

City of Fredericksburg

REGULAR CITY COUNCIL MEETING AGENDA MONDAY, NOVEMBER 4, 2019 ~ 6:00 P.M. LAW ENFORCEMENT CENTER ~ 1601 EAST MAIN STREET

Linda Langerhans, Mayor
Tom Musselman, Councilmember
Bobby Watson, Councilmember

Charlie Kiehne, Councilmember
Gary Neffendorf, Councilmember
Kent Myers, City Manager

The City of Fredericksburg City Council will meet in a regular session on Monday, November 4, 2019, at 6:00 p.m. in the Law Enforcement Center, 1601 East Main Street, Fredericksburg, Texas. This is an open meeting, open to the public, subject to the Open Meetings Law of the State of Texas, and as required by law, notice is hereby posted on November 1, 2019, before 5:00 p.m., providing time, place, date and agenda thereof. The meeting facility is wheelchair accessible and accessible parking spaces are provided. Requests for accommodations or interpretative services must be made to the City Secretary 48 hours prior to this meeting.

(Please turn off all pagers and phones, except emergency on-call personnel.)

1. PLEDGE OF ALLEGIANCE

2. CALL TO ORDER

3. EMPLOYEE RECOGNITIONS

4. PUBLIC COMMENTS

The City Council welcomes citizen participation and comments at all City Council Regular Meetings. The City Council offers citizens the opportunity to address them by signing up to speak prior to the meeting and to limit comments to 3-minutes.

NOTE: The Texas Open Meetings Act permits a member of the public or a member of the governmental body to raise a subject that has not been included in the notice for the meeting. However, any discussion of the subject must be limited to a proposal to place the subject on the agenda for a future meeting and any response to a question posed to the City Council is limited to either a statement of specific information or recitation of existing policy. TEX. GOV'T CODE § 551.042.

5. CONSENT

THE FOLLOWING ITEMS MAY BE ACTED UPON IN A SINGLE MOTION. NO SEPARATE DISCUSSION OR ACTION ON ANY OF THESE ITEMS WILL BE HELD UNLESS PULLED AT THE REQUEST OF A MEMBER OF CITY COUNCIL.

- A.** Consider approval of the October 21, 2019, City Council Regular Meeting Minutes.
(Agenda Packet Pages 5-12)

6. OTHER ACTION ITEMS AND UPDATES

- A. Consider the approval of Resolution 2019-16R approving the acquisition and financing of equipment with Frost Bank.
(Agenda Packet Page 13-30)
- B. Consider the approval of a lease agreement with Poarch Realty for the use of a downtown parking lot located at 108 East San Antonio Street.
(Agenda Packet Pages 31-40)
- C. Consider awarding a Professional Service Contract to John and Stan Klein for Architect services for Market Square Redevelopment Project.
(Agenda Packet Pages 41-46)
- D. Receive a presentation and discuss the Boot Ranch Utilities Update.
(Agenda Packet Pages 47-60)
- E. Receive a presentation and discuss the wine tasting on Main Street and off the golden block (Rosemary Estenson).
(Agenda Packet Page 63)
- F. Receive a presentation and discuss the number of allowable chains on Main Street (Rosemary Estenson).
(Agenda Packet Page 65)
- G. Receive a presentation and discuss the Relief Route by C.I.R.R. (Citizens Informed Relief Route (Gary Saucier).
(Agenda Packet Page 67)

7. CITY MANAGER'S REPORT

- A. November 5, 2019 Special Election
- B. November 12 Special Council Meeting-Institute Annexation

8. ITEMS FOR FUTURE AGENDA

(Agenda Packet Pages 69-70)

9. COUNCIL COMMENTS

Reports about items of community interest, which no action will be taken.

10. EXECUTIVE SESSION

The City Council will recess its open meeting and reconvene in Executive Session pursuant to Texas Government Code Section 551.072

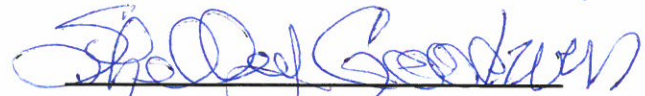
- A. Consider and discuss the purchase, exchange, lease, or value of real property, located in the vicinity of the intersection of N. Washington St. and E. Schubert St., in the City of Fredericksburg (Sec. 551.072).
- B. Consider and discuss the purchase, exchange, lease, or value of real property, located near the intersection of S. Llano St. and E. San Antonio St., in the City of Fredericksburg (Sec. 551.072).

11. BUSINESS ITEM

The City Council will reconvene into Regular Session upon the conclusion of the Executive Session, the City Council may take action on any item posted in Executive Session, as necessary.

12. ADJOURN

This is to certify that I, Shelley Goodwin, posted this Agenda at 3:15 p.m. on October 30, 2019, at the entrance and on the bulletin board of the City of Fredericksburg City Hall, 126 W. Main St., Fredericksburg, Texas.



Shelley Goodwin, TRMC
City Secretary



CITY OF FREDERICKSBURG
MINUTES OF CITY COUNCIL REGULAR
MEETING
OCTOBER 21, 2019

Members Present:

Mayor Linda Langerhans
Mayor Pro Tem Gary Neffendorf
Councilmember Tom Musselman
Councilmember Bobby Watson

Members Absent:

Councilmember Charlie Kiehne

City Staff Present:

Clinton Bailey, Assistant City Manager/Director Public Works and Utilities
Daniel Jones, City Attorney
Brian Jordan, Development Services Director
Steve Wetz, Police Chief
Lynn Bizzell, Fire Chief
Russell Immel, Information Technology Director
Laura Hollenbeak, Director of Finance
Kris Kneese, Assistant Director of Public Works and Utilities
Garret Bonn, Assistant Engineer
Anna Hudson, Historic Preservation Officer
Shelley Goodwin, City Secretary

1. PLEDGE OF ALLEGIANCE

Mayor Langerhans led the Pledge.

2. CALL TO ORDER

With a quorum of the City Council present, Mayor Langerhans called the regular meeting of the Fredericksburg City Council to order at 6:00 p.m. on Monday, October 21, 2019, in the Law Enforcement Center, 1601 East Main Street, Fredericksburg, Texas 78624.

3. EMPLOYEE RECOGNITIONS

Clinton Bailey, Assistant City Manager/Director Public Works and Utilities, stated he did not have any recognitions.

4. PUBLIC COMMENTS

Jerry McCorkle spoke regarding recycling concerns and fluoride election.

Rosemary Estinson spoke regarding Main Street concerns with allowing franchises over ten,

weekend vendors and the liquor establishments on the golden blocks.

Chord Sweitzer spoke regarding concerns of ETJ and losing property rights. He was also concerned with the lack of concept of community and notifying ETJ members.

5. CONSENT

THE FOLLOWING ITEMS MAY BE ACTED UPON IN A SINGLE MOTION. NO SEPARATE DISCUSSION OR ACTION ON ANY OF THESE ITEMS WILL BE HELD UNLESS PULLED AT THE REQUEST OF A MEMBER OF CITY COUNCIL.

A. Consider approval of the October 7, 2019, City Council Regular Meeting Minutes.

Motion: A motion was made by Councilmember Neffendorf, seconded by Councilmember Watson, to approve the October 7, 2019, City Council Regular Meeting Minutes. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

6. PUBLIC HEARING

A. Annexation of approximately 117.1 acres of land situated in Gillespie County, Texas along the south side of W. Live Oak and extending from east of Post Oak Road to west of Smokehouse Road.

- i. Hold a public hearing to receive comments for or against**
- ii. Discussion on the proposed annexation**

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Watson, to go into the Public Hearing at 6:13 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

Brian Jordan, Development Services Director, provided an update on the process and the history of the proposed annexation. He also pointed out the properties that signed an agreement and are identified as Agricultural, Timber or Wildlife Ad Valorem Exemptions.

Bobby Stewart, the owner of Tract F, stated a few years ago LCRA approached them about extending power on the current lines, which will make his property go from 16 acres to 10 acres.

Reginal Wells spoke regarding the boundary lines and how the buffer zone will affect her.

Brian Jordan, Development Services Director, reviewed the location of the property lines and how the buffer zones will affect property owners.

Edward Rode spoke regarding the new annexation bill and the notification requirements.

Brian Jordan, Development Services Director, provided an update on the process used in annexations and the adoption of Resolution 2019-6R before the new legislation became effective.

Daniel Jones, City Attorney, reviewed the law and the new legislation.

Pricilla Murphy spoke in opposition to the annexation and the impact that zoning change will have in this area.

Joe Salinas spoke in opposition to the annexation. He also spoke regarding the effects that becoming in City limits will have on them.

Brian Jordan, Development Services Director, reviewed the Salinas property and the agriculture usage of the property. He also stated their property applied for exemption. If they sell, then they would have to comply with City ordinances. He also reviewed the process for the Service Plan and the deadlines.

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Watson, to go out of the Public Hearing and back into the regular session at 6:44 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

7. ORDINANCE

A. Consider the approval of Ordinance 2019-30 amending Article 16.000 – Water and Sewer Rates and Fees, of Appendix A – Fee Schedule, of the Code of Ordinances, to update and amend the fees for Water and Sewer Utility Service provided by the City (second and final reading).

Kris Kneese, Assistant Director of Public Works and Utilities, stated this is the second reading of Ordinance 2019-30 of the Water and Wastewater rate. He reviewed the history and process of the rate increases. He also stated this rate increase is part of the revenue budget for FY2020.

Motion: A motion was made by Councilmember Neffendorf, seconded by Councilmember Musselman, to approve Ordinance 2019-30 amending Article 16.000 – Water and Sewer Rates and Fees, of Appendix A – Fee Schedule, of the Code of Ordinances, to update and amend the fees for Water and Sewer Utility Service provided by the City on second and final reading. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

8. OTHER ACTION ITEMS AND UPDATES

A. Zoning Case #Z-1916 by Dotty Duecker on behalf of St. Vincent De Paul Society for a Conditional Use Permit to expand a Nonconforming Use Per Section 6.110 of the Zoning Ordinance at 610 and 612 W. Live Oak Rd.

i. Presentation

ii. Hold a public hearing to receive comments for or against

iii. Consider the approval of the Zoning request.

Dotty Duecker, St. Vincent De Paul Society, provided the history of the project.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Musselman, to go into the Public Hearing at 7:23 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Watson, to go out of the Public Hearing and back into the regular session at 7:24 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

Brian provided the history of the zoning and the processes of the St. Vincent DePaul Society project.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Musselman, to approve Zoning Case #Z-1916 by Dotty Duecker on behalf of St. Vincent De

Paul Society for a Conditional Use Permit to expand a Nonconforming Use Per Section 6.110 of the Zoning Ordinance at 610 and 612 W. Live Oak Rd. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

B. Zoning Case #Z-1917 by the City of Fredericksburg to change the Land Use Plan area east of Post Oak Road from Low Density Residential to Commercial and change the first two tracts west of Post Oak Road from Low Density Residential to High Density Residential. And establish the Zoning C1 Neighborhood Commercial on the east of Post Oak Road, R-3, Multi-Family Residential on two tracts west of Post Oak Road, R-1, Single Family Residential on the remaining tracts over to Smokehouse Road, and R-1A, Single Family Residential on the small lot tracts west of Smokehouse Road

- i. **Presentation**
- ii. **Hold a public hearing to receive comments for or against**
- iii. **Consider the approval of the Land Use Plan**
- iv. **Consider the approval of the request to establish the Zoning**

Brian Jordan, Development Services Director, reviewed the location of the property and the current zoning. He also reviewed the proposed Land Use Plan density and different zonings.

The City Council discussed the number of R1A and R1 zonings in the area. They also discussed the density of R3 and R2 zoning.

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Neffendorf, to go into the Public Hearing at 6:59 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

Reginal Wells spoke regarding the future residents of the proposed homes and apartments in this area.

Pricilla Murphy spoke regarding her concern with no ingress or egress other than Live Oak. She also felt a Traffic Impact Study should be done on all the rezoning properties.

Bobby Stewart stated he has remodeled the Fredericksburg Inn and Suites into a first-class venue. He also stated he is trying to assist the City with the housing issues in Fredericksburg.

Joey Salinas spoke regarding his concerns about the proposed density and property values.

Carol Wells spoke regarding his concern with the growth and traffic increase in Fredericksburg.

Motion: A motion was made by Councilmember Neffendorf, seconded by Councilmember Musselman, to go out of the Public Hearing and back into the regular session at 7:10 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

The City Council discussed the different properties and their ability to change their zoning.

Brian Jordan, Development Services Director, provided an update on property owners' ability to petition for a Land Use Plan.

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Neffendorf, to approve Zoning Case #Z-1917 by the City of Fredericksburg to change the Land Use Plan area east of Post Oak Road from Low Density Residential to Commercial and change the first two tracts west of Post Oak Road from Low Density Residential to High Density Residential. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Watson, to approve establishing the Zoning C1 Neighborhood Commercial on the east of Post Oak Road, R-3, Multi-Family Residential on two tracts west of Post Oak Road, R-1, Single Family Residential on the remaining tracts over to Smokehouse Road, and R-1A, Single Family Residential on the small lot tracts west of Smokehouse Road. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

C. Consider the approval of the Landmark Designation of the Old High School at 110 W. Travis (Building 400) (previously postponed from September 16, 2019, Regular Meeting).

Anna Hudson, Historic Perseveration Officer, provided an update on the Landmark Designation of the Old High School and requested this item be postponed until the school's architect can review.

The City Council agreed by consensus to postpone until Fredericksburg ISD's architect can review the designation.

D. Consider the approval of a lease agreement with Poarch Realty for the use of a downtown parking lot located at 108 East San Antonio Street.

This item is being discussed in Executive Session.

E. Consider the approval of the FY 2020 Budget Amendments for expenditures that were approved in the FY 2019 Budget but not completed.

Laura Hollenbeak, Director of Finance, stated at the end of FY2019 (September 30, 2019) a few projects and purchases were not completed. She stated a budget amendment is needed for these projects and purchases in the FY2020 Budget.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Musselman, to approve the FY 2020 Budget Amendments for expenditures that were approved in the FY 2019 Budget but not completed. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

F. Consider awarding the bid for FY 2020 Lease Purchase Financing for the acquisition of equipment for Public Works and Fire Department.

Laura Hollenbeak, Director of Finance, stated in the FY2020 Budget funds were approved for funding the for lease-purchase payments for the acquisition of equipment. She also reviewed the equipment being leased and stated the purchase price to be financed is \$1,192,959.44. Staff recommends that the City Council award the financing to Frost Bank.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Neffendorf, to award the bid for FY 2020 Lease Purchase Financing for the acquisition of

equipment for Public Works and Fire Department to Frost Bank. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

G. Consider awarding a Professional Services Contract to Kimley-Horn and Associates, Inc. for the completion of the Transportation Projects Traffic Impact Study.

Garret Bonn, Assistant Engineer, reviewed the process for bidding, the scope of the project, the bids that were submitted, and the Qualifications Evaluation Criteria. He stated staff recommends awarding a Professional Services Contract to Kimley-Horn and Associates, Inc.

The City Council discussed the projects and referring Friendship Lane Extension to Inner Loop.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Musselman, to award a Professional Services Contract to Kimley-Horn and Associates, Inc. for the completion of the Transportation Projects Traffic Impact Study. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

H. Receive a presentation and discuss the Texas PACE Program.

John Clamp, Chief Financial Officer AACOG, provided a presentation Texas Pace Program. He reviewed the meaning of PACE, how it works, actions needed by City Council, benefits to the City, property owners, and annual investments. He also stated this program is zero cost to the City.

Clinton Bailey, Assistant City Manager/Director Public Works and Utilities, explained how property owners' loans are paid back. He also stated staff is looking for directions and the City Council supports the PACE Program, then they will need to approve a Resolution at a future City Council meeting.

Lean McCormick, Lone Star PACE, explained that they are an administrator for the AACOG PACE Program. He stated they provide marketing and the other services to the City and property owners.

The City Council agreed by consensus to bring back a Resolution at a future City Council meeting supporting the Texas PACE Program.

9. Future Agenda

Clinton Bailey, Assistant City Manager/Director Public Works and Utilities, reviewed the upcoming agenda items.

10. CITY MANAGER'S REPORT

A. City Council Work Session-October 29th

Clinton Bailey, Assistant City Manager/Director Public Works and Utilities, reviewed the five agenda items and stated the Work Session will be held at the LBJ Golf Course in the Cardinal Room at 8:30 a.m.

B. November 5, 2019, Special Election

Clinton Bailey, Assistant City Manager/Director Public Works and Utilities, reminded everyone about the City Election.

Shelley Goodwin, City Secretary, reviewed the voting hours and locations for Early Voting and Election Day.

Councilmember Musselman expressed his concerns regarding the information being provided by CleanWater Fred Specific-Purpose Committee.

Daniel Jones, City Attorney, stated the City can provide factual information regarding their water.

10. COUNCIL COMMENTS

Councilmember Watson reviewed the usage of fuel at the Airport Hanger.

Councilmember Musselman thanked the City employees who helped him and his wife during an incident.

11. EXECUTIVE SESSION

The City Council will recess its open meeting and reconvene in Executive Session pursuant to Texas Government Code Section 551.072

- A. Consider and discuss the purchase, exchange, lease, or value of real property, located near the intersection of S. Llano St. and E. San Antonio St., in the City of Fredericksburg (Sec. 551.072).**

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Musselman, to go out of Regular Session into Executive Session at 8:24 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Musselman, to go out of Executive Session into Regular Session at 9:07 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

12. BUSINESS ITEM

No action was taken.

13. ADJOURN

Motion: A motion was made by Councilmember Neffendorf, seconded by Councilmember Watson, to adjourn the Monday, October 21, 2019, City Council Regular Meeting at 9:07 p.m. The City Council voted four (4) for and none (0) opposed. The motion carried unanimously.

Linda Langerhans
Mayor

ATTEST

Shelley Goodwin, TRMC
City Secretary



CITY COUNCIL MEMO

DATE: November 4, 2019

TO: Mayor and City Council

FROM: Laura Hollenbeak, Director of Finance

SUBJECT: Resolution and Contract Approving the Acquisition and Financing of Equipment

Summary:

The 2020 adopted City Budget approved funding for lease purchase payments for the acquisition of equipment including a Maintainer for the Street Department, Boom Truck and Bobcat Excavator for the Water Department, Track Loader for the Solid Waste Fund, Ambulance for the EMS Fund, Bucket Truck and Backhoe for the Drainage Fund.

The purchase price of \$1,192,959.44 will be financed. The financing was bid with the low bid received from Frost Bank with an interest rate of 1.490%. Council awarded the financing to Frost Bank at the October 21, 2019 City Council Meeting.

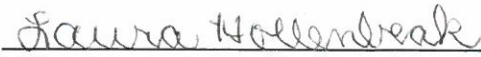
Recommendation:

Staff recommends that the Council approve the Resolution and the Contract with Frost Bank for the Lease/Purchase Financing of Equipment. The City attorney has reviewed the lease documentation.

Background / Analysis:

Attachments:

Resolution and Contract for Lease/Purchase Financing with Frost Bank.



Department Approval



City Manager Approval

RESOLUTION 2019-16R

**A RESOLUTION OF THE CITY OF FREDERICKSBURG, TEXAS,
APPROVING THE ACQUISITION AND FINANCING OF EQUIPMENT**

WHEREAS, the City of Fredericksburg ("City") desires to procure equipment using lease purchase financing; and

WHEREAS, the City has awarded the bid to provide said financing to *Frost Bank*, based on competitive bidding and procurement practices as required by Texas Law.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of Fredericksburg, Texas, that:

1. The City Council hereby approves the acquisition and financing of equipment, using financing provided by *Frost Bank*, said equipment being described as:

Street Department – Motor grader/Maintainer;
Water Fund – Boom Truck and Bobcat Excavator;
Solid Waste Fund – Track Loader;
EMS – Ambulance; and
Drainage Fund – Bucket Truck and Backhoe; and

2. The City Council hereby approves the financing at a total cost of \$1,192,959.44 for a term of 24 months, at 1.490% annual percentage rate, with the first annual payment of \$403,548.75 to be paid on November 15, 2019, followed by two annual payments of \$403,548.75 each, with *Security State Bank and Trust* acting as the Escrow Agent for the financing; and

3. The City Council hereby approves the Municipal Equipment Lease/Purchase Agreement (the "Agreement"), as copy of which is attached hereto as Exhibit "A"; and

4. The City Council hereby authorizes Kent Myers, in his capacity as City Manager, and Laura Hollenbeak, in her capacity as Director of Finance, to execute the Agreement and other documents related to said financing, on behalf of the City.

PASSED AND APPROVED this _____ day of November, 2019.

Mayor

ATTEST:

City Secretary

EXHIBIT "A"



FROST BANK
c/o Frost Leasing
3838 Rogers Road
San Antonio, Texas 78251

**Municipal Equipment
Lease/Purchase Agreement**

Number 776508758-002 dated as of October 28, 2019

THIS MUNICIPAL EQUIPMENT LEASE/PURCHASE AGREEMENT (this "Agreement") dated as of October 28, 2019 by and between City of Fredericksburg, Texas ("Purchaser") having its principal place of business at 126 W Main St., Fredericksburg, Texas 78624 (said state being referred to throughout this Agreement as the "State") and FROST BANK ("Bank").

W I T N E S S E T H

WHEREAS, with regard to any Equipment (hereinafter defined) not owned by Purchaser, Bank owns or can acquire such Equipment and Purchaser desires to lease/purchase said Equipment through the financing herein provided;

WHEREAS, Purchaser may desire to lease/purchase equipment under this Agreement from time to time whereby this Agreement shall apply to all such additional lease/purchases.

NOW, THEREFORE, in consideration of the covenants herein, the parties agree by entering into this Agreement, including all related Acceptance Certificates (as hereinafter defined), as amended from time to time, as follows:

I. Assignment to Bank; Sale to Purchaser; Term; Security Interest; Tax Certifications.

Section 1.1. Assignment to Bank. Purchaser assigns to Bank all rights, if any, which Purchaser has or may hereafter acquire in the personal property (the "Equipment") identified specifically in any Exhibit marked as an Exhibit "B" hereto as dated from time to time (the "Installment Payment Schedule") which exhibits set forth various matters related to such Equipment and related purchase orders (the "Purchase Orders"), as issued to any supplier of Equipment (a "Vendor") reserving to Purchaser, however, so long as Purchaser is entitled to possess the Equipment, all rights to property (other than the Equipment itself) and service that Vendors are obligated to provide. Purchaser irrevocably constitutes Bank its true and lawful attorney-in-fact with full power to demand, receive, and give acquittance for all moneys and claims with respect to Purchase Orders, to endorse any related instruments and to institute any proceedings which Bank deems advisable.

Section 1.2. Delivery Acceptance. Bank shall cause the Equipment to be delivered to Purchaser at the Equipment Location (as specified in the applicable Exhibit "B"), and Purchaser shall accept the Equipment as soon as it has met the acceptance criteria specified in the applicable purchase documents. Purchaser shall irrevocably accept the Equipment under lease and shall evidence the commencement of the lease with respect thereto by executing and delivering to Bank an acceptance certificate in the form attached as Exhibit "A" (an "Acceptance Certificate").

Section 1.3. Sale to Purchaser. Subject to the terms hereof, Bank will sell each item (an "Item") of Equipment to Purchaser, and Purchaser will purchase each Item from Bank by making the installment purchase payments (the "Installment Payments") according to the Installment Payment Schedule. The cost of each Item, delivery and installation charges, Bank's legal expenses, origination fees, and all other related costs will be included in the total cost of the Item as shown in each Exhibit "B."

Section 1.4. Term. This Agreement will be effective on the date hereof. With respect to any Item, except as may be otherwise specifically provided in this Agreement, the obligation to make the Installment Payments provided for in this Agreement and as set forth in each Installment Payment Schedule hereto will begin on the execution of an Acceptance Certificate and expire or terminate upon the first to occur of: (a) the end of the fiscal year of Purchaser ("Fiscal Year") during which an Event of Nonappropriation (as defined in Section 2.6 below) occurs; (b) an optional payment date as specified in Exhibit "B" hereto ("Optional Payment Date") upon which date the Purchaser may prepay the price of an Item (the "Option

Price"); (c) an event of default, as defined in Article V below ("Event of Default"), and a termination of Purchaser's possession of the Item; or (d) the later of the last installment payment date ("Installment Payment Date") specified in Exhibit "B" or the date on which all Installment Payments are paid. Expiration or termination of this Agreement will terminate all obligations of Purchaser with respect to such Item (except to the extent moneys have theretofore been appropriated for such purpose). Upon termination described in clause (a) or (c) above, title to the Item shall thereupon be deemed transferred to Bank.

Section 1.5. Title. Title to each Item will pass to Purchaser upon the execution and delivery of an Acceptance Certificate subject to the Bank's rights hereunder. Purchaser will keep each Item free of all encumbrances except Bank's purchase money security interest.

Section 1.6. Security Interest. To secure payment of all amounts due under this Agreement and to secure the performance and observance by Purchaser of all the covenants expressed or implied herein, Purchaser hereby grants a purchase money security interest in the Equipment to Bank in accordance with the Uniform Commercial Code or other applicable code of the State, said security interest to also cover all of Purchaser's interest (whether ownership or otherwise, and whether presently existing or hereafter acquired) in and to any and all the following: (i) future replacements, betterments, substitutions and additions to any of the Equipment; (ii) rentals, deposits, and other sums as may become due Purchaser as lessor under any and all leases of any Equipment, whether written or oral; (iii) purchase contracts or similar agreements (and all rights of Purchaser thereunder) executed by Purchaser and any other individual or entity pursuant to the terms of which such individual or entity has contracted to purchase from Purchaser the Equipment or any part thereof; and (iv) proceeds of the Equipment or any of the foregoing, including, without limitation, all condemnation or insurance proceeds arising out of or with respect to the Equipment or any of the foregoing.

Section 1.7. Tax Certification and Indemnification.

(a) Purchaser agrees and certifies as follows: (1) Moneys on deposit in any fund or account related to this Agreement will not be used in a way that will cause the interest component of any Installment Payment to be includable in Bank's gross income for federal tax purposes; (2) No use will be made of proceeds of this Agreement, or any funds or accounts of Purchaser which may be deemed to be such proceeds, which would cause this Agreement to be an "arbitrage bond" under section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder (the "Code"). Purchaser will comply with the requirements of section 148 of the Code; (3) Purchaser will not take, cause to be taken or fail to take any action, the result of which would cause the interest component of any Installment Payment to be ineligible for exclusion from Bank's gross income under section 103 of the Code or would cause this Agreement to be a "private activity bond" or to fail to meet any applicable requirement of section 149 of the Code; (4) Purchaser will timely file the information report required by section 149(e) of the Code (Form 8038-G or 8038-GC), and promptly provide to Bank evidence of Purchaser's filing of all necessary documents with the Internal Revenue Service; (5) This Agreement will not at any time be a "private activity bond" (as defined in section 141 of the Code); (6) the reasonably anticipated amount of tax exempt obligations as described in section 103(a) of the Code ("Tax Exempt Obligations") (including this Agreement and qualified 501(c)(3) bonds and excluding other private activity bonds) that will be issued by Purchaser and its subordinate entities during any calendar year in which an Acceptance Certificate is delivered will not exceed \$30,000,000. Not more than \$30,000,000 of obligations issued by Purchaser during any calendar year in which an Acceptance Certificate is delivered will be designated by Purchaser as a "qualified tax exempt obligation" for purposes of section 265(b)(3) of the Code. This Agreement has been entered into on the basis that Bank will be entitled to the exception contained in section 265(b)(3) of the Code (the "Exception") with respect to the deduction of interest expense allocable to tax-exempt interest. The Purchaser hereby designates this Agreement as a "qualified tax exempt obligation" for purposes of Section 265(b)(3) of the Code. If, as a result of the falsity or breach of Purchaser's representations or agreements in this Section 1.7, Bank will not have or will lose the right to claim the Exception, upon thirty (30) days' written notice to Purchaser by Bank, Purchaser shall, to the extent permitted by this Agreement and by applicable law, pay Bank an amount which, in the reasonable opinion of Bank and after deduction of all taxes required to be paid by Bank with respect to receipt of such amount, will cause Bank's net after-tax return over the term of this Agreement to equal the net after-tax return that would have been available if Bank had been entitled to the Exception.

(b) Purchaser is exempt from the arbitrage rebate requirements of section 148(f) of the Code because: (1) Under section 148(f)(4)(D) of the Code (i) it is a political subdivision of the State with general taxing powers and is not a subordinate entity of any other political subdivision, (ii) this Agreement will not at any time be a "private activity bond" (as defined in section 141 of the Code), (iii) 95% or more of the net proceeds of this Agreement will be used for local governmental activities of Purchaser within the meaning of section 148(f)(4)(D)(i)(III) of the Code, (iv) Purchaser has not issued any Tax Exempt Obligations in the current calendar year other than this Agreement and those referenced in Section 1.7(a) above, (v) the

aggregate face amount of all Tax Exempt Obligations (other than private activity bonds), including this Agreement, which will be issued by Purchaser and its subordinate entities during the calendar year in which an Item is delivered will not exceed \$5,000,000; or (2) Purchaser is entitled to the exception under section 148(f)(4)(B)(1) of the Code because the gross proceeds (as defined in section 148(f)(6)(B) of the Code) of this Agreement (including costs of issuance) will be expended for and allocated to the governmental purposes of this Agreement within six months after the date hereof.

(c) To the extent Purchaser fails to qualify for either of the above rebate exceptions, it will (i) timely pay to the United States any payments necessary to preserve the tax-exempt status of the interest component of the Installment Payments (provided, that this Section is not intended to create a debt for purposes of the Constitution of the State) and (ii) take all such actions that may be necessary to comply with the rebate requirements of section 148(f) of the Code.

(d) Bank, on behalf of Purchaser, will pay the proceeds of this Agreement to the Vendor of the Equipment no later than five (5) business days after execution of an Acceptance Certificate. Purchaser therefore reasonably expects that such proceeds will be spent within the three-year temporary period provided in the Treasury Regulations issued or proposed under the Code including amendments and successor provisions thereto (the "Regulations").

(e) Purchaser has investigated the facts, estimates and circumstances in existence on the date hereof, together with Purchaser's exceptions as to future events. These are true and are complete in all material respects, and on the basis of such, it is not expected that the use of the sale proceeds hereof or any other moneys or property will be used in a manner which will cause this Agreement to be an arbitrage bond within the meaning of section 148 of the Code. Such expectations are reasonable, and there are no other facts, estimates or circumstances that would materially change such expectations.

(f) None of the proceeds hereof will be used, directly or indirectly, in any trade or business carried on by any person other than a governmental unit, which is defined to include any state of the United States and any political subdivision, agency, instrumentality or entity acting by or on behalf of a state, but not including the United States or any agency or instrumentality thereof, no more than 10% of the Equipment will be used directly or indirectly in a trade or business carried on by any such person, and no more than 5% of the Equipment will be used directly or indirectly in trade or business carried on by any such person that is not related to any government use of such Equipment.

(g) The payment of the Installment Payments will not be directly or indirectly (i) secured by any interest in property used or to be used for a private business use or payments in respect thereof, or (ii) derived from payments in respect of property or borrowed money used or to be used for private business.

(h) None of the proceeds hereof will be used, directly or indirectly, to make or finance loans to persons other than a governmental unit.

(i) No person, other than Purchaser or another governmental unit, will use the Equipment on any basis other than the same basis as the general public; and no person other than a governmental unit will be a user of the Equipment as a result of (i) ownership, or (ii) actual or beneficial use pursuant to a lease or a management or incentive payment contract, or (iii) any other similar arrangement.

(j) Within fifteen (15) days before the date hereof, Purchaser has not sold (nor will it deliver within fifteen (15) days after the date hereof) any other obligations pursuant to the same plan of financing that will be paid from substantially the same source of funds (or which will have substantially the same claim to be paid from substantially the same source of funds), without regard to guarantees from unrelated parties, as this Agreement or which will be paid directly or indirectly from the proceeds hereof.

(k) No Item is expected to be sold or otherwise disposed of prior to the expiration of this Agreement.

(l) The certifications and representations made herein are intended, and may be relied upon, as a certification described in Section 1.148-2(b)(2) of the Regulations.

(m) Bank represents that it is entering into this Agreement for investment and not for assignment to others. The amount Bank funds pursuant hereto is the issue price hereof and does not exceed the fair market value of this Agreement as of the date hereof.

(n) Should the interest component of payments hereunder be deemed by the federal government or determined by the Internal Revenue Service or a court of competent jurisdiction or an opinion of nationally recognized bond counsel not to be exempt from gross income, subject to the provisions of Section 2.6 hereof, Purchaser will pay as additional sums hereunder sufficient funds to adjust the interest to be paid hereunder to an amount equivalent to the after-tax interest rate contemplated hereunder as a tax exempt transaction. Said adjustment will be retroactive and apply to any installments already paid by Purchaser to Bank to the extent that any ruling by any such taxing authority requires the payment of additional tax on payments already received by Bank. This obligation will survive the expiration of this Agreement.

II. Payment of Purchase Price; Warranty Disclaimers.

Section 2.1. Agreement to Pay. Subject to the limitation of Section 2.5 of this Agreement, Purchaser will pay the Installment Payments to Bank from funds appropriated therefor and any other moneys legally available for that purpose, at the place set forth in Exhibit "B" or such other place as Bank may designate, in such amounts, including principal and interest, and on such date as called for in each Supplement hereto along with the reasonable expenses of Bank related hereto, except expenses included in the cost of the Equipment pursuant to Section 1.3, and any other payment required under this Agreement. If any amount payable hereunder is not paid within ten (10) days after it is due, Purchaser will pay to Bank an amount equal to five percent (5%) of such overdue payment as a delinquency charge. Purchaser agrees with Bank that such a delinquency charge is reasonable compensation to Bank for the handling of such late payments. Purchaser's payment obligation hereunder is not subject to any defense, right of setoff or counterclaim arising out of any breach by Bank, hereunder or otherwise, or out of any indebtedness or any liability at any time owing by Bank. BANK HAS NO RIGHT TO COMPEL PURCHASER TO LEVY OR COLLECT TAXES TO MAKE ANY PAYMENTS REQUIRED HEREUNDER, OR TO EXPEND FUNDS BEYOND THE AMOUNT APPROPRIATED THEREFOR IN THE THEN CURRENT FISCAL YEAR OF PURCHASER.

Section 2.2. Warranties. BANK MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING THE EXTENT OF OR ENFORCEABILITY OF ANY CLAIM, WARRANTY, AGREEMENT OR REPRESENTATION ASSIGNED TO PURCHASER UNDER ARTICLE III BELOW. NO DEFECT OR UNFITNESS OF ANY ITEM WILL RELIEVE PURCHASER OF ITS OBLIGATIONS HEREUNDER. BANK MAKES NO REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, OR ITS DELIVERY, INSTALLATION, DESIGN, PERFORMANCE, SPECIFICATIONS, CONDITION, DURABILITY, SUITABILITY, FITNESS FOR USE OR MERCHANTABILITY. AS BETWEEN BANK AND PURCHASER, ALL EQUIPMENT IS ACCEPTED AND PURCHASED HEREUNDER BY PURCHASER "AS IS," "WHERE-IS," AND "WITH ALL FAULTS," AND BANK WILL NOT BE RESPONSIBLE FOR ANY PATENT OR LATENT DEFECTS THEREIN, OR ANY DAMAGES, WHETHER ACTUAL, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, ARISING THEREFROM. Under no circumstances will Bank be liable for actual, special, incidental, consequential or other damages of or to Purchaser, or any other entity arising out of or in connection with the maintenance, use or performance of the Equipment.

Section 2.3. Prepayment. If no Event of Default, or event which with notice or lapse of time, could become an Event of Default, exists, upon thirty (30) days prior written notice, Purchaser may prepay the purchase price of all, but not less than all, Items on any Optional Payment Date by paying the applicable Option Price in the specific Exhibit "B" applicable to the Item(s) plus the Installment Payment due on such date, whereupon Bank will release its purchase money security interest in the Item(s).

Section 2.4. Appropriations. (a) Purchaser, by entering into this Agreement, acknowledges its current intention to make all payments due under this Agreement during its current Fiscal Year on the dates such payments are then due, but does not commit to a legal or other obligation to make other payments due under this Agreement or to incur any liability or debt beyond the revenue and income provided during its then current Fiscal Year. The liability and obligations of Purchaser during each Fiscal Year and remedies of Bank will be limited to recovery only of funds appropriated for payments for such Fiscal Year. (b) Purchaser agrees (i) that the governing body of Purchaser shall, for each ensuing Fiscal Year in which the payments are scheduled to be made, to the extent funds have been appropriated for such Fiscal Year, make all such payments as and when due; and (ii) that if sufficient funds are appropriated and budgeted for the next Fiscal Year for the sale and lease of the Equipment, then this Agreement will continue during such Fiscal Year.

Section 2.5. Funding Intent. Purchaser reasonably believes that sufficient funds can be obtained to make all Installment Payments and other payments during the term of this Agreement. Purchaser affirms that funds to pay Installment Payments and other payments under this Agreement are available for Purchaser's current Fiscal Year. Purchaser and Bank agree that Purchaser's obligation to make Installment Payments under this Agreement will be Purchaser's current expense and will not

be interpreted to be a debt in violation of applicable law or constitutional limitations or requirements. Nothing contained in this Agreement will be interpreted as a pledge of Purchaser's general tax revenues, funds or moneys.

Section 2.6. Nonappropriation. If, during a Fiscal Year (the "Current Fiscal Year") the governing body of Purchaser fails to specifically include in its proposed budget or related documents, or to appropriate sufficient funds to make the Installment Payments and other amounts due under this Agreement in the next succeeding Fiscal Year with regard to any specific Item, then Purchaser will immediately (but in no event later than 90 days prior to the end of the Current Fiscal Year) notify Bank or its assignee of such occurrence. In such event, an event of nonappropriation ("Event of Nonappropriation") will be deemed to have occurred, and this Agreement will be terminated as it applies to said specific Item to which such Event of Nonappropriation applies at the end of the Current Fiscal Year, whereupon Purchaser will be obligated to pay all amounts then due under this Agreement subject to the provisions herein. At the end of the Current Fiscal Year, Bank will have the right to take possession of such Item and title to such Item shall vest in Bank, and all rights of Purchaser in and to such Item including rights to possession, shall terminate. Nothing in this Section or elsewhere in this Agreement will be deemed in any way to obligate Purchaser or create a debt of Purchaser beyond its Current Fiscal Year. If Purchaser makes all payments due under this Agreement through the end of the Current Fiscal Year and relinquishes such Item as provided elsewhere in this Agreement, then Purchaser will have no further liability under this Agreement as it relates to the specific Item as to which such Act of Nonappropriation has occurred and the Item has been surrendered to Bank.

III. Duties of Bank.

So long as no Event of Default or Event of Nonappropriation has occurred, Bank assigns to Purchaser all of Bank's rights to suppliers' and manufacturers' warranties and service agreements with respect to the Equipment, and Bank agrees to cooperate with Purchaser, at Purchaser's expense, in asserting such rights, provided that Purchaser shall, to the extent permitted by law, indemnify and hold harmless Bank from and against all related claims, costs, damages, losses and liabilities. If no Event of Default or Event of Nonappropriation has occurred, Purchaser's use of the Equipment will not be interrupted by Bank or anyone claiming solely through or under Bank.

IV. Duties of Purchaser.

Section 4.1. Use and Maintenance of Equipment. Purchaser agrees that the Equipment will be used solely in the conduct of its business at its principal place of business unless Bank is otherwise notified in writing of an alternate location and Bank first agrees to such alternate location in writing. Purchaser will maintain the Equipment in good repair and working order, reasonable wear and tear accepted, but in any event, to the same extent that Purchaser would, in the prudent management of its properties, maintain comparable equipment. Purchaser will comply with all laws, rules and regulations with respect to the use, maintenance and operation of the Equipment, and if any additional improvement to or replacement of any Item is required, Purchaser will do so at its own expense. Purchaser may add parts or accessories to any Item if it does not impair the value, utility or warranties of such Item and is readily removable without causing material damage.

Section 4.2. Sale and Encumbrance. Purchaser will not sell, lease or encumber the Equipment and will continue to own and use it for the public purposes of Purchaser.

Section 4.3. Inspection and Tags. At any time during Purchaser's normal working hours, Bank may inspect the Equipment where it is located and inspect all related records of Purchaser. Bank may attach tags to any Item showing that Bank retains a purchase money security interest in it. Purchaser will not allow any other name to be placed on any Item that might be interpreted as a claim to a lien thereon.

Section 4.4. Insurance; Damage or Destruction. Purchaser will provide public liability insurance and physical damage and loss acceptable to Bank with respect to the Equipment in amounts not less than those specified in Exhibit "B" with either a responsible insurance company authorized to do business in the State or an actuarially sound self-insurance program. Each policy will name Bank as an additional insured and loss payee and provide that it may be altered or canceled only after thirty (30) days' prior written notice to Bank. On demand, Purchaser will deliver to Bank evidence satisfactory to Bank showing the existence of such insurance, and will deliver to Bank evidence satisfactory to Bank showing renewal or replacement of such insurance within thirty (30) days prior to expiration or cancellation. If Purchaser fails to maintain such insurance, Bank may obtain such insurance as Bank deems necessary, and Purchaser will reimburse Bank for all premiums therefor, together with interest at the maximum rate permitted pursuant to Chapter 1204, Government Code, as amended, or other applicable law then in effect. Purchaser assumes all risk of loss to the Equipment. Purchaser will immediately notify Bank of any loss for which an insurance claim may be made, and shall, at Purchaser's option: (a) Exercise its option to prepay under Section

2.3; or (b) Place any damaged Items in as good a condition as before such damage, and replace any missing Items with similar equipment of at least equal value. Any such replacement will be subject to this Agreement, and Purchaser hereby grants to Bank a security interest therein free of all liens.

Section 4.5. Taxes. Purchaser shall, to the extent permitted by law, pay when due and indemnify Bank against all taxes and charges of any nature imposed against Bank, Purchaser or the Equipment with respect to the Equipment or its purchase, ownership, delivery, leasing, possession, use, or disposition, or upon the rentals or earnings therefrom, or with respect to the Agreement, unless Purchaser is contesting such in good faith and by appropriate proceedings. If any report or return is required with respect to any obligation of Purchaser under this Section, Purchaser will notify Bank and make such report or return in a manner satisfactory to Bank.

Section 4.6. Indemnification. To the extent permitted by applicable law, Purchaser will indemnify, protect, and hold harmless Bank or any assignee or transferee of Bank and their respective agents and servants from and against all claims, causes of action, damages, liability (including strict liability in tort), costs, fees, penalties or expenses (including attorney's fees) incurred in any manner by or for the account of any of them relating to the Equipment or any part thereof, including without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment as a result of the use, maintenance, repair, replacement, operation or condition thereof (whether defects are latent or discoverable by Bank or by Purchaser) except such as may result from the gross negligence or willful misconduct of Bank, or assignee or transferee thereof and their respective agents and servants. This Section will be effective from the date the first Item of Equipment is ordered. Purchaser agrees to give Bank prompt notice of any claim or liability hereby indemnified against. Bank agrees to cooperate with Purchaser in any defense or other action which Purchaser is obligated to undertake.

Section 4.7. Mortgages, Liens, Etc. Purchaser will not directly or indirectly create, incur, assume, or permit the existence of any mortgage, security interest, pledge, lien, charge, encumbrance, or claim on or with respect to the Equipment, title thereto or any interest therein except the respective rights of Bank and Purchaser as herein provided and liens for taxes either not yet due or being contested in good faith and by appropriate proceedings. Purchaser will promptly, at its own expense, take such actions as may be necessary duly to discharge any such mortgage, security interest, pledge, lien, charge, encumbrance, or claim not specifically excepted above.

V. Events of Default and Remedies.

Section 5.1. Events of Default. The following will be Events of Default: (a) Purchaser's failure to pay any payment hereunder within 10 days after it is due; (b) Purchaser's failure to maintain the insurance required under Section 4.4; (c) Purchaser's failure to perform any covenant, condition or agreement under this Agreement within 30 days after written notice from Bank requesting that such failure be remedied; (d) Any representation or warranty made by Purchaser to Bank is materially false or misleading when made; (e) Purchaser becomes insolvent or bankrupt or makes an assignment for the benefit of creditors or consents to the appointment of a trustee or receiver, or a trustee or a receiver is appointed for Purchaser for a substantial part of its property without its consent and is not dismissed within a period of sixty (60) days, or bankruptcy, reorganization or insolvency proceedings are instituted by Purchaser; (f) Purchaser defaults in any other material agreement to which Purchaser is a party with third parties resulting in a right by such third parties to accelerate the maturity of Purchaser's obligations under such other agreement, and such obligations materially impair Purchaser's ability to pay its obligations to Bank under this Agreement; and (g) Purchaser fails to comply with its obligations under Section 2.6 following an Event of Nonappropriation.

Section 5.2. Remedies. Whenever an Event of Default has occurred, Bank may, subject to the limitation of Section 2.4 of this Agreement, exercise any one or more of the following remedies: (a) By written notice to Purchaser, declare all amounts coming due during the current Fiscal Year for all Equipment to be immediately due and payable; (b) Take possession of the Equipment wherever the Equipment is located, without demand or notice, without any court order or other process of law, sell or lease it and retain the proceeds, holding Purchaser liable for an amount equal to (i) all amounts payable hereunder to the end of the then current Fiscal Year less (ii) the proceeds of such sale or lease; provided however, if the proceeds of such sale or lease exceed the amount required to compensate Bank for all payments contemplated under this Agreement plus any expenses related to said sale or lease, any costs to repair or replace the Equipment and any other expenses related thereto, then such excess proceeds will be paid to Purchaser; (c) Require Purchaser to deliver the Equipment to a location designated by Bank; (d) Proceed by court action to enforce performance by Purchaser of any terms of this Agreement and/or to recover all damages and expenses incurred by Bank by reason of any Event of Default; and (e) Exercise any other right or remedy available to Bank at law or in equity. Also, Purchaser shall pay Bank all costs and expenses (including reasonable legal fees and costs) incurred by Bank in enforcing any of the terms, conditions or provisions of this Agreement. Upon repossession or

surrender of any Equipment, Bank shall lease, sell or otherwise dispose of the Equipment in a commercially reasonable manner, with or without notice and at public or private sale, and apply the net proceeds thereof (after deducting all expenses (including reasonable legal fees and costs) incurred in connection therewith) to the amounts owed to Bank hereunder; provided, however, that subject to the provisions of Section 2.6, Purchaser shall remain liable to Bank for any deficiency that remains after any sale or lease of such Equipment to the extent permitted by law. These remedies are cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

Section 5.3. No Remedy Exclusive; Repossession. (a) No remedy herein is exclusive, and every remedy is in addition to every other remedy at law or in equity. No delay in exercising or failure to exercise any right or power will be a waiver thereof. No notice will be necessary to entitle Bank to exercise any remedy, except as required in this Article. To the extent permitted by law, Purchaser waives any requirements of law, now or hereafter in effect, that might limit or modify Bank's remedies; (b) If Bank is entitled to repossess the Equipment, Purchaser shall, if Bank requests, make it available at a reasonable place designated by Bank and execute and deliver such documents as may be required to establish clear title to the Equipment in Bank. Purchaser will bear all costs of removal and delivery of the Equipment and repairs to Purchaser's property.

VI. Representations, Covenants and Warranties of Purchaser.

Section 6.1. Representations, Covenants and Warranties of Purchaser. (a) Purchaser represents, covenants and warrants for the benefit of Bank that Purchaser is a political subdivision of the State with statutory authority to enter into this Agreement, and has been duly authorized to execute, deliver and carry out its obligations under this Agreement and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body politic and corporate. Purchaser is not subject to any legal or contractual provision that restricts or prevents it from entering into and performing its obligations under this Agreement, except laws affecting creditors' rights generally. There is no known pending or threatened action, proceeding, or investigation affecting Purchaser, nor to the best knowledge of Purchaser, is there any basis therefor, wherein an unfavorable result would adversely affect this Agreement; and (b) The Equipment is and will remain personal property, and not fixtures. The execution and performance of this Agreement will not violate any judgment, order, law or regulation, constitute a default under any instrument binding upon Purchaser, or create any encumbrance upon any assets of Purchaser or the Equipment, except as herein provided. Purchaser has never non-appropriated or defaulted under any of its obligations under any lease-purchaser contract, bond, or other debt obligation. Purchaser has been duly authorized to execute and deliver this Agreement under the terms and provisions of its duly adopted resolution and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the due authorization of this Agreement. No approval, consent, or withholding of objection is required from any governmental authority other than Purchaser with respect to the entering into or performance by Purchaser of this Agreement. The balance sheet of Purchaser for its most recent Fiscal Year and the related earnings statement of Purchaser for such Fiscal Year have been furnished to Bank and fairly present Purchaser's financial condition as of such date and the results of its operations for such fiscal year in accordance with generally accepted accounting principles consistently applied, and since such date there has been no material adverse change in such condition or operations.

Section 6.2. Opinion of Counsel. Upon Bank's request, Purchaser will deliver to Bank an opinion of Purchaser's legal counsel on and as of the date of this Agreement or any time deemed reasonably appropriate by Bank, with respect to the matters in Section 6.1 and such other matters as Bank reasonably requests. In addition, Purchaser agrees to provide Bank with any other documents reasonably requested by Bank prior to Bank's funding of this Agreement.

Section 6.3. Financial Statements. Purchaser shall keep its books and records in accordance with generally accepted accounting principles. Purchaser agrees that it will furnish Bank Purchaser's current audited financial statements within 120 days of each Fiscal Year end including (i) a balance sheet, (ii) statement of revenues, expenses and changes in fund balances, (iii) statement of cash flows, (iv) operating fund budget analysis, and (v) appropriate notes, schedules and attachments to the financial statements; and permit Bank or its agents and representatives to inspect Purchaser's books and records and make extracts therefrom. Purchaser represents and warrants to Bank that all financial statements which have been delivered to Bank fairly and accurately reflect Purchaser's financial condition and there has been no material adverse change in Purchaser's financial condition as reflected in the financial statements since the date thereof.

VII. Assignments.

Bank may assign and grant a security interest in any of its rights or interests in this Agreement or the Equipment. Bank or any future assignee will notify Purchaser of the assignment and provide the name and address of the assignee to Purchaser. PURCHASER WILL NOT ASSIGN OR GRANT A SECURITY INTEREST IN THIS AGREEMENT OR THE EQUIPMENT, IN WHOLE OR IN PART.

VIII. Bank's Rights to Perform for Purchaser.

(a) Subject to the limitations set forth within this Agreement, if Purchaser fails to perform or comply with any of its agreements contained herein, Bank may, but will not be required to, make any payment or perform or comply with any covenant or agreement contained herein, and all reasonable expenses of Bank incurred in connection therewith will be payable by Purchaser upon demand, together with interest at the maximum rate of interest allowed under Chapter 1204, Government Code, as amended, or other applicable law then in effect from the date of payment to the date of reimbursement; (b) Purchaser will promptly and duly (i) execute and deliver to Bank such further documents or instruments of further assurance and take such further action as Bank may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Bank hereunder, at the expense of Purchaser; or (ii) authorize Bank to file financing statements describing the Equipment.

IX. Miscellaneous.

This Agreement will be governed by the laws of the State. If a provision of this Agreement is invalid or unenforceable, the remainder may be enforced to the fullest extent permitted by law. This Agreement and each Acceptance Certificate may be executed in multiple original counterparts. This Agreement will bind and inure to the benefit of the parties' permitted successors and assigns. The headings herein will not in any way affect this Agreement. This Agreement is the entire agreement of the parties and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter hereof. This Agreement may not be amended, changed or modified except by written agreement executed by both parties hereto. Any waiver by Bank, implied or written, shall not constitute consent for any other breach of the same or other provision. All representations, warranties and covenants made by Purchaser shall survive termination of this Agreement. Upon demand, Purchaser will promptly reimburse Bank for any filing or recordation fees or expenses (including reasonable legal fees and costs) incurred by Purchaser in perfecting or protecting its interests in the Equipment and under this Agreement. Purchaser shall promptly execute and deliver to Bank such documents and take such further action as Bank may from time to time reasonably request to carry out the intent and purpose of this Agreement and to protect the rights and remedies of Bank created or intended to be created hereunder. Service of all notices under this Agreement shall be sufficient if mailed to the respective party at its address set forth herein or at such other address as the parties may provide to each other in writing from time to time. Any such notice mailed to said address shall be effective when deposited in the United States mail, duly addressed with first class postage prepaid. Notwithstanding anything contained in this Agreement to the contrary, in no event shall interest contracted for, charged or received hereunder, plus any other charges in connection herewith that constitute interest on this Agreement under applicable law, result in a "net effective interest rate" as defined in Section 271.003(6) of the Local Government Code, as amended, in excess of the net effective rate at which public securities may be issued in accordance with Chapter 1204, Government Code, as amended. The amounts of such interest or other charges previously paid to Bank in excess of the amounts permitted by the preceding sentence shall be applied by Bank to reduce the principal of the indebtedness incurred by Purchaser pursuant to this Agreement, or, at the option of Bank, be refunded. To the extent permitted by Chapter 1204, Government Code, as amended, or other applicable law then in effect, determination of the maximum net effective interest rate shall at all times be made by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of this Agreement and such indebtedness, all interest at any time contracted for, charged or received from Purchaser hereof in connection with the indebtedness evidenced hereby, so that the actual rate of interest on such indebtedness is uniform throughout the term hereof. Interest on the unpaid amounts under this Agreement shall be computed as simple interest.

IN WITNESS WHEREOF, Purchaser and Bank have executed this Agreement as of the date first above written.

City of Fredericksburg, Texas

(SEAL)

By: Kent Myers, City Manager

By: Laura Hollenbeak, Director of Finance

Attested and Countersigned:

Clerk/ Recorder/ Secretary of Lessee

Notice address:
126 W Main St.
Fredericksburg, Texas 78624

FROST BANK

By: Authorized Officer of Frost Leasing

Notice address:
Frost Bank
P.O. Box 59
San Antonio, Texas 78291-0059
Attention: Leasing Department



FROST BANK
c/o Frost Leasing
3838 Rogers Road
San Antonio, Texas 78251

Exhibit "A"

Acceptance Certificate

Number 776508758-002 dated as of October 28, 2019

The undersigned Purchaser, having entered into a Municipal Equipment Lease/Purchase Agreement dated October 28, 2019, (the "Agreement"), with FROST BANK ("Bank"), does hereby certify to Bank that:

1. The equipment listed in the attached Exhibit B (the "Equipment") dated October 28, 2019 is of a size, design, capacity, and manufacture selected by Purchaser, is in good condition and has been satisfactorily delivered and installed. Purchaser hereby expressly assumes all responsibilities in connection with the delivery and installation thereof;
2. Purchaser is satisfied that the Equipment is suitable for Purchaser's purposes;
3. The Purchaser has complied with all applicable competitive bidding requirements in connection with the lease/purchase acquisition of the Equipment;
4. Unless otherwise indicated on Exhibit B, the Equipment is new and unused on the date hereof except for routine testing and inspection;
5. Upon payment of the purchase price to the Vendors indicated in Exhibit B, there will be no liens, security interests, or encumbrances against the Equipment except the interest of Bank under the Agreement;
6. The Equipment is personal property and will not become either real property, fixtures or inventory;
7. Purchaser authorizes Bank to pay the Vendors indicated in Exhibit B for the Equipment;
8. The representations and warranties of Purchaser contained in the Agreement are true and correct in all material respects as of the date of this certificate;
9. There exists no Event of Nonappropriation as of the date of this certificate;
10. There exists no Event of Default or condition which, but for the passing of time or giving of notice or both, would constitute an Event of Default under the Agreement nor has there been any material change or difference in the Purchaser's covenants, representations or ability to meet its obligations under the Agreement; and
11. The lease/purchase of the Equipment as shown on the attached Exhibit B has been duly authorized by the governing body of the Purchaser.

Dated: _____

City of Fredericksburg, Texas

(SEAL)

By: Kent Myers, City Manager

By: Laura Hollenbeak, Director of Finance



FROST BANK
c/o Frost Leasing
3838 Rogers Road
San Antonio, Texas 78251

Exhibit "B"

Number 776508758-002 dated as of October 28, 2019

1. ITEMS OF EQUIPMENT COVERED BY THIS AGREEMENT:

Quantity	Description	Serial Number	Cost
1	Bobcat Excavator	TBD	
1	Track Loader	TBD	
1	Backhoe	TBD	

Vendor Name:	TBD	Contact:	
Address:		Phone:	
City, State & Zip:		Fax:	

Quantity	Description	Serial Number	Cost
1	Boom Truck	TBD	
1	Ambulance	TBD	
1	Bucket Truck	TBD	
1	Maintainer	TBD	

Vendor Name:	TBD	Contact:	
Address:		Phone:	
City, State & Zip:		Fax:	

Equipment Location:

126 W Main St., Fredericksburg, Texas 78624

2. PAYMENT AUTHORIZATION SCHEDULE:

Equipment Cost (per vendors invoice)	\$ 1,192,959.44
Less Trade-In Allowance	\$0
Less Down Payment	\$0
Equals Amount Financed	\$1,192,959.44

Purchaser will pay 3 periodic payments of \$403,548.75 each on an annual basis starting on November 15, 2019. Each due date is an Optional Payment Date.

SEE ATTACHED PAYMENT AMORTIZATION REPORT, which is incorporated into this Exhibit "B" as if fully set forth herein.

3. **THIS OBLIGATION EARNS INTEREST AT AN ANNUAL PERCENTAGE RATE OF 1.49%.**
The Installment Payments herein will be composed of principal and interest. In the event of changes in the Annual Percentage Rate due to events as outlined in Section 1.7 of this Agreement (Tax Certification and Indemnification), this payment and amortization schedule will be modified to Bank's equivalent taxable annual percentage rate in order to preserve Bank's anticipated after tax yield, subject to the limitations set forth in Article IX of this Agreement.
4. **The minimum amount of insurance to be provided by Purchaser with respect hereto is as follows:**
 - a. The lesser of (i) \$1,000,000.00 Comprehensive General Liability or (ii) the maximum limits of liability of Purchaser under applicable law, as amended from time to time.
 - b. Physical Damage and Loss: \$1,192,959.44
 - c. Additional riders, exclusions or special terms required by Bank:
Frost Bank, its successors and assigns shall be named as "Loss Payee" on the Physical Damage and Loss coverage and named as "Additional Insured" on the General Liability coverage.
In the event that Purchaser self-insures for Physical Damage and Loss Insurance required, Purchaser shall maintain Umbrella Liability Maximum Damage coverage.
5. **PURCHASER'S BILLING ADDRESS:**

Name:	City of Fredericksburg
Address:	126 W Main St
City, State & Zip:	Fredericksburg, TX 78624
6. **ADDRESS PAYMENTS TO (Place of Payment):**

Frost Bank
P.O. Box 59
San Antonio, Texas 78291-0059
Attention: Leasing Department
7. **PREPAYMENT – OPTION PRICE:**

The Option Price will be determined by taking the remaining Principal Balance in 2. above and multiplying that amount by 102.50% and adding any interest accrued through the date said Option Price is paid.

Dated: _____

City of Fredericksburg, Texas

(SEAL)

By: Kent Myers, City Manager

By: Laura Hollenbeak, Director of Finance



CITY COUNCIL MEMO

DATE: November 4, 2019

TO: Mayor and City Council

FROM: Clinton Bailey, P.E., Assistant City Manager/Director of Public Works and Utilities

SUBJECT: Consideration of Parking Lot Lease Agreement

Summary:

This item is for the consideration of approving a lease between the City of Fredericksburg and Poarch Realty, for the use of a parking lot located at 108 East San Antonio Street for the use of public parking. This item was initially presented to the City Council on October 21, 2019.

Recommendation:

City Staff recommends approval of the proposed lease agreement.

Background / Analysis:

The parking lot located at 108 East San Antonio Street is owned by Poarch Realty Investments, LP. The parking lot is approximately 0.75 acres in size, consists of an improved asphalt surface with a total of 74

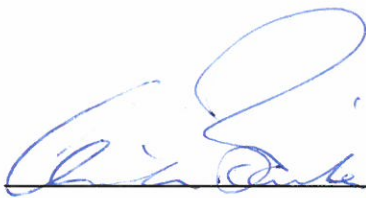
parking spaces and has access points located both on East San Antonio Street and South Llano Street. Over the past decade, the City of Fredericksburg had an unofficial agreement with the owners of the parking lot to allow for the public use of the parking lot during specific days and times throughout the week. The parking lot was once utilized by CHASE Bank employees but in recent years has only been used by the public and Holy Ghost Lutheran Church.

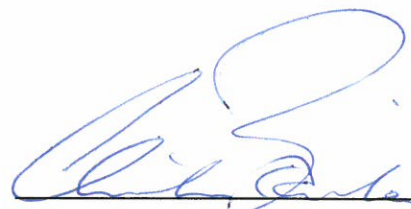
The only substantive change to the proposed lease agreement from the October 21st regular City Council meeting is the annual payment of property taxes in the amount of approximately \$9,000 has been eliminated. Under the proposed 2-year lease agreement, in lieu of a rental payment the City would be responsible for the following costs:

1. Initial Repairs to Parking Lot – These repairs include asphalt patching, application of single-course chip seal, restriping, repairs to concrete curbs, repair of poles and repairs to existing planter beds. The total cost of these repairs is approximately \$7,000.
2. Routine Repairs and Maintenance – These repairs and routine maintenance include repairs as a result of wear and tear from normal occupancy. The total cost of repairs and maintenance is estimated to be approximately \$500 annually.

The parking lot provides quick access to Main Street, area businesses and churches and is heavily used both during the week and on weekends by both residents and visitors.

Attachments: Proposed lease agreement



Department Approval

City Manager Approval

City Attorney Approval

LEASE AGREEMENT
for
PUBLIC USE PARKING LOT

This Lease Agreement (“Agreement”) is made and entered into this 4th day of November, 2019, by and between the City of Fredericksburg, Texas (“Lessee”), and Poarch Realty Investments, LP (“Lessor”).

ARTICLE 1. DEMISE, DESCRIPTION, USE AND TERM

1.01. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, that certain commercial parking lot property situated in the City of Fredericksburg, Gillespie County, Texas, located at 108 East San Antonio Street (the “Leased Premises”), and described as follows:

The parking lot located on approximately 0.75 acre of land, more or less, situated in the City of Fredericksburg, Gillespie County, Texas; said 0.75 acre tract of land is more particularly designated on the map in Exhibit “A”, a copy of which is attached hereto and made a part hereof.

The Leased Premises are to be used by Lessee as a public parking lot, for the term commencing on November 4, 2019, and ending on September 30, 2021, unless terminated earlier as hereinafter provided. Lessee may only use and occupy the Leased Premises for a non-commercial use.

ARTICLE 2. RENT

2.01. In lieu of a rental payment, and as compensation for Lessee’s occupancy and use of the Leased Premises, Lessee agrees to repair and maintain the parking lot surface and appurtenances on the Leased Premises, at Lessee’s sole cost and expense during the term of this Agreement, as follows:

- a. initial necessary repairs to the Leased Premises to include patching, chip seal application, and restriping of the parking lot surface; repairs to concrete curbs and poles; and repairs to existing plant beds; and
- b. routine repairs of the Leased Premises where damaged or worn through normal occupancy; and
- c. routine maintenance of the Leased Premises.

ARTICLE 3. Intentionally Deleted

ARTICLE 4. Intentionally Deleted

ARTICLE 5. INSURANCE

5.01. Lessee shall maintain a policy of comprehensive general liability insurance, at Lessee's sole expense, with respect to the activities of Lessee upon the Leased Premises, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Lessor shall be listed as an additional insured on Lessee's policy or policies of comprehensive general liability insurance.

ARTICLE 6. UTILITIES

6.01. Lessee shall pay all charges for all utilities used by Lessee in or on the Leased Premises during the term of this Agreement.

ARTICLE 7. WASTE AND NUISANCE

7.01. Lessee shall not commit, or suffer to be committed, any waste on the Leased Premises, nor shall Lessee maintain, commit, or permit the maintenance or commission of any nuisance on the Leased Premises or use the Leased Premises for any unlawful purpose.

ARTICLE 8. IMPROVEMENTS, REPAIRS AND MAINTENANCE

8.01. Lessee shall, at Lessee's expense:

(A) keep the Leased Premises as clean and sanitary as the condition of the premises permits;

(B) not permit any person on the premises, with Lessee's permission, to willfully or wantonly destroy, deface, damage, impair, or remove any part of the Leased Premises or the facilities, equipment, or appurtenances thereto;

(C) abide by all laws, regulations and ordinances of any governmental authority having jurisdiction over the Leased Premises;

(D) make all repairs and perform all maintenance to the Leased Premises other than those expressly imposed on Lessor herein, with all repairs performed by trained, qualified and insured repair persons.

ARTICLE 9. ALTERATIONS, IMPROVEMENTS AND FIXTURES

9.01. Any and all alterations, additions, improvements, and fixtures (except trade fixtures which Lessee shall be permitted to remove from the Leased Premises), made or placed in or on the Leased Premises, shall on expiration or sooner termination of this Agreement, belong to Lessor without compensation to Lessee.

ARTICLE 10.
Intentionally Deleted

ARTICLE 11.
Intentionally Deleted

ARTICLE 12.
Intentionally Deleted

ARTICLE 13. DEFAULT AND TERMINATION

13.01. If Lessee shall remain in default under any condition of this Agreement for a period of ten (10) calendar days after written notice from Lessor to Lessee, or if the default is of such a nature as to be incapable of cure within ten (10) days and same has not been cured within a reasonable time after written notice from Lessor to Lessee, Lessor may, at Lessor's option and without notice to Lessee, terminate this Agreement.

13.02. If Lessor shall remain in default under any condition of this Agreement for a period of ten (10) calendar days after written notice from Lessee to Lessor, or if the default is of such a nature as to be incapable of cure within ten (10) days and same has not been cured within a reasonable time after written notice from Lessee to Lessor, Lessee may elect to: (1) terminate this Agreement; or (2) remedy such default at Lessee's expense.

13.03. Either party may terminate this Agreement early, at any time for any reason or no reason, upon thirty (30) days prior written notice to the other party. If Lessor terminates this Agreement pursuant to this Section 13.03, Lessor shall pay to Lessee, within thirty (30) days of termination, a prorated share of the actual costs incurred by Lessee in performing the initial necessary repairs to the Leased Premises set forth in Section 2.01(a) of this Agreement. Such proration shall be calculated by multiplying the total number of calendar days from the date of termination to September 30, 2021, by a fraction, the numerator of which shall be the actual costs incurred by Lessee in performing the initial necessary repairs to the Leased Premises, and the denominator

of which shall be six-hundred and ninety six (696).

ARTICLE 14. INSPECTION BY LESSOR

14.01. Lessee shall permit Lessor and Lessor's agents to enter into and upon the Leased Premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining or making repairs or alterations.

ARTICLE 15. Intentionally Deleted

ARTICLE 16. INDEMNITY

16.01. TO THE EXTENT ALLOWED BY TEXAS LAW, LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES FOR THE DEFENSE THEREOF, ARISING FROM THE LESSEE'S USE OR OCCUPANCY OF THE LEASED PREMISES, OR FROM ANY NEGLIGENT ACT OR OMISSION OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, INVITEES, OR LICENSEES IN OR ABOUT THE LEASED PREMISES. NOTHING HEREIN SHALL BE CONSTRUED TO INDEMNIFY LESSOR FROM LESSOR'S OWN NEGLIGENCE.

16.02. The relationship between Lessor and Lessee shall at all times remain solely that of the Lessor and Lessee, and shall not be deemed a partnership or joint venture.

ARTICLE 17. MISCELLANEOUS

17.01. Any notice or communication hereunder must be in writing, and shall be deemed to have been given when delivered to and actually received by the party to whom it is addressed. Such notices or communications shall be given to the parties hereto at the following addresses:

LESSEE:

City of Fredericksburg
Attention: City Manager
126 W. Main Street
Fredericksburg, Texas 78624

LESSOR:

Such addresses may be changed at any time by either party upon earlier notice given as herein set forth.

17.02. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representative, successors, and assigns where permitted by this Agreement.

17.03. This Agreement is subject to the availability and appropriation of budgeted funds by Lessee beyond the Lessee's current fiscal year, and upon an occurrence of non-appropriation by City Council in a future fiscal year, this Agreement shall terminate immediately.

17.04. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Gillespie County.

17.05. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties.

17.06. No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing and duly executed by the parties.

17.07. Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

IN WITNESS WHEREOF, each of the parties hereto has executed this LEASE AGREEMENT, or caused the same to be executed by its duly authorized representative.

Poarch Realty Investments, LP

By:_____ Date:_____

Printed Name and Title: _____

CITY OF FREDERICKSBURG, TEXAS

By:_____ Date:_____
Kent Myers, City Manager

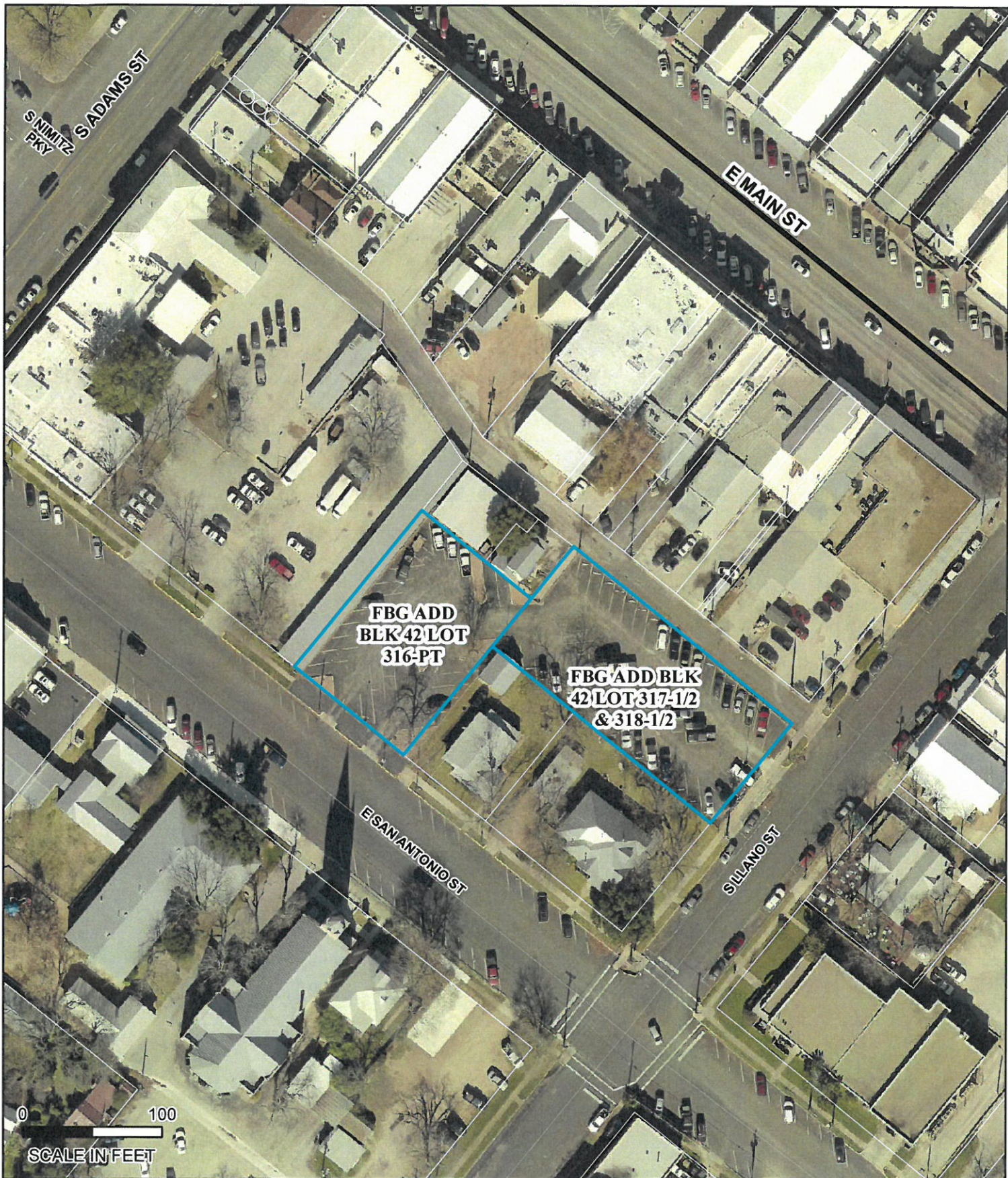


EXHIBIT A
Leased Premises
Parking Lot

Agenda Packet Page 39





CITY COUNCIL MEMO

DATE: November 5, 2019

TO: Mayor and City Council

FROM: Andrea Schmidt, Parks & Recreation Director

SUBJECT: Consider Awarding a Professional Services Contract to John Klein and Stan Klein for the Marktplatz Redevelopment Commission Project

Summary:

In September of 2018, City Council approved for the Market Square Redevelopment Commission to move forward with plans to develop the northwest corner of Marktplatz. This project will include renovating the City Hall Annex drive thru to add a meeting room and restrooms. The playground will also be replaced and some landscaping and rerouting of the vehicle entrance will be changed.

The total project budget is \$1.4 million. The City has budget \$200,000 in the Tourism Fund to help with this project this fiscal year. The remainder will be raised by the Market Square Redevelopment Commission through fundraising and grants.

The Commission needs to have plans in place first to help with fundraising. To proceed on the project, a firm needs to be hired to provide professional architectural services. The City advertised for RFQs over the past few weeks and received four submittals. A review committee scored each of them and John Klein and Stan Klein's submittal received the highest score.

Recommendation:

Consider approving a Professional Service Contract with John Klein and Stan Klein for the Marktplatz Redevelopment Commission Project.

Background / Analysis:

The City advertised in September and October for professional firms to submit their qualifications to help design the new facilities on the northwest corner of Marktplatz. Four professional firms submitted their qualifications: John Klein and Stan Klein, Mustard Design, Fifth Dimension Architecture and SLS Partnership. The review committee scored each submittal and scored John Klein and Stan Klein the highest. Once a firm is hired the plans can be finalized while fundraising is going on over the next 12 to 18 months. The Market Square Redevelopment Commission is also trying to hire a project coordinator/grant writer by December who will help with the fundraising as well.

Attachments:

Professional Service Contract with John Klein and Stan Klein


Department Approval


City Manager Approval


City Attorney Approval

AIA® Document B105™ – 2017

Standard Short Form of Agreement Between Owner and Architect

AGREEMENT made as of the 18th day of October in the year Two Thousand Nineteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Fredericksburg
124 W. Main Street
Fredericksburg, TX
78624

and the Architect:
(Name, legal status, address and other information)

John Wm. Klein, Architect Stehling, Klein & Thomas Architects, LLP 300-C W. Main Street Fredericksburg, Tx 78624	Stan Klein Architect Stan Klein Architect, LLC 405 W. Live Oak Rd. Fredericksburg, TX 78624
---	--

for the following Project:
(Name, location and detailed description)

Market Square Development, West End
Renovate Drive-thru portion of the Northwest corner building into restrooms and meeting room at 126 W. Main Street, Fredericksburg, Texas.

The Owner and Architect agree as follows.

Basic Architectural and engineering services to convert the existing old bank drive thru building into a community meeting room, public restrooms, creating adjacent plazas and children's play area.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining bids or proposals, and in awarding contracts for construction.

During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™-2017, Standard Short Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A105-2017, those modifications shall not affect the Architect's services under this Agreement, unless the Owner and Architect amend this Agreement.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are the Architect's Instruments of Service, and are for the Owner's use solely with respect to constructing the Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information or has permission from the copyright owner to transmit the information for its use on the Project.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

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Init.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

Compensation for Basic Architectural and Engineering Services shall be hourly, not to exceed \$ 120,000.00 based on the services listed above. The fee for Principal Architect's services will be billed on an hourly basis of \$ 95.00 per hour plus reimbursable expenses. The fee for services provided by our staff Associate Architect will be billed at a rate of \$ 85.00 per hour and Production Assistant at \$ 65.00 per hour plus reimbursable expenses.

The fee for our services including normal structural and MEP engineering services will be billed monthly at the hourly rates quoted, plus reimbursable expenses. Reimbursable expenses would include the cost of TAS fees, required permits, and any other expenses incurred directly relating to the project. All structural and MEP engineering services performed for the project will be billed through our office at a direct rate. Individual Structural and MEP lump-sum proposal agreements are signed and dated by the Architect.

The Owner shall pay the Architect an initial payment of zero (\$ 0) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus ten percent (10 %).

The city will be billed monthly for services rendered and expense incurred. Payments are due and payable upon receipt and due 10 days from the date of the Architect's monthly invoice. Amounts unpaid after (60) days after the invoice date shall bear interest from the date payment is due at the rate of five percent (5 %), or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond twenty-four (24) months of the date of this Agreement through no fault of the Architect.

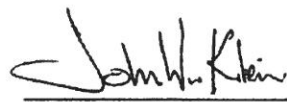
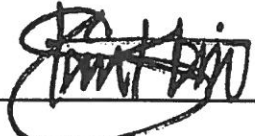
ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)

ARCHITECT (Signature)

John Wm. Klein, and Stan Klein, Architects

(Printed name, title, and license number, if required)

The Texas Board of Architectural Examiners, Hobby Building, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, Telephone (512) 305-9000, has jurisdiction over individuals licensed under the Architect's Registration Law, Article 249a Vernon's Texas Civil Statute. Website: www/tbae.state.tx.us



CITY COUNCIL MEMO

DATE: November 4, 2019

TO: Mayor and City Council

FROM: Kris Kneese, P.E. – Assistant Director of Public Works and Utilities

SUBJECT: Boot Ranch Update

Summary:

City Staff will provide information on the Boot Ranch development.

Recommendation:

Receive presentation on Boot Ranch.

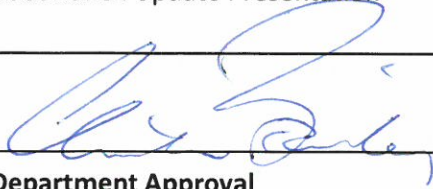
Background / Analysis:

Receive presentation on Boot Ranch development to include the following items:

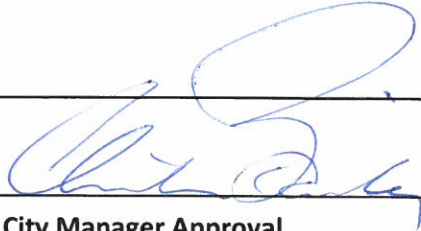
- Lot development, development overview, number of homes complete and number of homes currently under construction.
- Agreements between the City and Boot Ranch; including the Water and Sewer Utility Agreement and the Reclaimed Water Service Agreement.
- Number of equivalent dwelling units (EDU) in the Agreement and number of EDUs allocated to-date.
- Historic water use patterns by Boot Ranch customers.
- Utility operating expenses for FY2017, FY2018 and FY2019 at Boot Ranch.
- Water, sanitary sewer and reclaimed water revenues for at Boot Ranch for FY2017, FY2018 and FY2019.
- Future agenda items for Council to consider.

Attachments:

Boot Ranch Update Presentation



Department Approval



City Manager Approval



City Attorney Approval



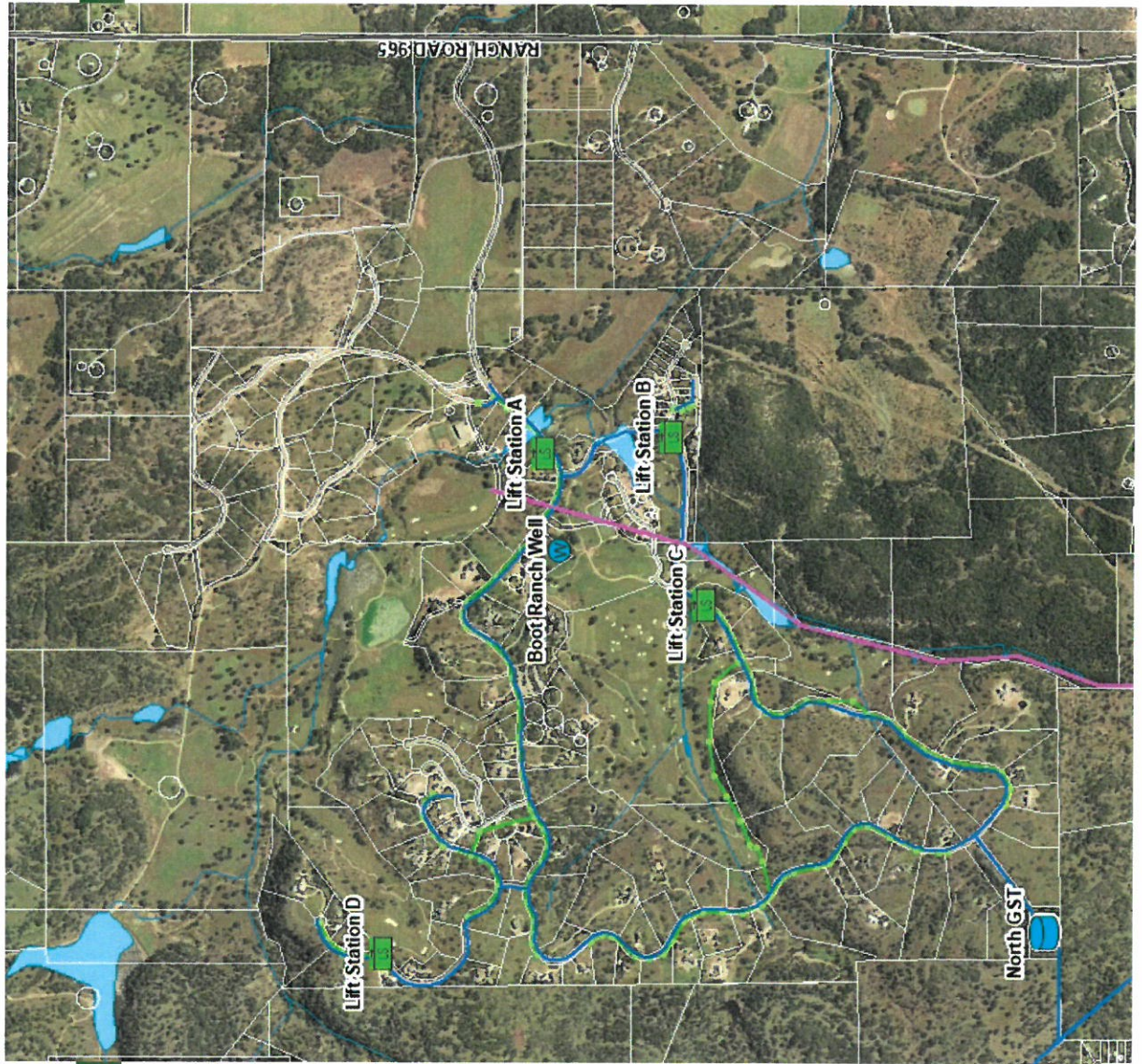
Boot Ranch Update

City Council –November 4, 2019

Presentation Outline

- **Boot Ranch Development**
 - Master Plan
- **Agreements between City & Boot Ranch**
 - Water and Sewer Utility Agreement
 - Reclaimed Water Service Agreement
- **Water Use**
 - Potable and Reclaimed
- **Utility Operating Expense**
- **Water, Sewer and Reclaimed Water Revenue**
- **Future Agenda Items for Council Consideration**

Boot Ranch Development



Boot Ranch Development, cont.

- Development approximately 3 miles North of FBG.
- Approximately 2,050 acres total
- Phased Project
 - Phase 1 – 189 Lots
 - Estate Lots, Sunday Houses, Country Home Section, Lower Meadow, etc.
 - Phase 2 – 300 Lots
 - Estate Lots, Sunday Houses, Village Home, etc.
- Home Construction
 - 57 homes complete
 - 34 homes under construction



Agreements Between City & Boot Ranch

- **Water and Sewer Utility Agreement**
 - Water and sanitary sewer service to Boot Ranch
 - Signed April 2005
 - 1st Amendment in December 2012
 - Construction of infrastructure
 - 12" Water line from Cross Mountain to Boot Ranch – Boot Ranch
 - 15,000 feet
 - 1.0 MG Water Ground Storage Tank (North Tank)
 - 300,000 gallon – Boot Ranch
 - 700,000 gallon – City
 - Water Pump Station at Cross Mountain Site - City
 - Sanitary sewer lift stations and collection system – Boot Ranch
 - Tank site dedicated to City
 - Approximately 5 acres

Agreements Between City & Boot Ranch, cont.

- **Water and Sewer Utility Agreement, cont.**
 - Groundwater Well Relocation
 - Achtzen Well
 - Drilled in 1964
 - Relocated by Boot Ranch – well location in golf course fairway
 - New Well (1) and Monitoring Wells (2)
 - Drilled in 2006
 - Boot Ranch Well; aka: Achtzen Well
 - City utilized in 2011 and 2018 during drought
 - Hill Country Underground Water Conservation District
 - High Historical Groundwater Use Area – Maximum pumpage placed on well in 1984
 - Maximum pumpage of 168 acre feet per year (approx. 54 million gallons)

Agreements Between City & Boot Ranch, cont.

- **Water and Sewer Utility Agreement, cont.**
 - Equivalent Dwelling Unit (EDU)
 - A unit of measurement that standardizes all land use types to the level of water and wastewater demand created by one typical single family housing unit.
 - Maximum 600 EDU
 - Pre-Paid Impact Fee on March 2015
 - \$1,836,000
 - 192 EDU used

Meter Size (inches)	Flow Rate (gpm)	EDU
5/8	20	1
3/4	25	1.25
1	40	2
2	160	8

Agreements Between City & Boot Ranch, cont.

- **Reclaimed Water Service Agreement**
 - Reclaimed water treated at City's Water Reclamation Facility
 - Irrigation of golf course and common areas; including club house.
 - Signed March 2008
 - 1st Amendment in January 2017
 - Current rate \$0.66 per 1,000 gallons

Calendar Year	Reclaimed Water (Gallons)
2017	87,112,000
2018	88,684,000
2019	56,197,000

Water and Sewer Operating Expense

- **Water and Sewer Operating Expenses**
 - Labor, Materials and Equipment to operate the water, sanitary sewer and reclaimed water systems
 - Electricity for pump station and lift stations.
 - Labor for utility repairs, water distribution and sewer collection system operation, utility billing, etc.
 - Materials for utility repairs, lift station, water distribution system, etc.
 - Equipment for utility repairs and operations.

Fiscal Year	Operating Expense
FY2017	\$197,892.74
FY2018	\$230,830.34
FY2019	\$238,269.86

Water, Sewer and Reclaimed Water Revenue

Fiscal Year	Total Water Sold (Gallons)	Water Sold to BR (Gallons)	Water Revenue	Sewer Revenue	*Operating Expense
FY2017	735,273,300	89,559,730	\$247,836.47	\$68,208.61	\$197,892.74
FY2018	810,870,932	129,039,700	\$269,494.37	\$86,555.71	\$230,830.34
FY2019	731,345,072	75,259,995	\$365,370.12	\$117,450.38	\$238,269.86

*Operating cost only, does not include cost for major capital improvement projects.

Calendar Year	Reclaimed Water Sold (Gallons)	Revenue
2017	87,112,000	\$48,393.98
2018	88,684,000	\$69,369.96
2019	56,197,000	\$31,335.48

Items for Councils Consideration – Nov 18th

- **Amendment to Water and Sewer Utility Agreement**
 - Extend utility service area to approx. 37 acre tract of land for proposed 23 lots development
 - No additional EDUs requested
- **Accept Lift Station Easement**
 - For construction of City's Lift Station Project
- **Amendment to Reclaimed Water Service Agreement**
 - Use of Boot Ranch Water Well for blending with reclaimed water for golf course and common area irrigation

Boot Ranch Update



Questions?



Citizen Request to be on City Council Agenda

Name:

Rosemary Estensen

Address:

17365 Ann 2093

Phone number:

H 830-997-6330 cell 456-4018

Email:

Rich at Wanger Hotel. com

Topic:

wine tastings on mainstreet and off
golden blocks-

(Agenda wording will be taken from the topic)

Topics may be added to the agenda by a citizen by one of the following:

1. Mayor's approval
2. Approval by at least two City Councilmembers

Rules for topics:

1. Not a political item
2. Maximum time allotted is 10 minutes
3. Your form and Mayor's approval, or approval from two City Councilmembers must be received by the City Manager 7 days before the meeting (City Council Regular Meetings are held on the 1st and 3rd Monday unless a holiday and then it will be held the following day).
4. If your topic will have backup material, it will need to be submitted with this form. No information should be distributed at the Council Meeting.
5. No more than one (1) Agenda Item should be requested.

Office Use

Date received form: 10/2/19

Date of Mayor's approval Linda Langerhaus 10-21-19

Councilmember _____ approval on _____

Councilmember _____ approval on _____

Agenda Date: 11-4-19



Citizen Request to be on City Council Agenda

Name:

Raemay Estensh

Address:

17365 7th 2093

Phone number:

H- 830-997-6330 cell 456-4018

Email:

Topic:

Chains on Main Street

(Agenda wording will be taken from the topic)

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Office Use

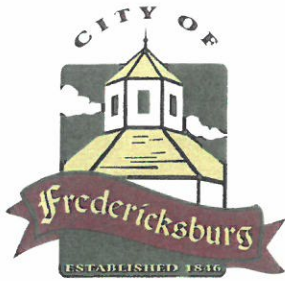
Date received form: 10/2/19

Date of Mayor's approval Linda Langerhans 10-21-19

Councilmember _____ approval on _____

Councilmember _____ approval on _____

Agenda Date: 11-4-19



Citizen Request to be on City Council Agenda

Name: Gary Saucier
Address: 130 Leyendecher Rd
Phone number: 469-758-8121
Email: ~~XXXXXXXXXXXXXXXXXXXX~~
Topic: Relief Route Update by C.I.R.R.

(Agenda wording will be taken from the topic)

Topics may be added to the agenda by a citizen by one of the following:

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5. No more than one (1) Agenda Item should be requested.

Office Use

Date received form: 10/9/19
Date of Mayor's approval Linda Langerhans 10-21-19
Councilmember _____ approval on _____
Councilmember _____ approval on _____
Agenda Date: 11/4/2019

Future Agenda Items

City Council

November 18, 2019

Regular Meeting

City Council = Red

4th and 18th Regular Meetings @ 6p.m.

12th Special Meeting @ 6 p.m.

Planning & Zoning = Green

Historic Review Board = Purple

Board of Adjustment = Blue

City Events = Yellow

11th Veteran's Day

28th and 29th Thanksgiving Holidays

Sun	Mon	Tues	Wed	Thur	Fri	Sat
			2	3	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Recognitions:

Consent

1. 10-29-19 City Council Workshop Meeting Minutes
2. 11-4-19 City Council Regular Meeting Minutes
3. 11-12-19 City Council Special Meeting Minutes

Ordinances

1. Approve Ordinance for the Live Oak annexation and zoning

Resolutions:

1. Canvass the 11-5-19 Special Election and approve a Resolution
2. AACOG-Texas PACE Program
3. Ballot for election of the board of directors for the Gillespie Central Appraisal District for the 2020-2021 term

Public Hearing

Approvals-Misc.

1. Approve purchase of restrooms at LBJ Park
2. Approve 2nd amendment to the Agreement with Boot Ranch
3. Approve the Lift Station Easement from Boot Ranch to the City
4. Approve a professional services contract with Biggs & Matthews for construction phase services and construction quality assurance services for Landfill Cell #8
5. Award bid for Consultant Services, HOT collections, STR permitting, & Sales Tax Discovery and Recovery Services
6. Award a construction contract for Landfill Cell #8-Construction
7. Award a construction contract for Landfill Cell #8-Geosynthetics (liner installation)

Presentations, Discussions and Updates:

1. Discussion on Utility System Revenue Refunding Bonds and Electric System Revenue Bonds/Notes issuance timeline.
2. Discussion on Code Enforcement possible changes from criminal to civil.

Executive Session

1. Seven Hills Economic Development Agreement

December 2, 2019 Regular Meeting

City Council = Red

2nd and 16th Regular Meetings @ 6p.m.

Planning & Zoning = Green

Historic Review Board = Purple

Board of Adjustment = Blue

City Events = Yellow

24th and 25th Christmas Holidays

31st New Year's Eve Holiday

Sun	Mon	Tues	Wed	Thur	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				30

Recognitions:

Consent

1. 11-18-19 City Council Regular Meeting Minutes

Ordinances

Resolutions:

Public Hearing

Approvals-Misc.

1. Approve the 2020 City Holiday schedule

Presentations, Discussions and Updates:

Executive Session