

RESOLUTION R-2018-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A 75-YEAR LAND LEASE AGREEMENT WITH BASTROP COUNTY IN THE AMOUNT OF ONE HUNDRED TWO THOUSAND THREE HUNDRED SIXTY-SIX DOLLARS AND 00 CENTS (\$102,366.00) FOR PROPERTY IN THE CITY'S MAYFEST PARK FOR A COMMUNITY CENTER TO BE BUILT BY BASTROP COUNTY; PROVIDING FOR A REPEALING CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, On February 14, 2017, the City Council approved a 75-Year lease with Bastrop County for 2.35 acres of land located at Mayfest Park to be used as emergency shelter and multi-use facility of approximately 12,000 square feet. Compensation for the 75-Year lease is \$102,366; and

WHEREAS, Bastrop County was notified that they would not be eligible to receive funding for their multi-use facility, if they have an executed lease prior to approval by the Texas General Land Office.

WHEREAS, therefore, the City of Bastrop terminated the Land Lease Agreement with Bastrop County dated February 17, 2017, on June 27, 2017; and

WHEREAS, the necessary approval has been received, and Bastrop County has requested a 75-Year Land Lease Agreement for 2.35 acres of property in the City's Mayfest Park for a one-time lease payment of \$102,366.00 for a Community Center to be built by Bastrop County.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

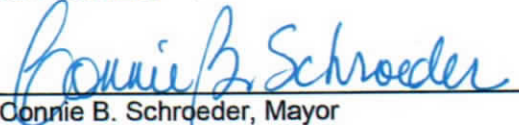
Section 1: That the City Council authorizes the City Manager to enter into a Land Lease Agreement with Bastrop County for a 75-Year lease with Bastrop County for 2.35 acres of land located at Mayfest Park to be used as emergency shelter and multi-use facility of approximately 12,000 square feet.

Section 2: That the City Council authorizes the City Manager to execute all documentation required to enter into a 75-Year Land Lease Agreement with Bastrop County for 2.35 acres of property in the City's Mayfest Park for a one-time lease payment of \$102,366.00 for a Community Center to be built by Bastrop County, now that the appropriate authorization is granted by the Texas General Land Office.

Section 3: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this
12th day of June, 2018.

APPROVED:



Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

LAND LEASE AGREEMENT

PURSUANT TO TEXAS LOCAL GOVERNMENT CODE 272.005, this land lease ("Lease") is made and entered into as of the 12th day of JUNE, 2018, by and between City and County, as described in the following basic lease information. City and County hereby agree as follows:

ARTICLE 1--BASIC LEASE INFORMATION

1.1 Defined Terms. In addition to the terms, which are defined elsewhere in this Lease, the following terms shall have the following meaning:

- (a) CITY: City of Bastrop, Texas, a home rule Texas City, hereinafter "City",
- (b) CITY'S ADDRESS: 1311 Chestnut St., Bastrop, Texas 78602
- (c) COUNTY: Bastrop County, Texas, HEREINAFTER "County",
- (d) COUNTY'S ADDRESS: 804 Pecan Street, Bastrop, Texas 78602
- (e) LAND: Approximately 2.35 acres of land which is described and depicted in Exhibit A attached hereto and incorporated herein by this reference, and which is a part of the parcel of real property owned by City and located in Bastrop County at Mayfest Park between Loop 150 East and State Highway 71.
- (f) PERMITTED USE: The Land may be used for an emergency shelter/multiuse facility of approximately 11,884 square feet with approximately 121 all-weather parking spaces.
- (g) TERM: The term of the lease shall be for 75 years.
- (h) COMPENSATION: One single rent payment from County to City of \$ 102,366.00 to be paid prior to initiation of construction.

ARTICLE 2--AGREEMENT AND USE

2.1 Lease. City hereby leases to County the land, and County leases the land from City, according to the terms and conditions of this Lease Agreement.

2.2 Use. County shall use the land only for the Permitted Use. County shall not allow land to be used for any unlawful purposes and will not commit waste or create any nuisance. County shall not erect signs or other improvements on the land without approval of City, which approval may be withheld at the sole discretion of City, unless such signs are required by state or federal law, in which case such approval shall not be unreasonably withheld or delayed. County will keep and maintain the improvements in good condition and repair. County will keep the land free from all trash, debris, and waste. County agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the leased site or improvements in violation of any law or regulation. This paragraph shall survive the termination of the Agreement. City will provide County with access to the land, subject to limitations in Section 2.5 of this agreement. City will have the right to enter leased premises with prior notice to County. Notwithstanding anything to the contrary contained in this Lease Agreement, if, in the exercise of any rights hereunder, County, its licensee, or agents cause damage to the City's Property,

County shall, within 10 days after receipt of a statement from City evidencing the amount of such damage, pay City the costs to repair such damage. The cost of repair shall include a reasonable sum to compensate City for its direct and indirect staff time in obtaining quotes for the repair work and preparing the cost statement to County.

2.3 Delivery of Possession. City will deliver possession of the Land to County within 30 days of the date of this Agreement. The property will be transferred "AS-IS" in its present condition. County acknowledges neither City nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Land for the conduct of County's business or as to the physical condition of the Land, nor has the City or its agents or employees agreed to undertake any alterations or construct any improvements to the Land.

2.4 Governmental Approvals. County shall, at its sole cost and expense apply for and obtain all licenses, permits and approvals required by any local, state or federal governmental authorities for its use of the Land. City shall cooperate with County to obtain all necessary governmental approvals, provided however, City shall not be required to expend any money in such cooperation. County understands and agrees that County's right to use the Land is contingent upon County obtaining and continually maintaining in full force and effect all governmental approvals. In the event any governmental approvals issued to County are canceled, expire, lapse, or are otherwise withdrawn or terminated by any governmental authority so the County will be unable to use the Land for its intended purposes, this lease shall automatically terminate.

2.5 Access. County shall be provided access to the Land, across City's Property in a location mutually agreed by both City and County. Any improvements provided for access to County's facility will be installed and maintained by County.

2.6 Free from Liens. County shall pay as due all claims for work done on, and for services rendered or material furnished to its facilities, free and clear of all liens. In the event a mechanic's or materialmen's lien is filed, County shall be in default under this Lease and, if same is not discharged within three business days, City may terminate this Lease. County may not encumber its interest in the Lease.

ARTICLE 3--UTILITIES AND TAXES

3.1 Utilities. County shall, at its sole cost and expense, arrange for electricity, water, gas, and other utilities necessary for County's operations directly from such providers. County shall be billed directly for the use of such services, and shall promptly pay the same when due.

3.2 Taxes. Both the County and the City are exempt from taxes.

3.3 Limitation on Liability. City will not be in default under this Lease or be liable to County or any other person, for direct or consequential damages, or otherwise, for any failure to supply any electricity, water, gas, security or other utilities, or for surges or interruptions of electricity, or other such services or utilities.

ARTICLE 4—INSURANCE

4.1 County's Insurance. At all times during the Term, County will carry and maintain, at County's expense, the following insurance in the amounts specified below or such other amounts as City may



from time to time reasonably request. A Certificate of Insurance shall be supplied to City on an annual basis for proof of insurance. Such certificate shall bear a legend whereby the carrier undertakes to give City at least thirty days' prior notice of cancellation of coverage and shall show City as an "Additional Named Insured".

(a) Bodily injury and property damage liability insurance, with a combined single occurrence limit of not less than \$2,000,000. All such insurance will be equivalent to coverage offered by a Commercial General Liability form including, without limitation, personal injury, death of persons, or damage to property occurring in, on, or about the Land.

(b) insurance covering the Improvements, and any other personal property owned by County or any Licensee located on or about the Land, and any leasehold improvements to the Land, in an amount not less than the full replacement cost. Property forms will provide coverage on a broad form basis insuring against "all risks of direct physical loss."

(c) worker's compensation coverage insuring against and satisfying County's and any Licensee's obligations and liabilities under the worker's compensation laws of Texas.

ARTICLE 5--MAINTENANCE; REQUIREMENTS OF LAW

5.1 Maintenance. County shall at all times throughout the Term, at its sole cost and expense, maintain and repair the Land, the Improvements, and all trade fixtures and personal property of County located thereon. County understands that City is a retail public utility and a primary purpose of the City, including, but not limited to the Property, is to provide continuous and adequate water service to its members. Nothing in this Lease shall be construed to limit or constrain City from making improvements to the Property, including technical improvements, required by the City to fulfill its primary purpose. In the event of a conflict between this paragraph and the Lease, this paragraph shall control.

5.2 Compliance with Laws. For the purposes of this Section 7.2, "Applicable Laws" means all laws, statutes, ordinances and governmental rules, regulations, or requirements now in force or in force after the Commencement Date, the requirements of any board of fire underwriters or other similar body constituted now or after the Commencement Date, and any direction or permanent occupancy certificate issued pursuant to any law by any public officer or officers, as well as the provisions of all recorded documents affecting the Land. At its sole cost and expense, County will promptly comply with Applicable Laws insofar as they relate to (a) County's use, occupancy, or alteration of the Land; (b) the condition of the Land resulting from County's use, occupancy, or alteration of the Land; or (c) alterations to the Land required as a result of County's status under Applicable Laws.

ARTICLE 6--DEFAULT

6.1 Events of Default. The following events are referred to, collectively, as "Events of Default" or, individually, as an "Event of Default":

(a) County defaults if it fails to pay \$102,366 in Section 1.1(h), and such default continues for 30 days after written notice from City and if after such written notice any rent is not paid when due, an Event of Default will be considered to have occurred without further notice;



(b) County vacates or abandons the Premises;

(c) If any part of the Premises is taken upon execution or by other process of law directed against County, or are taken upon or subject to any attachment by any creditor of County or claimant against County, and said attachment is not discharged or disposed of within fifteen days after its levy;

(d) County purports to assign this Lease, or sublet all or a portion of the Premises, in violation of the terms hereof;

(e) Failure on the part of the County to comply with any of the provisions of this lease shall be grounds for termination of the Lease.

ARTICLE 7—GENERAL

7.1 Limitation on Liability. County specifically agrees to look solely to City's interest in the Land for the recovery of any judgments from City. It is agreed that City (and its officers, directors and employees) will not be personally liable for any such judgments. The provisions contained in the preceding sentences are not intended to, and will not, limit any right that County might otherwise have to obtain injunctive relief against City.

7.2 Notices. All notices and other communications required or permitted under this Lease shall be in writing and shall be given (a) by United States first class mail, postage prepaid, registered or certified, return receipt requested; (b) by hand delivery (including by means of a professional messenger service); or (c) by delivery from a nationally recognized overnight delivery service that routinely issues receipts, which notice shall be addressed to the party to whom such notice is being given, at their address set forth in Section 1.1 above. Any such notice or other communication shall be deemed to be effective when actually received or rejected. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

7.3 Inspection. City reserves the right to enter, at any time, the Land to inspect the same.

7.4 No Waiver. The waiver by either City or County of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease.

7.5 Authority. County and the party executing this Lease on behalf of County represent to City that such party is authorized to do so by requisite action of the Bastrop County Commissioners Court.

7.6 Governing Law. This Lease shall be governed by and construed pursuant to the laws of the State of Texas.

7.7 Captions. The captions of the various Articles and Sections of this Lease are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

7.8 Recordation. County shall record this Lease in the public records.

7.9 Severability. If any provision of this Lease proves to be illegal, invalid or unenforceable, the remainder of this Lease shall not be affected by such finding, and in lieu of each provision of this Lease



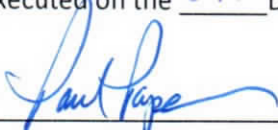
that is illegal, invalid or unenforceable, a provision will be added as a part of this Lease as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

7.10 Entire Agreement; Amendment. This Lease contains the entire agreement between City and County. No amendment, alteration, modification of, or addition to the Lease will be valid or binding unless expressed in writing and signed by City and County.


7.11 Attorney's Fees - If any action is instituted by either party to this Lease Agreement to enforce any of the terms of this Lease or the License Agreement, the prevailing party shall be entitled to receive its reasonable attorneys' fees, expert witness fees, costs, and expenses.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Executed on the 29th Day of May, 2018 at Bastrop, Texas.



Judge Paul Pape
Bastrop County Judge



Lynda Humble
Bastrop City Manager