

**ASSET LEASE  
AND SERVICE AGREEMENT  
BETWEEN  
THE WOODLANDS TOWNSHIP AND  
THE WOODLANDS FIRE DEPARTMENT, INC.**

This Asset Lease and Service Agreement (“Agreement”) is entered into effective January 1, 2010 (the “Effective Date”), by and between the Township and the WFD (sometimes each referred to herein as a Party or collectively as the Parties).

**RECITALS:**

**WHEREAS**, a Transition Agreement dated February 1, 2008, as amended by the First Amendment to Transition Agreement dated October 15, 2008, and as further amended by the Second Amendment to Transition Agreement dated January 1, 2009 (collectively, the “Transition Agreement”) was executed by and between THE WOODLANDS TOWNSHIP, a political subdivision of the State of Texas, duly created and operating pursuant to Chapter 289, Acts of the 73<sup>rd</sup> Texas Legislature, Regular Session, 1993, as amended (“Township”), THE WOODLANDS COMMUNITY ASSOCIATION, INC., a Texas non-profit corporation (“WCA”), THE WOODLANDS ASSOCIATION, INC., a Texas non-profit corporation (“TWA”), THE WOODLANDS COMMERCIAL OWNERS ASSOCIATION, INC., a Texas non-profit corporation (“WCOA”), THE WOODLANDS COMMUNITY SERVICE CORPORATION, a Texas non-profit corporation (“WCSC”), THE WOODLANDS RECREATION CENTERS, INC., a Texas non-profit corporation (“WRC”), and THE WOODLANDS FIRE DEPARTMENT, INC., a Texas non-profit corporation (“WFD”) (collectively, the “Associations”) to accomplish a seamless consolidation of the functions and services of the Associations into the Township as single, community-wide governmental organization; and

**WHEREAS**, in accordance with the Transition Agreement, the WFD, by separate Bill of Sale, Assignment, and Assumption with the Township effective January 1, 2010 (“Bill of Sale”), transfers all of its personal and financial assets to the Township (the “Transfer Assets”) and by separate Special Warranty Deed effective January 1, 2010, conveys all of its real property to the Township; and

**WHEREAS**, pursuant to legislation that may prohibit the direct employment of fire protection personnel by the Township prior to January 1, 2012, and in accordance with the Transition Agreement, the WFD shall continue separate operations as the WFD through December 31, 2011, and shall have the Transfer Assets available back to them from the Township by lease through December 31, 2011 for use in the WFD’s continued operation; and

**WHEREAS**, the WFD desires to provide to the Township and the Township desires to acquire from the WFD continued fire protection and emergency medical services to business, customers and property owners within the Township; and

**WHEREAS**, the Township has determined that the Asset Lease and Services will better protect the public health and safety within the Township and promote economic development activity within the Township.

**NOW, THEREFORE**, the Township hereby enters into this Asset Lease and Service Agreement (“Agreement”) to lease the herein-described personal property and assets to the WFD, and to contract for continued fire protection and emergency medical services from the WFD.

## **ARTICLE 1: GENERAL PROVISIONS**

### **1.1 Term**

The term of this Agreement shall commence on the Effective Date and shall continue until the end of the twenty-fourth (24th) full calendar month thereafter, subject to extension as hereinafter provided (the “Term”).

### **1.2. Consideration**

Upon execution of this Agreement, the WFD shall pay to the Township at its designated address, Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as full rent (“Rent”) for the leasing of the Transfer Assets. Additionally, the WFD shall provide the Services (as described below) to the Township in exchange for the Township’s ongoing funding commitments.

## **ARTICLE 2: ASSET LEASE**

### **2.1. Asset Lease**

Pursuant to the Bill of Sale, the Transfer Assets that the WFD transferred to the Township included, **WITHOUT LIMITATION**, all of the WFD’s respective rights, titles, and interests in and to the assets listed on Exhibit “A” attached thereto, as well as: (i) the personal property, fixtures, furnishings, furniture, equipment, motor vehicles, tools, supplies, spare parts, computers, printers, software, files, books, records, and all other tangible personal property owned or leased by the WFD (notwithstanding the foregoing, the Parties each acknowledged the difficulty in maintaining a current list of all personal property, and further acknowledged that the actual items of personal property transferred may be more or less than those enumerated in the exhibits attached thereto); (ii) all rights of the WFD to warranties and indemnities with respect to any of the assets; (iii) all telephone and facsimile numbers (together with all other similar numbers); (iv) all rights of the WFD pertaining to any causes of action, lawsuits, judgments, claims, demands, counterclaims, set-off, or defense they may have with respect to the assets; and (v), all other assets, properties, and rights of every kind and nature held by the WFD, or in which the WFD had an interest, known or unknown, tangible or intangible, fixed or unfixd, accrued, absolute, contingent, or otherwise, whether or not specifically referred to in the Bill of Sale or the exhibits attached thereto, it was expressly agreed and understood that it was the intent of the WFD to transfer **ALL** assets to the Township.

The WFD desires to lease back from the Township, and the Township desires to lease to the WFD, all of the Transfer Assets, including all personal property and assets, in whatever form and wherever situated, as such assets are further described and detailed on **Exhibit “A”** (comprised of Exhibit A-1: WFD Depreciation Ledger and Exhibit A-2: WFD Personal Property Inventory) attached hereto and incorporated for all purposes, on the terms and conditions stated herein (the “Asset Lease”). It is expressly agreed and understood between the Parties that it is the intent of the Parties for WFD to lease **ALL** Transfer Assets from the Township whether or not they are specifically described or noted on exhibits attached hereto.

## **2.2. Delivery of and Title to Transfer Assets**

On or prior to January 1, 2010, the Transfer Assets shall be delivered by the Township to the WFD under this Agreement. The Parties acknowledge that in light of this scheduled leaseback of the Transfer Assets in accordance with the Transition Agreement, the Transfer Assets have remained in the WFD’s possession and control despite the change in title or ownership of the Transfer Assets pursuant to the terms of the Bill of Sale.

## **2.3. Disclaimer of Warranties**

The Township expressly disclaims and makes to the WFD no warranty or representation, express or implied, of merchantability or fitness for any particular purpose or otherwise, including, but not limited to the fitness for use, design or condition of any of the Transfer Assets. The Township acknowledges that any manufacturer’s and/or seller’s warranties in relation to the Transfer Assets are for the benefit of both the Township and the WFD.

## **2.4. Insurance**

The WFD will, at its own expense, insure the Transfer Assets at all times against all hazards requested by the Township including, but not limited to, fire, theft and extended coverage insurance, and such policies shall be payable to the Township as its interest may appear. Such policies of insurance shall be reasonably satisfactory to the Township as to form, amount, and insurer, and shall provide for at least thirty (30) days written notice of cancellation to the Township. The WFD shall furnish certificates, policies, or endorsements to the Township as proof of such insurance. The Township may act as attorney for the WFD in making, adjusting, or settling any claims under any insurance policies insuring the Transfer Assets. The WFD assigns to the Township all of its right, title, and interest to any insurance policies insuring the Transfer Assets, including all rights to receive the proceeds of insurance not in excess of the unpaid obligations under this lease Agreement, directs any insurer to pay all such proceeds directly to the Township, and authorizes the Township to endorse the WFD’s name on any draft for such proceeds.

The WFD will, at its expense, carry public liability insurance with respect to the Transfer Assets and the use of them, in a minimum of \$2,000,000.00 per occurrence and

\$2,000,000.00 in the aggregate, with such insurers as are reasonably satisfactory to the Township, and such insurance policies shall also name the Township as an additional insured. The proceeds of any public liability or property damage insurance shall be payable first to the Township to the extent of its liability, if any, and the balance to the WFD. The proceeds of any fire, theft, and extended coverage insurance with respect to the Transfer Assets shall be payable solely to the Township and shall be applied by the Township toward the payment of the WFD's obligations under this Agreement and any balance of the proceeds shall be the property of the Township, provided that at the Township's option, such proceeds may be used for the repair or replacement of the affected Transfer Assets.

## **2.5. Risk of Loss**

The WFD assumes all risk of loss, damage, theft, or destruction of the Transfer Assets. In the event of loss, damage, theft, or destruction of any Transfer Asset, the WFD, at the Township's option, shall either:

- (a) Place the Transfer Asset in good repair, condition, and working order at the WFD's sole cost and expense; or
- (b) Replace the Transfer Asset with a like asset in good repair, condition, and working order as the WFD's sole cost and expense;

## **2.6. Maintenance, Repairs, and Operation**

The Township shall, at its expense, maintain each Transfer Asset in good condition and running order.

## **2.7. Taxes and Other Assessments**

The WFD shall be responsible for all taxes, including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes, license fees, assessments, charges, fines, or penalties, currently or later levied or imposed by any state, local, Federal, or foreign authority (all such expenses, taxes, license fees, assessments, charges, fines, penalties, being called "Assessments") upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery, or transfer of title, all of which Assessments the WFD assumes and agrees to pay on demand in addition to the other payments to be made by it provided for in this Agreement. The WFD will also pay promptly all Assessments which may be imposed upon the Transfer Assets or for the use or operation of it or on the earnings arising from it (except as provided above) or on the Township solely by reason of the ownership of it and will keep at all times all and every part of the Transfer Assets free and clear of all Assessments which might in any way affect the title of the Township to the Transfer Assets or result in a lien upon the Transfer Assets. In the event that during the continuance of this Agreement, any reports with respect to Assessments involving the Transfer Assets are required to be made, the WFD will either make such reports in such manner as to show the interest of the

Township in the Transfer Assets, or notify the Township of such requirement and make such reports in such manner as shall be satisfactory to the Township. To the extent that the WFD is prohibited by law from performing in its own name the duties required by this Section, and only to such extent, the Township authorizes the WFD to act in the Township's name and on its behalf; provided, however, that the WFD shall indemnify and hold the Township harmless from and against any and all claims, costs, expenses, damages, losses, and liabilities incurred in connection with them as a result of, or incident to, any action by the WFD pursuant to this authorization. The WFD shall, when requested by the Township, submit to the Township copies of returns, statements, reports, billings, and remittances, or furnish other evidence satisfactory to the Township of the WFD's performance of its duties under this Section. The WFD shall also furnish promptly on request all data as the Township shall reasonably require to permit the Township's compliance with the requirements of taxing jurisdictions.

## **2.8. Indemnification**

Except as otherwise provided in this Agreement, the WFD assumes liability for, and agrees to indemnify, protect and keep harmless the Township, its agents, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs, and expenses, including reasonable attorney's fees, of whatever kind and nature, arising out of the use, condition (including but not limited to, latent and other defects, and whether or not discoverable by the WFD or the Township), operation, ownership, selection, delivery, leasing, or return of any of the Transfer Assets, or any failure on the part of the WFD to perform or comply with any condition of this Agreement. The indemnities and assumptions of liabilities and obligations in this Agreement provided for shall continue in full force and effect notwithstanding the expiration or other termination of this Agreement.

## **2.9. Township's Performance of WFD's Obligations**

If the WFD shall fail to duly and promptly perform any of its obligations under this Agreement with respect to the Transfer Assets, the Township may (at its option) perform any act or make any payment which the Township deems necessary for the maintenance and preservation of the Transfer Assets and the Township's title to it, including payments for satisfaction of liens, repairs, taxes, levies, and insurance, and all sums so paid or incurred by the Township, and any reasonable legal fees incurred by the Township in connection therewith shall be payable by the WFD to the Township on demand. The performance of any act or payment by the Township as set forth above shall not be deemed a waiver or release of any obligation or default on the part of the WFD.

## **2.10. Return of Transfer Assets**

At the expiration or earlier termination of the Term of this Agreement, the WFD will return the Transfer Assets to the Township in the same operating order, repair, condition, and appearance as of the date of this Agreement, excepting only for reasonable wear and tear and depreciation (as applicable) resulting from the authorized use of the Transfer Assets.

## **2.11. Events of Default Under Asset Lease Provisions**

The WFD shall be in default under the Asset Lease provisions of this Agreement upon the happening of any of the following events or conditions ("Events of Default") during the Term of this Agreement:

- (a) the WFD should fail to pay any sum required to be paid under the Asset Lease provisions of this Agreement on or before the due date, and such failure shall continue for five (5) consecutive days;
- (b) the WFD shall fail at any time to procure or maintain any insurance coverage required by the Asset Lease provisions of the Agreement;
- (c) the WFD should fail to perform or observe any covenant, condition, or agreement (other than the payment of any sums required to be paid under this Agreement and other than the obligation to procure and maintain any insurance coverage required by this Agreement) in the Asset Lease provisions of this Agreement, and such failure shall continue for fifteen (15) days after receipt by the WFD of written notice of such failure or performance; or
- (d) the WFD shall make or permit any unauthorized assignment or transfer of this Asset Lease, the Transfer Assets, or any interest in them.

## **2.12. Remedies**

- (a) Upon the occurrence of any Event of Default and later at any later time thereafter (unless such Event of Default shall have been waived by the Township), the Township may without any further notice, exercise any one or more of the following remedies:
  - (1) Take possession of the Transfer Assets, and for this purpose enter upon any premises of the WFD and remove the Transfer Assets, without any liability, suit, action, or other proceeding by the WFD;
  - (2) Cause the WFD at the WFD's expense to promptly return the Transfer Assets to the Township;
  - (3) Proceed by appropriate action either at law or in equity to enforce performance by the WFD of the applicable covenants of this Agreement, or to recover damages for the breach of them; or
  - (4) Exercise any other rights accruing to the Township under any applicable law upon a default by the WFD.

(b) No right or remedy conferred on or reserved to the Township by this Agreement shall be exclusive of any other right or remedy in this Agreement or by law provided. All rights and remedies of the Township conferred on the Township by this Agreement or by law shall be cumulative and in addition to every other right and remedy available to the Township. No failure on the part of the Township to exercise, and no delay in exercising any right or remedy under this Agreement shall operate as a waiver of such right or remedy unless specifically waived by the Township in writing; nor shall any single or partial exercise by the Township of any right or remedy under this Agreement preclude any other or further exercise of such right or the exercise of any other right or remedy.

(c) The WFD, for and in consideration of, and as an inducement to the Township to enter into this Agreement, voluntarily and knowingly waives, to the extent permitted by law, any and all rights to notice and/or hearing prior to any retaking of possession or replevy of the Transfer Assets by the Township, its agents, or assigns, upon default of the WFD. The Township may require the WFD to deliver the Transfer Assets to the Township at a place to be designated by the Township.

(d) Promptly after the WFD has knowledge of it, the WFD shall give notice to the Township of any event that has occurred or is continuing which would constitute an Event of Default, but for the requirement that notice be given or time elapse or both.

### **ARTICLE 3: SERVICE AGREEMENT**

#### **3.1. Services**

The WFD desires to provide to the Township, and the Township desires to acquire from the WFD, continued fire protection and emergency medical services to business, customers and property owners within the Township (the “Services”). The Services will include: i) establishment, advancement, and perpetuation of any and all systems, services and facilities which are reasonably necessary and within the capabilities of the WFD to provide, so as to preserve life and property from and during fires and similar or related emergencies or hazards that may occur from time to time in the Township and general service area; ii) teaching, educating and training the Township residents and property owners regarding the prevention and suppression of fires therein, and providing similar or related emergency services to such persons or entities; iii) leasing, maintaining, operating, or providing any and all land, building, facilities, fire engines, rescue equipment, ambulances and other apparatus, instrumentalities, machinery and equipment deemed necessary by the WFD, for the prevention of fires and similar or related hazards and for the provision of emergency services; and iv) employing or providing all necessary manpower, and lease and maintain real property including any improvements or fixtures thereon, suitable and convenient for housing personnel, or for housing, repairing, or caring for fire fighting and other necessary equipment.

### **3.1.1. Funding**

For calendar year 2010 and 2011, the Township covenants and agrees to pay over to WFD, for the provision of Services, and at the times and in the manner and upon the conditions noted herein which are ample and sufficient to fully fund the adopted budget for each ensuing calendar year. For calendar year 2010, the WFD budget is hereby approved and shall be funded subject to the following terms and conditions.

The Township agrees to pay the WFD from any lawfully available funds, in advance, and on or prior to the fifteenth (15<sup>th</sup>) day of each calendar quarter, but within the limits of the approved budget, such amounts as are estimated to be required by the WFD to fund such expenditures for such calendar quarter (with any material variance from the approved budget being requested in writing by either party and being subject to approval by the Boards of each of the Township and the WFD). Such payments to the WFD shall not exceed the total approved budget for Services to be rendered for each ensuing calendar year. Failure to timely agree upon such approved budgets or budget amendments shall cause the then current budget and payments procedures to continue in effect for such calendar year. In addition, the Township agrees to provide to the WFD, at no cost or expense to the WFD, such staff and services as may reasonably be required in support of the Services to be provided by the WFD hereunder.

Furthermore, the Township and WFD acknowledge and agree that the approved budget for each calendar year (i) shall serve as the basis for defining the scope and level of services and funding, (ii) shall not be amended or revised in any material respect without prior written approval (iii) shall be updated, approved and adopted by the WFD and presented to the Township Board of Directors for consideration and approval on or before July 15 of each calendar year, and (iv) shall be consistent with the scope and Plans of the approved Transition Agreement.

Upon request by the Township, but not less frequently than quarterly, the WFD shall provide the Township with a written report or presentation concerning the Services actually provided hereunder by the WFD and the results of such Services so as to demonstrate to the Township the effectiveness of the Services provided hereunder and that the intended public benefits to be determined from such Services have been or are being realized by the Township. Similarly, the WFD shall provide financial reports, not less frequently than quarterly, to the Township comparing actual to budgeted expenditures and providing in reasonable detail an accounting for the expenditures of public funds paid to the WFD by the Township hereunder.

### **3.2 Compliance with Laws**

The WFD shall be, and shall remain solely responsible for taking all actions necessary to insure continuing compliance on its part with all applicable laws, ordinances, codes, orders, restrictive covenants, permits, licenses, consents, rules, or requirements relating to this Agreement and its performance of the Services, including,



without limitation, all applicable environmental, health, and safety laws, and training and certification requirements.

### **3.3 Payment of Expenses**

The WFD shall be solely responsible for paying all direct costs associated with providing the Services, including, without limitation, operation and maintenance expenses, capital and equipment costs and expenses, personnel expenses, licensing, registration or permit fees, insurance premiums, salaries and compensation, benefits and accruals, and management, supervision, training, certification and educational expenses.

### **3.4 INDEMNIFICATION**

**TO THE FULLEST EXTENT PERMITTED BY LAW, THE WFD AGREES TO PROTECT, DEFEND (WITH ATTORNEYS REASONABLY ACCEPTABLE TO THE TOWNSHIP), HOLD HARMLESS, AND INDEMNIFY THE TOWNSHIP, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AND AGENTS (HEREIN INDIVIDUALLY REFERRED TO AS INDEMNITYEE AND COLLECTIVELY REFERRED TO AS “INDEMNITEES”) FROM AND AGAINST ALL CLAIMS, ACTIONS, LIABILITIES, DAMAGES, LOSSES (INCLUDING ECONOMIC LOSSES), FEES, COSTS, EXPENSES (INCLUDING ATTORNEYS’ FEES AND EXPENSES INCURRED IN THE ENFORCEMENT OF THIS INDEMNITY PROVISION), AND LIENS, ARISING IN WHOLE OR IN PART OUT OF ANY ACTUAL OR ALLEGED BODILY INJURY OR DEATH; INJURY TO, DESTRUCTION OF, OR ENVIRONMENTAL IMPAIRMENT OF TANGIBLE PROPERTY INCLUDING, WITHOUT LIMITATION, THE LOSS OF USE RESULTING THEREFROM; VIOLATION OF APPLICABLE LAWS, RULES OR REGULATORY REQUIREMENTS; FAILURE BY THE WFD TO PURCHASE ALL INSURANCE REQUIRED BY THIS AGREEMENT; OR ANY OTHER DAMAGE OR LOSS ARISING OUT OF OR RESULTING FROM, AND TO THE EXTENT CAUSED BY, ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE WFD, OR ANY OFFICER, DIRECTOR, AGENT, EMPLOYEE, REPRESENTATIVE, INSURER OR SUBCONTRACTOR OF THE WFD, OCCURRING DURING THE TERM OF THIS AGREEMENT AND RELATED IN ANY WAY TO THE WFD’S PERFORMANCE OF THE SERVICES. FURTHERMORE, IN NO EVENT SHALL THE WFD BE DIRECTLY LIABLE TO THE TOWNSHIP, OTHER THAN BY OR THROUGH THIS INDEMNITY, FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES.**

The provisions of this Section shall survive expiration or termination of this Agreement, and shall not be construed to provide for any defense or indemnification of any Indemnitee for his, her, or its own negligence, or to provide for any indemnification which would, as a result thereof, make the provisions of this Section void, or eliminate any other indemnification, right, or limitation of liability which the WFD or any Indemnitee has by law.

## ARTICLE 4: MISCELLANEOUS

### **4.1. Assignment**

Neither Party may assign its rights to this Agreement without the prior written consent of the other Party.

### **4.2 Notices**

Any notices required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, return receipt requested, or delivered by a nationally recognized overnight delivery service or by confirmed facsimile. Notice shall be deemed given: (i) if given personally, as of the date delivered; (ii) if given by certified mail three (3) days after deposit for delivery; (iii) if by overnight mail, the next business day following deposit with such service; or (iv) if given by facsimile, the date shown on the confirmed transmission receipt. Notice shall be sent to the WFD or to the Township at the addresses noted below. Either Party may by notice to the other specify a different address for notice purposes.

#### TOWNSHIP:

The Woodlands Township  
Attn: Records & Property Data Manager  
2201 Lake Woodlands Dr.  
The Woodlands, Texas 77380

#### WFD:

The Woodlands Township/WFD  
Attn: Fire Chief  
10001 Woodloch Forest Drive, Suite 600  
The Woodlands, Texas 77380

### **4.3. Amendment**

This Agreement may not be modified, terminated, or discharged except in writing signed by both Parties hereto.

### **4.4. Other Miscellaneous**

(a) This Agreement shall be construed in accordance with the laws of the State of Texas. All or a portion of this Agreement is performable in Montgomery

County, Texas, and therefore, the Parties agree that venue for any dispute related thereto shall be proper in the courts serving such county and state.

(b) If any provision of this Agreement, or the application of any provision to any circumstance, is held invalid or unenforceable under any applicable law of any jurisdiction, the remainder, and the application of such provision to other circumstances, shall remain valid and enforceable; provided, however, if the provisions of any such applicable law may be waived, they are waived by the WFD and the Township to the full extent permitted by law, to the end that this Agreement shall be deemed to be a valid and binding agreement enforceable in accordance with its terms.

(c) This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute but one and the same instrument.

[SIGNATURES ON THE FOLLOWING PAGE]  
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**IN TESTIMONY WHEREOF**, the Parties hereto have executed this Agreement in multiple counterparts, each of which shall constitute an original but collectively shall constitute only one document, such execution to be effective as of the Effective Date.

TOWNSHIP:

WFD:

**THE WOODLANDS TOWNSHIP**,  
a political subdivision of  
the State of Texas

**THE WOODLANDS FIRE  
DEPARTMENT, INC.**,  
a Texas non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "A"**

**TRANSFER ASSETS**

**Exhibit A-1: WFD Depreciation Ledger**

**Exhibit A-2: WFD Personal Property Inventory**

**EXHIBIT “A”**

**Exhibit A-1: WFD Depreciation Ledger**

**(copy attached)**

**EXHIBIT “A”**

**Exhibit A-2: WFD Personal Property Inventory**

**(copy attached)**