

AMENDING AGREEMENT

THIS AMENDING AGREEMENT dated February 21, 2023

BETWEEN:

Frank DeNina and Russell DeNina

-AND-

The City of Tomball

Background

1. Frank DeNina and Russell DeNina and the City of Tomball (the "Parties") entered into a contract (the "Contract") dated April 1, 2017, for the purpose of the Lease of 3.547-acre tract of land.
2. The Parties desire to amend the Contract on the terms and conditions set forth in this Amending Agreement (the "Agreement").
3. This Agreement is the first amendment to the Contract.
4. References in this Agreement to the Contract are to the Contract as previously amended or varied, and attached as Exhibit A.

IN CONSIDERATION OF the Parties agreeing to amend their obligations in the existing Contract, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to keep, perform, and fulfill the promises, conditions, and agreements below:

Amendments

The Contract is amended as follows:

1. Section 2 of the Contract is amended to extend the Contract two additional years, as permitted in Section 2.
2. Section 3 of the Contract is amended by increasing the annual lease payment to a not-to-exceed amount of \$7,000 annually.

No Other Changes

Except as otherwise expressly provided in this Agreement, all the terms and conditions of the Contract remain unchanged and in full force and effect.

Governing Law

Subject to the terms of the Contract, it is the intention of the Parties that this Agreement, and all suits and special proceedings under this Agreement, be constructed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Texas, without regard to the jurisdiction in which any action or special proceeding may be instituted.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on the ____ day of February 2023.

Witness: _____

Date: _____

Frank DeNina

Date: _____

Attest: _____

Date: _____

(SEAL)

David Esquivel, City Manager

Date: _____

EXHIBIT A

LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered as of the 1st day of April, 2017, by and between Frank DeNina and Russell DeNina, individuals, whose principal address is 27100 Tomball Parkway, Tomball, TX 77375 ("Lessor"), and the City of Tomball, a home rule municipal corporation located in Harris County, Texas, having its City Hall located at 401 W. Market Street, Tomball, TX 77375 (the "City").

Whereas, Lessor is the owner of a certain 3.547 acre tract of land, more or less, located within the City of Tomball, Harris County, Texas; and

Whereas, the City desires to lease said 3.547 acre tract from Lessor for use by the City as a day worker's assembly and collection facility; and

Whereas, Lessor is willing to lease said 3.547 acre tract to the City subject to the terms and conditions contained herein; now therefore

For and in consideration of the mutual obligations and benefits to be derived hereunder, Lessor and the City do hereby agree as follows:

Section 1. Lessor agrees to lease to the City, and the City agrees to lease from Lessor, all of that certain 3.547 acre tract of land, more or less, located in the City of Tomball, Harris County, Texas, said 3.547 acre tract being more particularly described and depicted in Exhibit "A" attached hereto and for all things, made a part hereof (the "Property").

Section 2. The primary term of this lease shall be for a period of five (5) years, commencing on the effective date written above, which primary five (5) year term may be extended for an additional period of two (2) years (the "Renewal Term") upon effective notice thereof to Lessor not less than (90) days prior to the expiration of the Primary Term. Notwithstanding the foregoing, Lessor shall have the right at any time ~~to terminate this Lease, upon thirty (30) days advance written notice thereof.~~ The City shall have the right, at any time, to terminate this lease upon thirty (30) days advance written notice thereof.

Section 3. The City shall pay to Lessor, as its annual lease payment, an amount that equals the total ad valorem taxes, not to exceed \$6,000 dollars, that may become due and payable on the Property during the Term or any Renewal Term hereof, including, but not limited to, ad valorem taxes levied by any school district, county, city, conservation reclamation district, hospital district, or any other lawfully constituted taxing unit for that year. Rental shall be due and payable on or before December 15 of each calendar year. For any year of the Primary Term or and Renewal Term that includes less than a full calendar year, the lease payment shall be prorated based upon the portion of the year during which this lease agreement is in effect. It is expressly recognized and agreed between Lessor and the City that the value of the leasehold interest being obtained by the City hereunder exceeds the rental as provided by this Section. The City agrees to cooperate with Lessor, at request of Lessor, with establishing a fair market value of such leasehold estate for the purpose of determining the value of the contribution made by Lessor to the City hereunder.

LEASE AGREEMENT

Section 4. The City shall be authorized to construct and place fixtures and other improvements on the Property as reasonably necessary to provide for the safe and healthful assemblage of day workers and employers. Such improvements may include, but shall not be limited to, perimeter fencing, lighting, portable water facilities, sanitary sewer facilities, including portable toilets, seating, designated vehicular and bicycle parking areas, and shelters. All such improvements constructed or placed on the Property shall be approved by Lessor, which approval shall not be unreasonably withheld.

Section 5. The City agrees to maintain the Property in accordance with the same standards applicable to maintenance of other similar properties of the City. At a minimum, such maintenance shall include regular policing of the grounds and trash removal. The City shall not use, or permit the use of, the Property in any manner that results in waste.

Section 6. The City agrees to maintain policies of liability insurance, insuring against personal injury property damage arising from use of the Property, such policies to provide coverage in amounts not less than those carried for other similar properties by the City. The City shall maintain such policies of insurance at all times during the Term or Renewal Term of this Lease.

Section 7. The City shall return the Property at the termination of the lease in a comparable condition to that which existed on the effective date hereof, normal wear and tear expected. Notwithstanding the foregoing, the City shall not be required to remove fixtures attached to the Property by the City during the Term hereof unless any such fixture shall constitute an attractive nuisance. The City shall not allow attractive nuisance to exist on the Property, nor shall the City return the Property to Lessor at the termination hereof with any attractive nuisance existing on the Property.

Section 8. The City shall be authorized to use the Property as a day laborer assembly and collection site and if agreed upon in writing by both the Lessor and the City for any other lawful municipal purposes.

Section 9. If the City defaults in performing any covenant or term of this Lease and does not correct the default within thirty (30) days after receipt of written notice from Lessor to the City to do so, the City shall be deemed in default hereunder and Lessor shall be entitled to terminate this Lease.

Section 10. Lessor warrants that they own the Property in fee simple.

Section 11. Lessor covenants that as long as the City pays the rental and other charges under this Lease and observes the covenants and terms of this Lease, the City will lawfully hold, occupy, and enjoy the Property during the lease Term and any Renewal Term hereof without being disturbed by Lessor or any person claiming under Lessor, except for any portion of the Property taken under the power of eminent domain. In the event of any such taking by eminent domain, the City shall be entitled to a prorated reduction of rentals equivalent to the reduction in the Property. Provided further, in the event any such taking of the Property by eminent domain leaves insufficient space for the City to provide the facilities contemplated hereby, the City shall be entitled to terminate this Lease.

Executed in duplicate originals as of the date provided above.

LEASE AGREEMENT

THE CITY

City of Tomball, Texas

By: _____

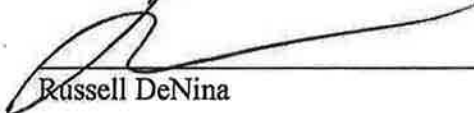
Mayor

Attest:


Doris Speer
City Secretary

LESSOR


Frank DeNina


Russell DeNina

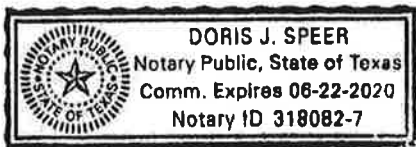
LEASE AGREEMENT

ACKNOWLEDGMENTS

THE STATE OF TEXAS

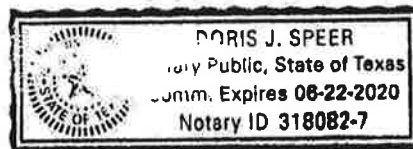
COUNTY OF HARRIS

This instrument was acknowledged before me on the 17th day of April, 2017, by Gretchen Fagan, Mayor of the City of Tomball, TX.



Doris J. Speer
Notary Public In and For the State of Texas

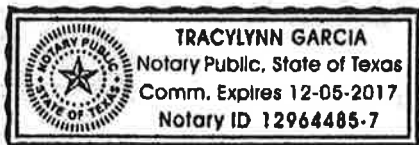
My Commission Expires: 6-22-2020



THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 18 day of April, 2017, by Doris Speer, City Secretary for the City of Tomball, TX.



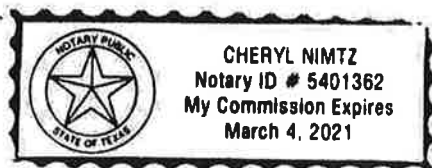
Tracy Lynn Garcia
Notary Public In and For the State of Texas

My Commission Expires: 12-05-2017

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 18 day of May, 2017, by Frank DeNina.



Cheryl Nimitz
Notary Public In and For the State of Texas

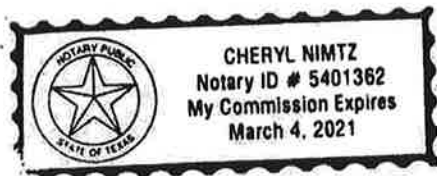
LEASE AGREEMENT

My Commission Expires: 03-04-2021

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 18 day of May, 2017, by
Russell DeNina.



Cheryl NimtZ

Notary Public In and For the State of Texas

My Commission Expires: 03-04-2021