

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

INTERLOCAL LEASE AGREEMENT FOR FIRE DEPARTMENT HOUSING
FORT BEND COUNTY AND THE CITY OF ROSENBERG, TEXAS

THIS INTERLOCAL LEASE AGREEMENT made and entered into by and between FORT BEND COUNTY, a body corporate and politic under the laws of the State of Texas, acting by and through the Commissioners Court of Fort Bend County (hereinafter "Lessor"), and the City of Rosenberg, Texas, a municipal corporation and home-rule city of the State of Texas, acting by and through its City Council (hereinafter "Lessee").

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform government functions and services; and

WHEREAS, §272.005 of the Texas Local Government Code authorizes a county to lease property to another political subdivision without the necessity of complying with any competitive purchasing procedures; and

WHEREAS, this Agreement is entered into pursuant to the authority, under the provisions of, and in accordance with, Chapter 791 of the Texas Government Code, and Chapter 272 of the Texas Local Government Code for the performance of governmental functions and services; specifically, public health and welfare; and the lease of county-owned property without following requirements competitive bidding procedures.

In consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, those certain premises, being land and improvements located at 4336 Highway 36 South, Rosenberg, Texas, 77471 (hereinafter "Leased Premises").

ARTICLE I
Term of Lease

This Agreement shall commence on upon execution by the last party hereto, and remain in effect through December 31, 2019. Upon expiration, the term may be extended on a month-to-month basis upon agreement of both parties. This Agreement may be terminated by either party for any reason by giving thirty (30) days written notice of the intent to terminate.



ARTICLE II
Rent

Lessee agrees and promises to pay to Lessor the sum of \$1.00 for the term of the Lease. If the Lease Agreement is renewed, the rental amount will be determined upon mutual agreement of Lessor and Lessee.

ARTICLE III
Utilities and Other Expenses

3.01 Lessee will, at its own expense, separately secure and contract for telephone and/or telecommunications services, including local and/or long distance telephone service as well as internet service, which may be necessary to Lessee in its enjoyment and use of the facility.

3.02 Lessee will, at its own expense, separately secure and contract for electricity services. Lessor shall have no obligation to provide such services.

3.03 Lessee will, at its own expense, separately secure and contract for water, sewer and garbage services. Lessor shall have no obligation to provide such services.

3.04 Any costs related to an alarm system or service, elected by Lessee to be installed by Lessee at the facility, shall be the sole obligation of the Lessee. Lessee's obligation shall include obligating Lessee to pay all charges of any kind as to the installation or use of such alarm system or service.

3.05 Lessee shall reimburse Lessor for the cost of pest control for services, if Lessor elects to provide such services. Lessor shall provide an invoice to Lessee for Lessee's reimbursement to Lessor. Lessee shall reimburse Lessor for all costs associated with pest control within thirty (30) calendar days.

3.06 Lessee will be responsible for any and all charges of any kind incurred as a result of the installation, commencement or use of any utility service, (including electricity, telephone and/or telecommunications services, including local and/or long distance service as well as internet service and alarm system or service).

3.07 For purposes of this Agreement, any alarm system, including related sensors, control panels and corresponding annual inspections, requiring installation of hardware or modifications to the building must be approved in writing by Lessor.

3.08 Lessor will provide a monthly invoice by the 15th of each month, due within thirty (30) days of Lessee's receipt. All reimbursable expenses will be made payable in the form of a check or money order to Fort Bend County, Attn: Facilities 301 Jackson St. Richmond, TX. 77469.

ARTICLE IV

Use

Lessee shall operate the Leased Premises as housing for fire station administrative staff during construction of Lessee's permanent facility.

ARTICLE V

Maintenance and Surrender

5.01 Lessee shall be responsible for maintaining the Leased Premises in good repair and condition during the term of the lease. Further, Lessee shall be responsible for maintenance of building including, but not limited to, janitorial service. Any and all repairs of the Leased Premises shall be made by Lessee properly and with due diligence after Lessee is made aware of need of such repairs. County shall have no obligation to make any repairs to the Leased Premises during the term of the lease.

5.02 Lessee agrees to properly and diligently make such repairs and replacements to the Leased Premises as are made necessary by the negligence or willful acts of Lessee, its agents, servants, employees, licensees, business guests or invitees and, at the termination or expiration of this lease. Lessee agrees to surrender and deliver the Leased Premises to Lessor in good order and condition, natural deterioration from ordinary wear and tear. Lessee agrees to make all necessary, incidental repairs to the Leased Premises and to maintain such in good condition. All maintenance and repairs shall be done with materials and equipment of a quality equal to that called for in the original plans and specifications and shall be in accordance with the then existing federal, state and local regulations regarding health and safety. All such repairs to and replacements of items related the Leased Premises made by Lessee in and to the Leased Premises pursuant to this paragraph, exclusive of Lessee's furniture, fixtures and equipment, shall constitute a part of the fee estate remainder subject to this lease, and Lessee's rights, and title and interest therein shall be limited to its right of possession and use pursuant to the provisions of this lease and subject to all of the terms and provisions hereof.

5.03 Lessee shall keep the Leased Premises free of trash, mowed and trimmed on a weekly basis.

5.04 Lessee's negligence and/or failure to observe, keep or perform any of its obligations to maintain and repair the Leased Premises in the time and manner provided in this Article shall constitute a default hereunder and if such default shall continue for fifteen (15) days after notice thereof, Lessor shall have the right to pursue the rights and remedies provided Lessor herein below.

ARTICLE VI
Insurance and Waiver of Subrogation

6.01 Lessee shall obtain and maintain throughout the term of this lease, a certificate of insurance indicating coverage in the amounts stated below and provide that such insurance shall not be canceled or undergo any material changes, except on 30 days' prior written notice to Lessor. All policies shall be underwritten by insurance companies maintaining A.M. Best's ratings of A-VII or higher on insurance of the following types and minimum limits:

6.011 Worker's Compensation insurance in accordance with the laws of the State of Texas. Substitute policies other than Workers' Compensation Insurance will not be allowed.

6.012 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

6.013 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

6.014 Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

6.015 Lessee is responsible to maintain fire and extended coverage insurance on all personal property belonging to Lessee located on the Leased Premises.

6.02 Lessee shall deliver to Lessor, prior to the lease commencement date, certificates or affidavits of such insurance and shall, at all times during the lease term, deliver to Lessor upon request true and correct copies of said insurance policies. Lessee shall deliver to Lessor certificates of renewal at least 30 days prior to the expiration date of each such policy and copies of new policies at least 30 days prior to terminating any such policies.

6.03 Lessor and the members of the Commissioners Court of Fort Bend County, Texas shall be named as additional insured to all required coverage except for Workers' Compensation. All liability policies written on behalf of Lessee shall contain a waiver of subrogation in favor of Lessor and members of the Commissioners Court of Fort Bend County, Texas.

6.04 Lessee and Lessor hereby waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party may now or hereafter have by subrogation or otherwise against the other party for any loss or damage that may occur to

the Leased Premises, Lessee's improvements or any of the contents of any of the foregoing by reason of fire or other casualty, or by reason of any other cause except gross negligence or willful misconduct (thus including simple negligence of the parties hereto or agents, employees or contractors), that could have been insured against under the terms of (1) in the case of Lessor, the standard fire and extended coverage insurance policies available in Texas at the time of the casualty and (2) in the case of Lessee, the fire and extended coverage insurance policy required to be obtained and maintained under 6.01; provided however, that the waiver set forth in this 6.04 shall (i) be ineffective against any insurer of Lessor or Lessee to the extent that the waiver is prohibited by the laws or insurance regulations of Texas or would invalidate any insurance coverage of Lessor or Lessee and (ii) not apply to any deductibles on insurance policies carried by Lessor or to any coinsurance penalty which Lessor might sustain. Lessor and Lessee hereby agree to cause (if available) an endorsement to be issued to their respective insurance policies recognizing this waiver of subrogation.

6.05 If required coverage is written on a claims-made basis, Lessee warrants that any retroactive date applicable to coverage under the policy precedes the effective dated of the Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the end of the Lease term.

6.06 Approval of the insurance by Lessor shall not relieve or decrease the liability of Lessee.

ARTICLE VII Limitation of Liability

The liability for acts or omissions of the agents and employees of either party or for injuries caused by conditions of tangible property is provided for solely by the provisions of the Texas Civil Practice and Remedies Code, Chapters 75, 101 and 102, and that Workers' Compensation Insurance coverage for state and county employees is provided as mandated by the provisions of Texas Labor Code, Chapter 504.

ARTICLE VIII Alterations and Signs

8.01 Lessee shall not create any openings in the roof or exterior walls, nor make any alterations, additions, or improvements to the Leased Premises without the prior written consent of Lessor. Consent for nonstructural alterations, additions, or improvements shall not be unreasonably withheld by Lessor. Lessee shall have the right at all times to erect or install shelves, bins, machinery, air conditioning or heating equipment, and trade fixtures, provided that Lessee complies with all applicable governmental laws, ordinances, and regulations. Lessee shall have the right to remove at the termination of this lease such items so installed; however, Lessee shall, prior to the termination of this lease, repair any damage caused by such removal. All alterations, additions, or improvements made by Lessee shall become the

property of Lessor at the termination of this lease; however, Lessee shall promptly remove, if Lessor so elects, all alterations, additions, and improvements, and any other property placed in the premises by Lessee, and Lessee shall repair any damage caused by such removal.

8.02 Locks may not be changed or re-keyed at any time during the term of this Agreement.

8.03 Lessee shall have the right to erect signs on any portion of the Leased Premises, including, but not limited to, the exterior walls of the building, subject to applicable laws and deed restrictions, and subject further to the prior written approval of the Lessor. Lessee shall remove all signs at the termination of this lease, and shall repair any damage and close any holes caused by such removal.

ARTICLE IX
Lessee's Property and Certain Notices

9.01 Lessor shall not be liable for any damage to or loss of personal property placed in, on or about the Leased Premises by Lessee or others, resulting from fire, theft, explosion, flood, windstorm, hurricane, or other casualty caused by acts of God or by the acts or omissions of other occupants of other space in the building.

9.02 Lessee shall give immediate notice to Lessor in the event of fire or other accidents or casualties within the Leased Premises or in or around the building, as prescribed by the fire and extended coverage insurance policy required herein to be carried thereon, and further, Lessee shall give immediate notice to Lessor of any defects in any of the fixtures or equipment located in the Leased Premises or in or around the building.

ARTICLE X
Assignment

This Lease shall be binding on the heirs, successors and assigns of the parties hereto. Lessee shall not assign, sublet or transfer its interest or obligations in and under this lease without the prior, written consent of Lessor. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Lessee or Lessor.

ARTICLE XI
Access and Inspection by Lessor

Lessee shall permit Lessor and its agents to enter into and upon the Leased Premises at all times for the purpose of inspecting the same or for the purpose of maintaining or making repairs or alterations to the building. Lessor and its agents, specifically including but not limited to staff of Fort Bend County Information Technology, shall have unlimited access at all times to the Leased Premises, including periods after normal business hours and weekends.

ARTICLE XII
Default

In the event of any default by the Lessee in any of the terms, conditions, covenants, or agreements herein contained, Lessor may enforce the performance of this Agreement in any manner provided by law including forfeiting and terminating at Lessor's discretion if such default continues for a period of twenty (20) days after Lessor notifies Lessee in writing of such default and its intention to declare this Agreement terminated. Unless Lessee shall have completely removed and cured such default as aforesaid, this Agreement shall terminate and come to an end as if that were the day originally fixed herein for the expiration of the term. The Lessor's representatives shall have the right, without further notice or demand, to reenter and remove all persons and Lessee's property therefrom without being deemed guilty of any trespass, and also without prejudice to any remedies for breach of covenant.

ARTICLE XIII
Miscellaneous

13.01 All notices provided to be given under this lease shall be given by certified mail or registered mail, addressed to the proper party or delivered in person at the following addresses:

Lessee: City of Rosenberg, Texas
Attention: Mayor
P.O. Box 32
Rosenberg, Texas 77471

Lessor: Fort Bend County
Attention: County Judge
401 Jackson Street
Richmond, Texas 77469

Copy to: Facilities Management & Planning
Attention: James Knight, Director
301 Jackson Street
Richmond, Texas 77469

13.02 This lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this lease.

13.03 This lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.

13.04 In case any one or more of the provisions contained in this lease shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13.05 This lease constitutes the sole and only lease of the parties hereto and supersedes any prior understandings or written or oral leases between the parties respecting the within subject matter.

13.06 No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

13.07 The rights and remedies provided by this lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

13.08 No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this lease shall be deemed to be waiver of any other breach of the same or any other term, condition, or covenant contained herein.

13.09 Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

13.10 Time is of the essence of this lease.

13.11 Lessee's leasehold estate, created hereby and all of Lessee's rights, titles and interests, hereunder are subject and subordinate to any mortgage presently existing.\

IN WITNESS WHEREOF, this Agreement has been executed in duplicate originals as follows:

**LESSOR
FORT BEND COUNTY**


By: _____
Robert E. Hebert, County Judge

Date: _____

ATTEST:

Laura Richard, County Clerk

APPROVED:



James Knight, Director


**LESSEE
CITY OF ROSENBERG, TEXAS**

By: 

Cynthia A. McConathy, Mayor

Date: January 5, 2016

ATTEST:



Linda Cernosek, City Secretary

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