

RESOLUTION NO. R-3570

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A TEMPORARY RIGHT OF ENTRY AGREEMENT BY AND BETWEEN THE CITY AND FORT BEND COUNTY.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Council of the City of Rosenberg hereby authorizes the City Manager to negotiate and execute, a Temporary Right of Entry Agreement (Agreement) by and between the City and Fort Bend County.

Section 2. A copy of such Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this 14 day of November 2023.

ATTEST:



Danyel Swint, TRMC, CITY SECRETARY

APPROVED:



Kevin Raines, MAYOR ~~PROTEM~~

Susan Euton

TEMPORARY RIGHT OF ENTRY AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Temporary Right of Entry Agreement ("Agreement") is made and entered into by and between FORT BEND COUNTY, TEXAS (the "County"), a political subdivision of the state of Texas, and the City of Rosenberg, Texas (the "City"), a municipality established under the laws of the state of Texas. County and City may be collectively referred to as the "Parties" and each individually a "Party."

WHEREAS, County is the owner of that certain real property located in Fort Bend County, Texas identified by FBCAD No. R4683 and legally described as follows (hereinafter, the "County's Property"):

A 66.9852 acre tract of land, more or less, being out of the S.A. Stone Survey, No. 10, Abstract No. 392, Fort Bend County, Texas, and being more particularly described by metes and bounds in Deed recorded under Clerk's File No. 8947183 of the Official Public Records of Fort Bend County, Texas; and

WHEREAS, City desires to acquire from County an approximately 2.8 acre tract of land out of the County's Property for the construction of a water plant facility; and

WHEREAS, in connection with said acquisition, City desires to access the County's Property to conduct land surveys, inspections, and other tests; and

WHEREAS, County desires to grant such access to City, its employees, agents, consultants, and contractors for the purpose of entering the Property to conduct such land surveys, inspections, and tests.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Right of Entry.** In connection with City's acquisition of approximately 2.8 acres out of County's Property as provided on Exhibit "A" attached hereto and incorporated by reference herein (the "Site"), County grants to City, its employees, agents, consultants, and contractors a right of entry and license to enter upon the Site and any remaining portion of County's Property necessary for access to the Site to City for the purposes of conducting land surveying services, physical, engineering, environmental and feasibility studies, inspections and/or any other tests as City deems necessary or appropriate for its acquisition of the Site including road accessibility, physical conditions of the soil and

subsoil, and suitability for construction of the City's water plant facility (the "Permitted Activities"). City's entry rights are specifically limited to the Permitted Activities and shall not include any other activities or any other portions of the Property not necessary to perform the Permitted Activities.

2. **Term.** This Agreement shall become effective upon the date signed by the last Party hereto (the "Effective Date") and shall terminate upon the earlier of City's completion of the Permitted Activities or four (4) months from the Effective Date. The term of this Agreement may be extended by written instrument executed by both Parties.
3. **Responsibilities.** City shall be responsible for all costs of the Permitted Activities, including the delivery of equipment and supplies that may be required. Upon completion of the Term, City shall restore the surface of County's Property that has been damaged, disturbed, or altered by the Permitted Activities, reasonable wear and tear excepted. Such restoration includes but is not limited to leveling, re-grading, re-seeding and/or re-vegetation. Additionally, City shall be responsible for ensuring all equipment, supplies, and any debris generated by the Permitted Activities is cleaned up and removed from County's Property upon completion of the Permitted Activities.
4. **Compliance.** City agrees to comply with all local, state, and federal laws, rules, and ordinances applicable to the Permitted Activities. City further agrees to exercise due care in the performance of all Permitted Activities on the Site and County's Property, which activities shall not unreasonably interfere with County's activities on County's Property.
5. **Insurance Requirements.**
 - (a) Prior to entering the Property, City shall obtain and maintain throughout the term of this Agreement, insurance coverage in the amounts stated below. 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:
 - (1) Worker's Compensation in the amount required by Texas law. Substitute policies other than Workers' Compensation Insurance will not be allowed.
 - (2) Comprehensive General Liability Insurance including contractual liability insurance, \$1,000,000 per occurrence, \$2,000,000 aggregate (defense costs excluded from face amount of policy).
 - (3) Comprehensive Automobile Liability Insurance, including owned, non-owned and hired vehicles used for the Permitted Activities, with bodily injury and property damage with a combined limit of not less than \$1,000,000 each occurrence.

- (4) City shall maintain fire and extended coverage insurance on all personal property belonging to City, its agents, consultants, and contractors located on the County's Property.
- (b) Fort Bend County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation.
- (c) City shall further require its agents, consultants, and contractors to procure and maintain insurance in the amounts established above and to name County as well as City as additional insureds on all policies except for Worker's Compensation. City may require insurance in excess of the amount of coverage set out above, as it deems necessary, in such instances, County must remain an additional insured.
- (d) Prior to entering the Property, City shall provide County with all properly executed certificate of insurance evidencing coverage as provided hereunder.
6. **Indemnity.** TO THE EXTENT ALLOWED BY LAW, CITY HEREBY AGREES THAT IT WILL INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL CLAIMS, SUITS, OR CAUSES OF ACTION, WHETHER FOR PERSONAL INJURY OR PROPERTY DAMAGE, ARISING OUT OF OR RELATED TO ANY ACTION OR FAILURE TO ACT BY CITY, ITS OFFICERS, AGENTS, EMPLOYEES, CONSULTANTS, CONTRACTORS, SUCCESSORS, OR ASSIGNS WITH RESPECT TO THE PERMITTED ACTIVITIES CONDUCTED ON COUNTY'S PROPERTY. THIS INDEMNIFICATION OBLIGATION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
7. **Use and Enjoyment.** City, its employees, agents, consultants, and contractors shall not conduct any activities that unreasonably interrupt the normal operations of County. Additionally, City agrees that the Permitted Activities shall not interfere with County's use and enjoyment of County's Property or interfere with the use and enjoyment of any neighboring property owners. In the event that any activity by City, its employees, agents, consultants, and contractors interfere with the use and enjoyment of said properties, City agrees to immediately cause all Permitted Activity to cease until such interference is removed by City, its employees, agents, consultants, and contractors at its sole cost and expense.
8. **Governing Law and Venue.** This Agreement shall be governed by the laws of the state of Texas and venue for any claim arising out of or related to this Agreement shall lie in Fort Bend County, Texas.
9. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect. **IT IS ACKNOWLEDGED**

BY CITY THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.

10. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
11. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by either Party of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
12. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
13. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
14. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

{Execution Pages Follow}

FORT BEND COUNTY, TEXAS

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

CITY OF ROSENBERG, TEXAS

John Maresch
Name – Signature

JOHN MARESH
Name – Printed Name

CITY MANAGER
Title

ATTEST:

Danyel Swint
Name – Signature

Danyel Swint
Name – Printed

City Secretary
Title



EXHIBIT A

(Follows Behind)



October 19, 2023

Vincent Morales, Jr.
Commissioner, Precinct One
Fort Bend County
22333 Grand Corner Drive
Katy, Texas 77494

RE: Request for County Owned Property for Water Plant

Dear Commissioner Morales,

The City of Rosenberg has identified the need to construct a new water plant facility in the general area behind the Fort Bend County Fairgrounds, near the proposed Sheriff Department Training Complex. The attached Preliminary Site plan identifies a +/- 2.8-acre tract of land with frontage on Stella Road that would be an ideal site for the City's water plant. An additional sanitary control easement from adjacent county owned property may also be needed.

Please accept this letter as the City's formal request to acquire the +/- 2.8-acre tract of land. The City would like to take possession of the property at the earliest opportunity and is available to meet and discuss terms at your convenience.

Feel free to contact me by email at jmaresh@rosenbergtx.gov or by phone at 832-595-3310.

Your consideration of this request will be most appreciated by the City of Rosenberg.

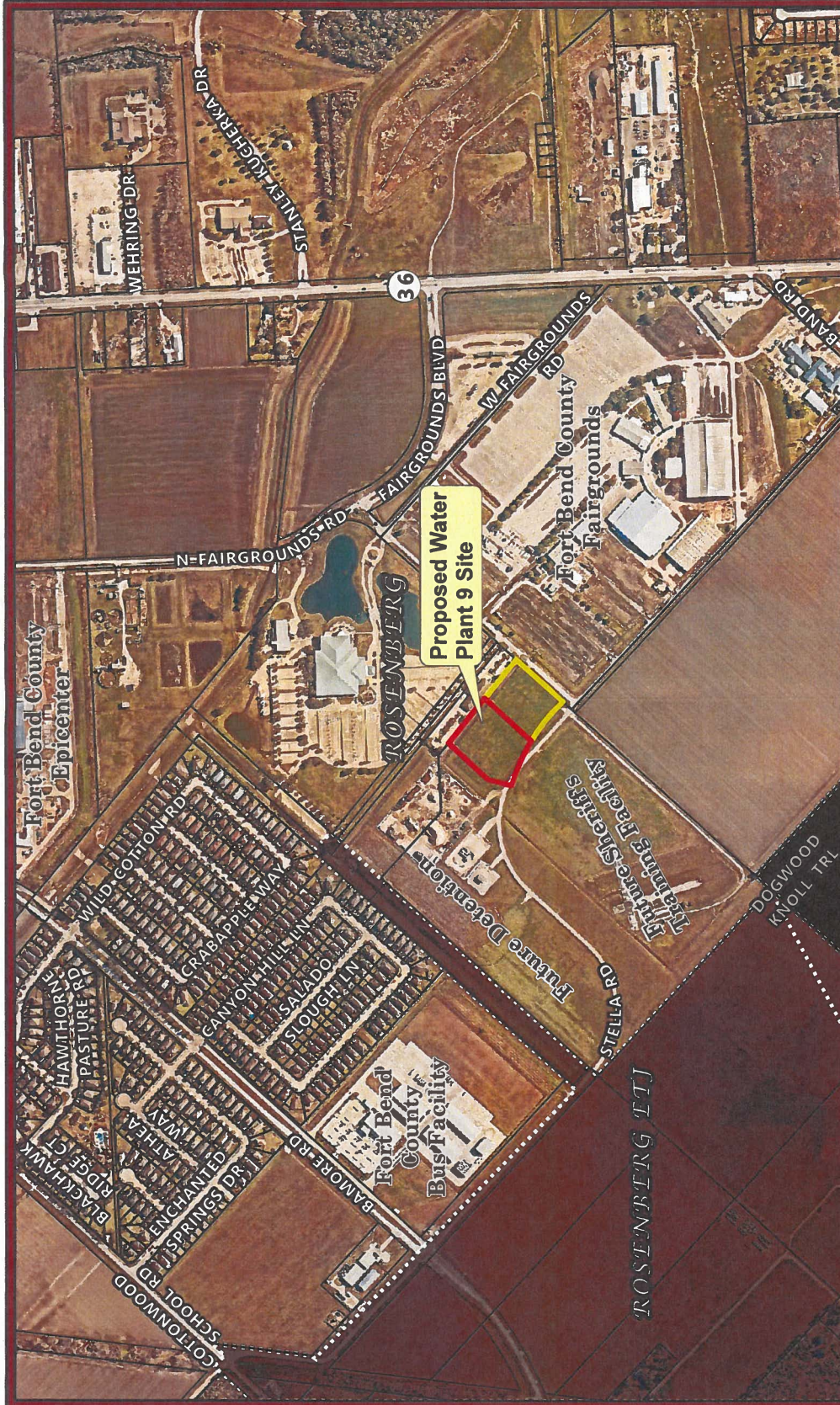
Sincerely,

John Maresh
City Manager

JM/hm

xc: Mayor Kevin Raines
City Council
Charles Kalkomey, City Engineer

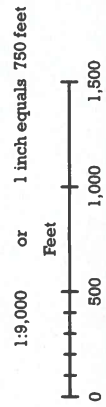
Attach:
File/Correspondence



Proposed Water Plant 9 Site - Stella Rd **City of Rosenberg, Texas**



Scale:



Created by: Cory Vardaman
City of Rosenberg GIS
Date Created: October 17, 2023.
Original Size: 8.5" x 11"
File: Pro Exhibit_2023_2.aprx

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of geographic features.



