of the City of Hunters Creek.
3. I have read the factual statements in Plaintiff's Original Verified Petition for Breach of Interlocal Contract, Nuisance, and Application for Temporary and Permanent Injunction. I swear that all statements of fact within this document are true and correct and within my personal knowledge except for those statements made on my information and belief, which I still believe are true and correct.



David A. Wegner Mayor

SWORN and SUBSCRIBED TO before me this 18th day of January, 2012.



Notary Public in and for the State of Texas

My Commission Expires:
04-12-13

