

TRIANGLE LEASE AGREEMENT

between

City of Dripping Springs

and

Veterans of Foreign Wars (VFW) Post 2933
and American Legion Post 290

Contract No. VFW20241101

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TRIANGLE LEASE AGREEMENT

THIS TRIANGLE LEASE AGREEMENT IS ENTERED BY AND BETWEEN THE CITY OF DRIPPING SPRINGS AND VETERANS OF FOREIGN WARS (VFW) POST 2933 AND AMERICAN LEGION POST 290.

WHEREAS, the Landlord and Tenants entered into a Lease Agreement dated November 8, 2005 provided for the lease of the tract commonly known in the community as the “Triangle”, that being the grounds and Firehall, excluding the Dripping Springs Water Supply Corporation Property, located at the Premises; and

WHEREAS, the Landlord and Tenants entered into a partial extension of the November 8, 2005 Lease Agreement dated April 13, 2021 providing for a two-year extension through October 31, 2024 and removing the building from the Premises governed by the Lease Agreement;

WHEREAS, the Landlord and Tenants wish to replace the lease agreement upon its expiry on October 31, 2024 and have set forth in this Agreement the terms and conditions of the lease effective November 1, 2024;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE LANDLORD AND TENANTS AGREE AS FOLLOWS:

ARTICLE 1. GENERAL

1.1 Recitals

The foregoing recitals are incorporated into this Agreement by reference as if expressly set forth herein.

1.2 Effective Date

This Agreement shall be effective on November 1, 2024.

1.3 Duration

This Agreement shall remain in effect until October 31, 2029 unless terminated earlier in accordance with this Agreement.

ARTICLE 2. DEFINITIONS

In this Agreement:

- (a) “**American Legion**” means American Legion Post 290.
- (b) “**City**” means the City of Dripping Springs, Texas, an incorporated municipality.
- (c) “**Landlord**” means the City.

- (d) **“Parties”** means, collectively, the Landlord and Tenants.
- (e) **“Party”** means, as the context requires,
 - (i) any of the Landlord, VFW, or American Legion, or
 - (ii) either the Landlord or any of the Tenants.
- (f) **“Premises”** means the portion of Lot 1 and the entirety of Lot 2 of the Veterans Memorial Park Subdivision as shown in Exhibit “A”, having a street address of 140 East Mercer Street and located between the intersections of Highway 290 West, East Mercer Street and Ranch Road 12 in Dripping Springs, Texas.
- (g) **“Rent”** means the annual rent established in section 3.3 below.
- (h) **“Tenants”** means, collectively, the VFW and the American Legion.
- (i) **“Term”** means the lease term period between the Effective Date and the date until which this Agreement remains in effect as established in section 1.3 above.
- (j) **“VFW”** means the Veterans of Foreign Wars (VFW) Post 2933.

ARTICLE 3. LEASE TERMS

3.1 Grant of Lease

The Landlord agrees to lease, and the Tenants agree to Lease from the Landlord, the Premises.

3.2 Use of Premises

The Premises are to be used by the Tenants exclusively for the purposes of conducting meetings and civic events, including those open to the public. It is contemplated that the Premises may be used for Tenants’ memorial site and for private and public events related to the purpose of the VFW and American Legion, and as parking areas for such events. The Tenants may, with prior consent of the Landlord, use specified portions of Lot 1 of the Veterans Memorial Park Subdivision as parking areas for the Tenant’s events.

3.3 Rent

The Tenants shall pay Rent to the Landlord for the premises in the amount of Ten Dollars (\$10.00) per year.

3.4 Abatement

The Tenants’ covenants under this Agreement and the Landlord’s obligations under this Agreement are independent. Except as otherwise specifically provided herein, the Tenants will not be entitled to abate Rent for any reason.

3.5 Termination

This Agreement may be terminated by any Party for any reason upon receipt of written notice ninety (90) days before the termination date.

ARTICLE 4. TENANTS' COVENANTS

4.1 Notice of Events

The Tenants agree to provide at least 30 days notice of each event the Tenants host on the Premises to the City's Community Events Coordinator, or such other person as the City may designate for this purpose from time to time.

4.2 Special Event Permits

Without limiting the generality of section 4.5 below, the Tenants must obtain a Special Event Permit from the City as applicable.

4.3 As-Is Condition

The Tenants agree to accept the Premises in their present condition "as is" and as suitable for Tenants' intended use.

4.4 Payment of Rent

The Tenants agree to pay the Rent by the effective date of this Agreement and on the anniversary of this date each year thereafter.

4.5 Compliance with Laws

The Tenants agree to comply with all laws, regulations, rules, and ordinances applicable to this Agreement and to performing the terms and conditions of this Agreement, including without limitation City ordinances governing park rules and special event permit requirements.

4.6 Landlord Access

The Tenants agree to allow the Landlord, and the Landlord's agents, employees, and contractors, to enter the Premises to perform the Landlord's obligations and to inspect the Premises.

4.7 Repair

The Tenants agree to repair any damage to the Premises caused or contributed to by either of the Tenants or the Tenants' invitees.

4.8 Maintenance by Tenants

The Tenants agree to maintain the Premises, including without limitation the flagpole, memorial wall, archways, and other related Tenant improvements, in a condition suitable for its intended use under this Agreement.

4.9 Insurance

- (a) The Tenants agree to maintain public liability insurance for the Premises and the conduct of the Tenants' use in an amount of at least two million dollars (\$2,000,000) and naming the City of Dripping Springs, Texas as an additional insured.
- (b) The Tenants agree to maintain insurance on the Tenants' improvements and personal property, carried by one or more insurance companies duly authorized to transact business in Texas.
- (c) The Tenants agree to deliver to the Landlord certificates of insurance confirming the coverages required under this section upon execution of this Agreement and thereafter as requested.

4.10 Indemnity

THE TENANTS SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE LANDLORD FROM ANY LOSS, ATTORNEY'S FEES, COURT AND OTHER COSTS, OR CLAIMS ARISING OUT OR IN ANY WAY CONNECTED WITH THE TENANTS' USE OF THE PREMISES.

4.11 Release of Claims, Subrogation

THE TENANTS AGREE TO RELEASE THE LANDLORD FROM ANY CLAIM, BY SUBROGATION OR OTHERWISE, FOR ANY DAMAGE TO THE PREMISES, REGARDLESS OF CAUSE, INCLUDING NEGLIGENCE OF LANDLORD OR TENANTS. This release applies only to the extent that it is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect any insurance coverage.

4.12 Attorney's Fees

If the Landlord retains an attorney to enforce this Agreement and the Landlord prevails in litigation, the Landlord is entitled to recover reasonable attorney's fees and court and other costs from the Tenants.

4.13 Prohibitions

The Tenants agree not to do any of the following without the prior written consent of the Landlord:

- (a) use the Premises for any purpose other than as permitted by this Agreement;
- (b) assign or sublet the Premises or any part thereof;

- (c) create or permit a nuisance on or about the Premises;
- (d) permit the destruction or devaluation of the Premises;
- (e) use the Premises in any way that is unduly hazardous, is materially likely to increase insurance premiums, or would void or invalidate insurance coverage in respect of the Premises;
- (f) alter the Premises without the Landlord's written consent, which may only be given by City Council.

ARTICLE 5. DEFAULT

5.1 Landlord's Remedies

- (a) The Landlord's remedies for Tenants' default are to:
 - (i) enter and take possession of the Premises, after which the Landlord may relet the Premises on behalf of the Tenants and receive rent directly by reason of the reletting, and the Tenants agree to reimburse the Landlord for any expenditures made in order to relet;
 - (ii) enter the Premises and perform the Tenants' obligations; and
 - (iii) terminate this Agreement by written notice and sue for damages.
- (b) The Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out the Tenants or any other person who may be occupying the Premises, until each default is cured, without being liable for damages.

5.2 Total or Partial Destruction

If the Premises are damaged by casualty, the Landlord has an option to restore the Premises. If the Landlord chooses not to restore, this Agreement will terminate. If the Landlord chooses to restore, the Landlord will notify the Tenants of the estimated time to restore and give the Tenants the option to terminate this Agreement by notifying Landlord within ten (10) days. If the Tenants do not terminate this Agreement, the lease will continue.

5.3 Mitigation

The Landlord and the Tenants have a duty to mitigate damages resulting from the other Party's breach of this Agreement.

ARTICLE 6. POST-TERM OBLIGATIONS

6.1 Surrender of Premises on Termination

The Tenants agree to vacate and surrender the Premises on termination of this Agreement, including without limitation termination upon ninety (90) days' notice by the Landlord in cases of neglect, waste, or failure to pay timely rent.

6.2 Holdover

If the Tenants do not vacate the Premises after termination of this Agreement, the Tenants will become Tenants-at-will and must vacate the Premises on receipt of notice from the Landlord. No holding over by the Tenants, whether with or without the consent of the Landlord, will extend the Term.

6.3 Fixtures

All permanent improvements made by Tenants shall become fixtures that remain with the Premises at the conclusion of the Term.

ARTICLE 7. MISCELLANEOUS

7.1 *Limitation of Warranties.*

THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS AGREEMENT.

7.2 Joint and Several Liability

The obligations, covenants, and responsibilities of the VFW and the American Legion under this Agreement shall be joint and several. This means that each of the VFW and American Legion shall be fully responsible for fulfilling the obligations set forth in this Agreement, and the Landlord may enforce this Agreement against the VFW, the American Legion, or both, as it sees fit. If either of the VFW or American Legion fulfills a portion or all of the obligations, it does not relieve the other Party from being liable for the entire obligation. The Landlord reserves the right to seek full performance or remedy from either or both of the VFW and American Legion at its discretion.

7.3 Assignment

Neither Party's obligations under this Agreement may be assigned or transferred to any other person, firm, or corporation without the prior written consent of the other Party.

7.4 Entire Agreement

This Agreement (including any and all Exhibits attached hereto) constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, whether written or oral.

7.5 Amendment

This Agreement may only be amended in writing signed by both parties.

7.6 Severability

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall continue in full force and effect.

7.7 Force Majeure

Each of the Parties shall be excused from any delays and failures in the performance of the terms and conditions of this agreement, to the extent that such delays or failures result from causes beyond the delaying/failing Party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of this Agreement. Any delaying/failing Party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy.

7.8 Notice

- (a) All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the Landlord:
Attention: City Administrator
City of Dripping Springs
P.O. Box 384
Dripping Springs, TX 78620

For the Tenants:
American Legion Post 290
PO Box 1413
Dripping Springs, TX 78620
info@post290tx.com

With a copy to:
VFW Post 2933
PO Box 216
Dripping Springs, TX 78620
post@vfw2933.com

- (b) Either Party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

7.9 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

7.10 Venue

The venue for any and all legal disputes arising under this Agreement shall be a court of competent jurisdiction located in Hays County, Texas.

7.11 Execution in Counterparts

This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the Parties and delivered to the other Party. A signed copy of this Agreement delivered by facsimile, e mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

7.12 Section Headings, Exhibits

The article, section and subsection headings of this Agreement, shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the Agreement are included merely for organization and ease of review. The exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

7.13 Waiver

No waiver of any provision of this Agreement shall be effective unless in writing and signed by the waiving Party. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof.

7.14 Binding Effect

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.

[THIS SPACE INTENTIONALLY BLANK]

7.15 Survival

Despite the termination of this Agreement, the following provisions, and the terms and conditions contained therein, shall remain in effect: 1.1 [Recitals], Article 2 [Definitions], 3.4 [Abatement], 3.5 [Termination], 4.4 [Payment of Rent], 4.7 [Repair], 4.8 [Maintenance by Tenants], 4.9 [Insurance], 4.10 [Indemnity], 4.11 [Release of Claims, Subrogation], 4.12 [Attorney's Fees], 4.13 [Prohibitions], Article 5 [Default], Article 6 [Post-Term Obligations], and Article 7 [Miscellaneous].

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT.

THE CITY:
City of Dripping Springs

THE TENANTS:
Veterans of Foreign Wars (VFW) Post 2933

Michelle Fischer
City Administrator

Name:
Title:

Date

Date

American Legion Post 290

Name:
Title:

Date

**Exhibit "A":
PREMISES**

