
**Lease Agreement
By and between
City of Windcrest, Texas
and
Bexar County Water Control and Improvement District Number 10**

This Lease Agreement ("Agreement") is made and entered by and between the City of Windcrest, Texas ("City"), as "Landlord," and the Bexar County Water Control and Improvement District Number 10 ("District"), as "Tenant," on this 16th day of July, 2012. The City and the District are jointly referred to hereinafter as the "Parties."

RECITALS

WHEREAS, the City is home rule municipality and municipal body politic incorporated in 1959; and

WHEREAS, the District is a special district formed on November 28, 1955, in accordance with Article XVI § 59 of the Texas Constitution, and operating pursuant to Chapter 49 of the Texas Water Code; and

WHEREAS, the City and District have co-existed and operated cooperatively since the incorporation of the City, and have engaged in the sharing of resources on a mutually-beneficial basis; and

WHEREAS, the District currently houses its office operations and equipment in premises owned by the City; and

WHEREAS, City and District each desire that the District continues to conduct its operations in premises owned by the City under mutually-agreeable, written terms; and

WHEREAS, the Parties each find executing of this Lease Agreement to be in their respective best interests, and the best interests of the citizens of the City and the ratepayers of the District;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, for good and valuable consideration, it is agreed as follows:

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Article I. Basic Lease Terms

Landlord: City of Windcrest, Texas

Landlord's Address: 8601 Midcrown
Windcrest, Texas 78239
Attn: City Manager
Fax: 210-655-8776

Tenant: Bexar County Water Control & Improvement District #10

Tenant's Address: 8601 Midcrown
Windcrest, Texas 78239
Attn: General Manager
Fax: (210) 654-3888

Primary Term: 60 months, commencing on August 1, 2012 ("Commencement Date") and ending at 11:59 p.m. on July 31, 2017 ("Termination Date") subject to the "Termination Grace Period" provided in Article V hereof.

Automatic renewal/Extended Term:

Unless terminated in writing not less than sixty (60) days prior to the fifth anniversary of the Commencement Date, this Agreement will automatically be extended for an additional term of twelve (12) months ("Extended Term") beginning on the calendar day following the Termination Date and thereafter shall be extended for successive twelve (12) month terms unless terminated by giving notice not less than sixty (60) days prior to the expiration of the term; subject to the "Termination Grace Period" provided in Article V hereof.

Base Rent (monthly): \$100.00

Security Deposit: NONE

Permitted Use of **Premises "A"**: General office space for administration and management of a water utility, and all functions pertinent and incidental thereto, including file storage, and housing of computerized data.

Permitted Use of **Premises "B"**: Maintenance facility, equipment and materials storage, motor pool and general shop operations

pertinent to the production and delivery of retail water service.

Article II. Demised Premises

Premises "A"

Approximate square feet: 380 ft.²
Name of Building: City Hall
Street address/suite: 8601 Midcrown
City, state, zip: Windcrest, TX 78239

****"Premises A"*** is more fully described and depicted in the attached ***"Attachment 1."***

Premises "B"

Description of space: Three (3) rooms situated in the south east portion of the maintenance building; One (1) inside parking bay -- distinguishing feature is pit in the floor; Three (3) covered parking bays; Approximately 1/2 covered parking bay; Four parking spaces in the parking lot.
Name of Building: City Maintenance Facility
Street address/suite: 9326 Jim Seal Drive
City, state, zip: Windcrest, TX 78239

****"Premises B"*** is more fully described and depicted as shaded spaces in the attached ***"Attachment 2."***

Article III. Definitions

"Normal Operating Hours" means 8:00 A.M. to 5:00 P.M. Monday through Friday, except holidays.

"Common Areas" means all facilities and areas of the Premises and associated parking facilities and the related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all occupants of the Premises. The term "Common Areas" includes, without limitation, kitchen and restroom facilities.

“Essential Services” means the following services: (a) air-conditioning and heating to the Premises reasonable for the Permitted Use (inclusive of air-conditioning and heating) during Normal Operating Hours and at such other times as Landlord and Tenant may agree on; (b) hot and cold water for lavatory and drinking purposes; (c) electricity and outlets for normal office machines and standard lighting reasonable for the Permitted Use; (d) communications demarcation points and outlets (including for telephone, fax, modem, server and router); and (e) access to conference areas for its regularly scheduled and special meetings.

“Injury” means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) “personal and advertising injury” as defined in the form of liability insurance Tenant is required to maintain.

“Landlord” means the City of Windcrest, Texas and its agents, employees, invitees, licensees, or visitors.

“Parking Facility” means all surface lots or other areas designated for parking by occupants of the Premises.

“Rent” means Base Rent payable by Tenant to Landlord.

“Tenant” means Bexar County Water Control & Improvement District #10 and its agents, contractors, employees, invitees, licensees, or visitors.

Article IV. Clauses and Covenants

A. Tenant agrees to—

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date and for any Extended Term hereof.
2. Accept “**Premises A**” and “**Premises B**” in their present condition “AS IS,” the Premises being currently suitable for the Permitted Use.
3. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises; and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises.
4. Pay rent to the Landlord monthly, in advance, on the first day of the month, at Landlord’s Address.
5. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

6. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

7. Vacate the Premises and return all keys to the Premises on the last day of the Term, or any extended Term.

B. Tenant agrees not to—

1. Use the Premises for any purpose other than the Permitted Use.
2. Create a nuisance.
3. Interfere with Landlord's, or any other tenant's normal business operations, or Landlord's management of the Building.
4. Permit any waste.
5. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.
6. Change Landlord's lock system; provided, however Tenant is expressly authorized to, in its sole discretion, change the lock and key for "Premises A"
7. Alter the Premises.
8. Allow a lien to be placed on the Premises.
9. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

C. Landlord agrees to—

1. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.
3. Provide the Essential Services.
4. Provide Tenant with quiet enjoyment of the Premises.
5. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common

Areas to include restroom and kitchen facilities, (d) structural soundness of the exterior walls, doors, corridors, and windows, and (e) other structures or equipment serving the Premises.

6. Install, at Landlord's expense, an electrical/power circuit separately metered, and dedicated exclusively for use by Tenant at **Premises A**.

D. Landlord agrees not to—

1. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.
2. Interfere with Tenant's normal business operations.

E. Landlord and Tenant agree to the following:

1. ***Alterations and Improvements to the Leased Premises.***

a. **Tenant Improvements.** Tenant may, in its sole discretion, make any alterations, or improvements in or to "Premises A;" provided however, that any alterations, physical additions, improvements, and fixtures, including but not limited to trade fixtures, added to or installed by either party hereto shall remain upon and be surrendered with the Premises and become the property of Landlord upon the expiration or earlier termination of this Lease without credit to Tenant. This clause shall not apply to moveable equipment, furniture or moveable trade fixtures owned by Tenant, which may be removed by Tenant at the end of the term of this Lease. Tenant shall not have authority or power, express or implied, to create or cause any mechanic's or material men's lien, charge or encumbrance of any kind against the Premises.

b. **No Construction or Improvements to "Premises B."** Tenant may not make any alterations, or improvements in or to "Premises B," without the express written consent of Landlord.

2. ***Tenant's use and Parking.*** Tenant, and its employees and customers, and when duly authorized pursuant to the provisions of this Lease, its licensees and customers, shall have the non-exclusive right to use the Common Area, including surface parking lot(s), as constituted from time to time and such use is to be in common with the Landlord, other tenants in the City Hall and other persons permitted by Landlord to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe.

3. Insurance. Landlord shall provide fire and extended coverage insurance for the improvements on the Premises. Landlord and Tenant shall each maintain general public liability insurance for damage to property and injury or death to persons arising out of and in connection with the use of the Premises. The general liability insurance furnished by each party shall be a least \$1,000,000.00. Each party may maintain contents coverage as desired by the respective parties.

4. Release of Claims/Subrogation. LANDLORD AND TENANT RELEASE EACH OTHER FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES OR CITY HALL, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE CITY HALL, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY.**

5. Casualty/Total or Partial Destruction

- a. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, replace any of its damaged furniture, fixtures, and personal property and restore any leasehold improvements that are within Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.
- b. If the Premises cannot be restored within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore,

Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue and Landlord will restore the Premises as provided in a. above.

- c. To the extent the Premises are untenable after the casualty, the Rent will be adjusted as may be fair and reasonable.

6. **Default by Landlord/Events.** An event of default by Landlord includes the failure to comply with any provision of this lease within thirty days after written notice or failing to provide Essential Services to Tenant within ten days after written notice.

7. **Default by Landlord/Tenant's Remedies.** Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service within ten days after default, terminate this lease.

8. **Default by Tenant/Events.** An event of default by Tenant (a) includes the failure to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises without paying rent, or (c) failure to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

9. **Default by Tenant/Landlord's Remedies.** Landlord's remedies for Tenant's default are to terminate this lease by written notice and sue for damages, which shall be limited to rents due for the term of this lease, subject to Landlord's obligation to mitigate its damages.

10. **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.

11. **Holdover.** Strictly subject to Article V hereof, if Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

Article V. Termination Grace Period

1. Landlord and Tenant agree that Tenant shall retain a continued right to occupy and utilize "**Premises B**" in conformance with the Permitted Use for a period of 180 days following the date of termination and/or expiration of this Lease

("Termination Grace Period"), irrespective of whether such termination or expiration of this Lease results from the occurrence of the Termination Date, or other act or occurrence.

2. Article V shall survive termination and/or expiration of this Lease, and any termination of the remainder of this Lease shall not effect or otherwise work as a termination of this Article.

Article VI. Miscellaneous

1. ***Alternative Dispute Resolution.*** Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

2. ***Attorney's Fees.*** If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court costs.

3. ***Venue.*** Exclusive venue will be in the state district courts of Bexar County, Texas, and this clause shall be deemed to be the Parties' forum and venue selection agreement.

4. ***Entire Agreement.*** This lease, together with Attachments 1 and 2 comprise the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this lease or to any expressly mentioned exhibits and riders not incorporated in writing in this lease.

5. ***Amendment of Lease.*** This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

6. ***Notices.*** Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or facsimile transmission and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

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EXECUTION PAGE TO LEASE AGREEMENT

**By and between
City of Windcrest, Texas
and**

Bexar County Water Control and Improvement District Number 10

Landlord:

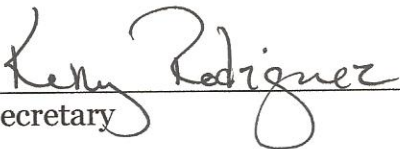
CITY OF WINDCREST

BY:



Mayor

ATTEST:

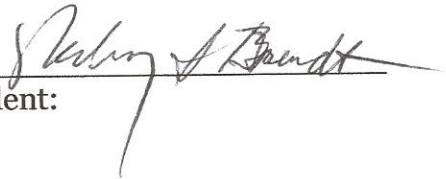


City Secretary

Tenant:

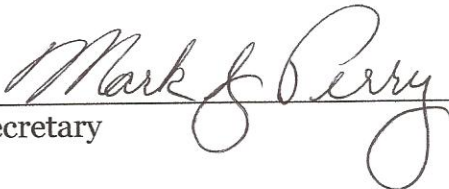
BEXAR COUNTY WATER
CONTROL & IMPROVEMENT
DISTRICT #10

By:



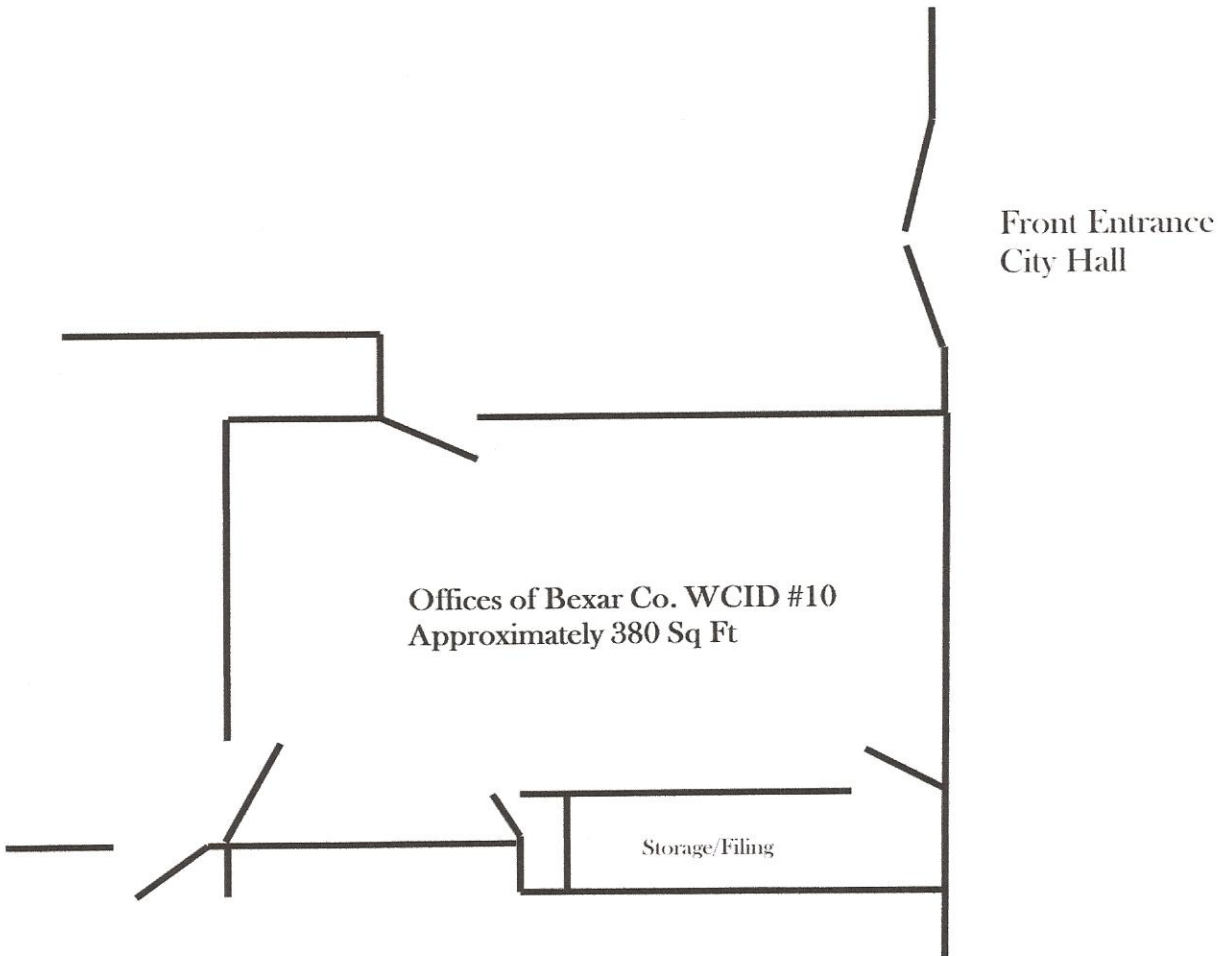
President:

ATTEST:



Secretary

Attachment 1
Improvements Occupied by Tenant Within
Windcrest City Hall ("Premises A")

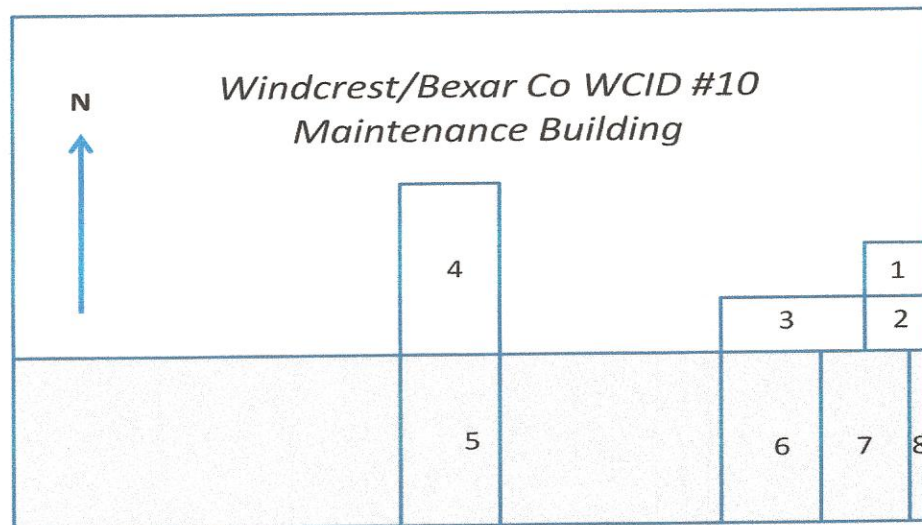


**Note: This Floor Plan is NOT
To Scale. Locations are Approximate
And are Only Meant to Show Relative Location
Within City Hall.**

ATTACHMENT 2
Improvements occupied by Tenant within "Premises B"

Note: The drawing below is not to scale. It is only used to show the relative location of the spaces discussed below.

1. Three rooms situated in the south east portion of the maintenance building for use as office for field supervisor (1), a room for bench stock inventory (2), and a workshop (3).
2. One inside parking bay (4) for the District's sewer cleaning truck. Distinguishing feature is pit in the floor.
3. Three covered parking bays, one immediately outside the inside bay where the sewer cleaning machine (5) is parked and two at the eastern end of the covered parking area (6 and 7).
4. Approximately 1/2 covered parking bay at extreme eastern end of the covered bay (8) to be used as a storage area for equipment and supplies that don't have to be inside, but need to be protected.
5. Four parking spaces in the parking lot to park miscellaneous District equipment (trailer, vehicles, backhoe, etc.)



Note: This picture is not to scale. It only shows relative location of spaces identified above.