

City of Fredericksburg

REGULAR CITY COUNCIL MEETING AGENDA TUESDAY, JANUARY 21, 2020 ~ 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 Tuesday, January 21, 2020, 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 January 17, 2020, 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 January 6, 2020, City Council Regular Meeting Minutes. (Agenda Packet Pages 5-10)
- B. Consider approval of Resolution 2020-03R authorizing lease obligations in any amount not to exceed \$811,900.31 with respect to the acquisition, purchase, financing, and leasing of certain equipment for the public benefit, specifically a Pierce Impel PUC Pumper Fire Truck; authorizing the execution and delivery of documents required in

connection therewith; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this Resolution.

(Agenda Packet Pages 11-46)

6. PUBLIC HEARING

- A.** Hold a public hearing to receive comments for or against the voluntary annexation of 13.395 acres proposed as Stone Ridge Unit 10 located near the intersection of Lower Crabapple Road and Ellebracht Drive (second and final public hearing).

(Agenda Packet Pages 47-50)

- B.** Hold a public hearing to receive comments for or against and consider approval establishing R-1 Single Family Residential Zoning on 13.395 acres proposed as Stone Ridge Unit 10 located near the intersection of Lower Crabapple Road and Ellerbracht Drive.

(Agenda Packet Pages 51-56)

7. ORDINANCES AND RESOLUTIONS

- A.** Consider, discuss, and take appropriate action regarding the Annexation of approximately 91.24 acres of land situated in Gillespie County, Texas along the south side of W. Live Oak, west of Post Oak road and the current City limits (January 7, 2020 City Council postponed and took no action on Ordinances 2020-01, 2020-02, and 2020-03).

(Agenda Packet Pages 57-60)

- B.** Consider the approval of Ordinance 2020-04 s authorizing the issuance of a “City of Fredericksburg, Texas Utility System Revenue Notes, Series 2020”; providing for the payment of the principal of and interest on the Notes by a first and prior lien on and pledge of the pledged revenues of the City's Electric Utility System; providing the terms and conditions of such Notes; resolving other matters incident and relating to the issuance, payment, security, sale, and delivery of such notes; authorizing the execution of a Paying Agent/Registrar Agreement and a Purchase and Investment Letter; and providing for an effective date (1st of two readings; City Council may waive second reading).

(Agenda Packet Pages 61-108)

- C.** Consider the approval of Resolution 2020-01R establishing the City of Fredericksburg’s participation in the Property Assessed Clean Energy (“PACE Program”).

(Agenda Packet Pages 109-114)

- D.** Consider the approval of Resolution 2020-02R lease with TCF National Bank for golf course equipment at the LBJ Golf Course.

(Agenda Packet Pages 115-118)

8. OTHER ACTION ITEMS AND UPDATES

- A.** Consider the approval of the Professional Services Agreements with Avenu Insights & Analytics, LLC to perform professional services for Local Hotel Occupancy Tax , Sales and Use Tax Discovery and Recovery, and Short-term Rental Permitting.

(Agenda Packet Pages 119-150)

- B.** Consider the appointments of members of the Market Square Redevelopment Commission.

(Agenda Packet Pages 151-152)

- C. Consider the approval of a Property Assessed Clean Energy (“PACE Program”) Interlocal Agreement with Alamo Area Council of Governments and the City of Fredericksburg.
(Agenda Packet Pages 153-160)

D. Boot Ranch

- i. Consider the approval of the 2nd Amendment to the Reclaim Water Service Utility Agreement with Boot Ranch to allow for the use of the City’s groundwater for golf course irrigation.

(Agenda Packet Pages 161-166)

- ii. Consider the approval of the Lift Station Easement granted from Boot Ranch as part of the Boot Ranch Lift Station Project.

(Agenda Packet Pages 167-172)

- iii. Consider the approval of Amendments No. 2 to Boot Ranch Water and Sewer Service Agreement to include 37.217 acres, known as the Muncy Tract, to the original Water and Sewer Service Agreement.

(Agenda Packet Pages 173-178)

- E. Consider the award of bid for Marktplatz Pavilion and Arbor project to Hill Country Home and Ranch in the amount of \$161,682.00.

(Agenda Packet Pages 179-192)

- F. Receive and discuss the Hotel Occupancy Tax Fund Applications for 2020.

(Agenda Packet Pages 193-196)

9. CITY MANAGER’S REPORT

- A. Traffic Impact Study Open House-January 28

- B. Historic District Design Guidelines Open House-January 28

- C. Meeting with Planning and Zoning Commission and Historic Review Board-February 11

10. ITEMS FOR FUTURE AGENDA

(Agenda Packet Pages 197-198)

11. COUNCIL COMMENTS

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

12. EXECUTIVE SESSION

The City Council will recess its open meeting and reconvene in Executive Session pursuant to Texas Government Code Section 551.071 and 551.087

- A. Consider and discuss E. 290 Owners Coalition vs. City of Fredericksburg, Texas, pending in the 216th District Court (Section 551.071); and
- B. Consider and discuss Penick R&C, LP vs. City of Fredericksburg, Texas, pending in the United States District Court for the Western District of Texas (Sec. 551.071); and
- C. Consider and discuss economic development agreement related to the construction and operation of a Hotel and Conference Center in the City; and to receive legal advice concerning said economic development agreement (Section 551.087 and Section 551.071), and

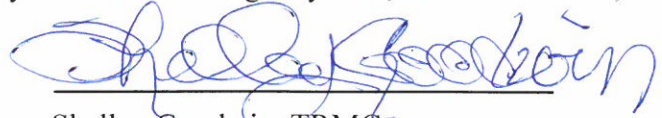
- D. Consider and discuss Hormuth and Farley v. Linda Langerhans, Mayor, pending in the 216th District Court (Section 551.071)

13. BUSINESS ITEM

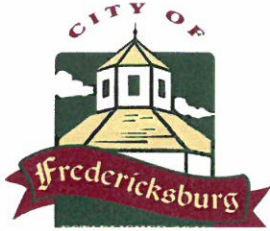
The City Council will reconvene into Regular Session upon the conclusion of the Executive Session, the City Council may take action on any item posted in Executive Session, as necessary.

14. ADJOURN

This is to certify that I, Shelley Goodwin, posted this Agenda at 10:45 a.m. on January 17, 2020, 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 JANUARY 6, 2020

Members Present:

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

Members Absent:

None

City Staff Present:

Kent Myers, City Manager
Clinton Bailey, Assistant City Manager/Director of Public Works and Utilities
Daniel Jones, City Attorney
Brian Jordan, Development Services Director
Steve Wetz, Police Chief
Russell Immel, Information Technology Director
Laura Hollenbeak, Director of Finance
Andrea Schmidt, Parks Department Director
Kris Kneese, Assistant Director of Public Works and Utilities
Garrett Bonn, Assistant Engineer
Lee Stubblefield, Electric Supervisor
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, January 6, 2020, in the Law Enforcement Center, 1601 East Main Street, Fredericksburg, Texas 78624.

3. EMPLOYEE RECOGNITIONS

Kent Myers, City Manager, stated he had two recognitions:

- A praise for a job well done for all of those involved in the New Year's Eve Events.
- Thank you letter for Officer Bosse from a visitor for the assistance they received.

4. PUBLIC COMMENTS

Edward Rode spoke against Agenda Items 7. A. He stated he felt the legal requirements for notification have not been met.

Rosemary Estenson provided figures for the number of TABC licenses on Main Street and the new businesses since November.

Mickey Poole spoke against the water and sewer agreement with Boot Ranch.

Tim Lafferty provided information on the Short-Term Rental court case filed against the City of Austin.

Josh Kramer read a letter written by Hill Country Builders Association regarding the trellis at 302 N. Bowie.

Cord Switzer spoke against the Annexation process and feels the City should be using the current laws instead the previous laws (grandfathered laws). He also spoke in support of Agenda Item 8. A.

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 December 16, 2019, City Council Regular Meeting Minutes.

B. Consider the approval of street closure of W. Austin Street between N. Adams and N. Crockett Street between the hours of 12 p.m. and 7:15 p.m. on March 19, 2020 for the City Hall Open House and Touch-A-Truck.

Motion: A motion was made by Councilmember Musselman seconded by Councilmember Kiehne, to approve the Consent Agenda Items 6.A.-B, with amendments to 6. A. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

6. PUBLIC HEARING

A. Hold a public hearing to receive comments for or against the Property Assessed Clean Energy ("PACE") Program".

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Neffendorf, to go into the Public Hearing at 6:17 p.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

John Clamp, Alamo Area Council of Government, provided the history of the creation of the program to create low-interest financing for local economic development projects that create energy savings. He stated there is zero expense to the City.

John Rodrigues thanked the City Council for bringing the PACE Program to Fredericksburg.

Mathew Pipkins stated he supported the PACE Program.

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: 25 p.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

B. Hold a public hearing to receive comments for or against the voluntary annexation of 13.395 acres proposed as Stone Ridge Unit 10 located near the intersection of Lower Crabapple Road and Ellebracht Drive (1st of two public hearings).

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Neffendorf, to go into the Public Hearing at 6:26 p.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

Alan Lindskog, engineer representing Mr. Elbrecht, stated he is available to answer any questions.

Kent Myers, City Manager, stated the owners of Stone Ridge donated the future site for the water tank and it has been secured.

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: 29 p.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

7. ORDINANCE

A. Annexation of 91.43 acres of land situated in Gillespie County, Texas along the south side of W. Live Oak and extending from east of Post Oak Road

- i. Consider the approval of Annexation Agreement with CSE Commercial Real Estate, LP for the Live Oak/Post Oak Plan for Development.
- ii. Consider the approval of the Ordinance 2020-01 annexing approximately 91.43 acres of land, located along the Southside of W. Live Oak Street extending from east of Post Oak Road to west of Smokehouse Road, Gillespie County, extending the corporate limits of the City so as to include said territory granting to all inhabitants and future inhabitants of said territory; all of the rights and privileges of other citizens of the City; binding the inhabitants and future inhabitants of said territory by any and all acts, Ordinances, Resolutions and regulations of said City ; and adopting an Annexation Service Plan for the extension of Municipal Services into said territory and the construction and maintenance of public utilities related to such annexation.(1st of two readings; City Council may waive second reading)
- iii. Consider the approval of the Ordinance 2020-02 adopting a change in the Comprehensive Plan of the City; specifically in the Land Use Map and Comprehensive Plan as to tracts located along the South Side of W. Live Oak Street extending from east of Post Oak Road to west of Smokehouse Road; changing said property to commercial, public, and high density residential; providing that the change become a part of the Comprehensive Plan and providing for an effective date (1st of two readings; City Council may waive second reading).
- iv. Consider the approval of the Ordinance 2020-03 amending the Zoning Ordinance of the City and establishing the Zoning District as to tracts located along the south side of W. Live Oak Street, extending from east of Post Oak Road to west of Smokehouse Road, upon annexation into the City; establishing Residential, Public Facilities, and Commercial Zoning for said property upon annexation; and providing for an effective date (first of two readings; City Council may waive second reading).

Kent Myers, City Manager, stated Mr. Rode inquired to public hearing posting requirements and currently Staff is looking into his claims. He recommended not to take action on W. Live Oak Street items and bring back the items at the Regular Meeting scheduled for January 21, 2020.

The City Council agreed by consensus not to take action on the W. Live Oak Street items and to bring them back at the January 21, 2020 Regular Meeting.

8. OTHER ACTION ITEMS AND UPDATES

A. Consider the approval of the proposed Performance Agreement and associated financial security in amount of \$132,000.00 in the form of a performance bond for required public subdivision improvements (Oaks of Windcrest Unit 5).

Garrett Bonn, Assistant Engineer, reviewed Section 5.05 of the Subdivision Ordinance which allows an option for developers to pursue the approval and recordation of the final plat for a subdivision prior to the completion of the public improvements required in connection with the approval of the subdivision plat by executing a Performance Agreement and providing an associated security in the amount of 110% of the cost to construct and complete the remaining public improvements, which includes water, wastewater, storm water and street infrastructure.

Jacob Grant, President 10-8 Properties, LLC., stated he is available to answer any questions.

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Kiehne, for approval of the proposed Performance Agreement and associated financial security in amount of \$132,000.00 in the form of a performance bond for required public subdivision improvements (Oaks of Windcrest Unit 5). The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

B. Consider the awarding the construction contract for the new Electric Department Building to Kendnel Kasper Construction in the amount of \$2,115,284.00.

Kris Kneese, Assistant Director of Public Works and Utilities, provided the history of the project. He also stated Steve Thomas, SKT Architects, developed the Electric Department Building Project bid documents which advertised for four (4) weeks starting October 30th. The City received eight bids and recommends approving Kendnel Kasper, which included two deductive bid alternates. Staff recommends Option 2 with base bid of 2,163,261.00 and a deduction of the split face block on exterior wall (\$47,977.00), which would equal \$2,115,284.00.

Motion: A motion was made by Councilmember Kiehne, seconded by Councilmember Musselman, for awarding the construction contract for the new Electric Department Building to Kendnel Kasper Construction in the amount of \$2,115,284.00 for Option 2. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

C. Consider the award of financing for the lease purchase of a Fire Pumper for the Fire Department to Signature Public Funding Corp.

Laura Hollenbeak, Director of Finance, stated the FY2020 Budget approved the funding for lease purchase payments for the acquisition of a Fire Pumper for the Fire Department. She also stated the City went out for bids for financing \$811,900.31. Staff recommended awarding the lease purchase financing for acquisitions of the Fire Pumper to Signature Public Funding Corp at an interest rate of 2.19%.

Motion: A motion was made by Councilmember Neffendorf, seconded by Councilmember Watson, for approval of award of financing for the lease purchase of a Fire Pumper for the Fire Department to Signature Public Funding Corp. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

D. Mo Saiidi's Citizen Request to make a presentation and discuss the City and Boot Ranch Development Water Agreement (10 minutes).

Mo Saiidi provided a PowerPoint presentation on the City & Boot Ranch Development Water Agreement. He provided his research, opinion on issues and concerns. He also provided his suggestions and recommendations.

Councilmember Neffendorf inquired to whether he should abstain from Boot Ranch items since he signed the original Agreement when he was the City Manager.

Daniel Jones, City Attorney, stated he does not need to abstain from Boot Ranch items.

Councilmember Watson stated he owns property in Boot Ranch.

Daniel Jones, City Attorney, stated there is no issue with listening to the presentation.

The City Council discussed the information provided in the presentation.

Alan Brecher spoke in support of Mo Saiidi's presentation and encouraged the City Council to do what is best for the City.

8. CITY MANAGER'S REPORT

A. January 14 Relief Route Open House

Kent Myers, City Manager, stated the Relief Route Open House will be held on January 14th at Farm Bureau from 2p.m.-7p.m.

B. January 16 City Council Work Session

Kent Myers, City Manager, stated the City Council Workshop will be held on January 16th at Golf Course in the Cardinal Room at 8:30a.m. He reviewed the agenda items.

The City Council asked that the City Council Rules and Procedures Policy and the public comment period be included on the Work Session Agenda.

C. January 28 Traffic Impact Study Open House

Kent Myers, City Manager, stated the Traffic Impact Study Open House will be held on January 28th at Law Enforcement Center from 5p.m.-8p.m. He stated with the possibility of high attendance the Open House was moved from City Hall to the Law Enforcement Center.

9. ITEMS FOR FUTURE AGENDA

Kent Myers, City Manager, reviewed the upcoming agenda items.

10. COUNCIL COMMENTS

Councilmember Kiehne thanked everyone involved in making the New Year's Eve Ball Drop a successful event.

11. EXECUTIVE SESSION

The City Council will recess its open meeting and reconvene in Executive Session pursuant to Texas Government Code Section 551.071, 551.074, and 551.087

A. Consider and discuss economic development agreement related to the construction and operation of a Hotel and Conference Center in the City; and to receive legal advice concerning said economic development agreement (Section 551.087 and Section 551.071),

B. Consider and discuss legal advice regarding the Water and Sewer Construction Contract entered into between the City and Boot Ranch Development (Section 551.071), and

C. Consider and discuss the annual evaluation of the City Manager and City Attorney (Section 551.074 – Personnel Matters).

Motion: A motion was made by Councilmember Musselman, seconded by Councilmember Watson, to go out of Regular Session into Executive Session at 7:32 p.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

Motion: A motion was made by Councilmember Neffendorf, seconded by Councilmember Watson, to go out of Executive Session into Regular Session at 10:21 p.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

12. BUSINESS ITEM

Motion: A motion was made by Councilmember Neffendorf, seconded by Councilmember Watson, to approve a 4% salary increase for Kent Myers, City Manager and an annual salary of \$107,00 for Daniel Jones, City Attorney for the FY2020. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

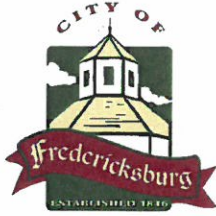
13. ADJOURN

Motion: A motion was made by Councilmember Watson, seconded by Councilmember Kiehne, to adjourn the Monday, January 6, 2020, City Council Regular Meeting at 10:23 p.m. The City Council voted five (5) for and none (0) opposed. The motion carried unanimously.

Linda Langerhans
Mayor

ATTEST

Shelley Goodwin, TRMC
City Secretary



CITY COUNCIL MEMO

DATE: January 21, 2020
TO: Mayor and City Council
FROM: Laura Hollenbeak, Director of Finance
SUBJECT: Resolution and Equipment Lease-Purchase Agreement of Fire Pumper

Summary:

The 2020 adopted City Budget approved funding for lease purchase payments for the acquisition of a Fire Pumper for the Fire Department.

The purchase price of \$811,900.31 will be financed. The financing was bid with the low bid received and awarded to Signature Public Funding Corporation with an interest rate of 2.19% at the January 6, 2020 City Council Meeting.

The City Attorney has reviewed the documents.

Recommendation:

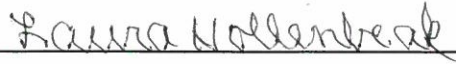
City staff recommends that the Council approve the Resolution and Equipment Lease-Purchase Agreement as presented.

Background / Analysis:

Attachments:

Resolution

Equipment Lease-Purchase Agreement



Department Approval



City Manager Approval

RESOLUTION 2020-03R

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, AUTHORIZING, PURSUANT TO THE TEXAS LAW AND THE CITY CHARTER (COLLECTIVELY, "AUTHORIZING LAW"), THE INCURRING OF LEASE OBLIGATIONS IN ANY AMOUNT NOT TO EXCEED \$811,900.31 TO BE EVIDENCED BY THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT AND AN EQUIPMENT SCHEDULE WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING, AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT, SPECIFICALLY A PIERCE IMPEL PUC PUMPER FIRE TRUCK; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Fredericksburg (the "*Lessee*"), a body politic and corporate duly organized and existing as a political subdivision of the State of Texas, is authorized by the laws of the State of Texas to purchase, acquire, and lease personal property for the benefit of the Lessee and those it provides services to and to enter into contracts with respect thereto;

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; including without limitation custom Pierce Impel PUC Pumper Fire Truck purchased from Siddons-Martin Emergency Group and all other equipment Lessee or its Designated Officers may deem necessary and/or desirable (the "*Equipment*") in an amount not more than \$811,900.31, and the Lessee hereby finds and determines that the realistic estimated useful life of the Equipment is at least eight (8) years;

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into a Master Equipment Lease Purchase Agreement dated as of January 22, 2020 (together with the Equipment Schedule dated as of January 22, 2020 and all related exhibits, schedules, and certificates attached thereto, the "*Lease Agreement*") with Signature Public Funding Corp. (the "*Lessor*");

WHEREAS, the Governing Body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Transaction Documents for the purchase, acquisition, and leasing of the Equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT RESOLVED AND ENACTED by the City Council of the City of Fredericksburg as follows:

Section 1. Approval of Documents. The Governing Body of the Lessee hereby approves the form, terms and provisions of the Transaction Documents in substantially the forms presented to this meeting and authorizes and directs Kent Myers, the City Manager, of the City of Fredericksburg, and such other persons as he may delegate (the "*Designated Officers*"), and each of them individually, for and in the name of and on behalf of the Lessee, to execute, attested, seal, and deliver the Transaction Documents, and any related Certificate, Exhibits, or other documents attached thereto substantially in such forms as presented herewith, together with such changes, modification, negotiations, insertions, revisions, corrections, or amendments as shall be approved by the officer executing them. The execution of the foregoing by a Designated Officer shall constitute conclusive evidence of such officer's and the Governing Body's approval of any such changes, insertions, revisions, corrections, negotiations, or amendments to the respective forms of agreements presented to this meeting.

Section 2. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Transaction Documents to carry out, give effect to, and consummate the transactions contemplated thereby (including the execution and delivery of Certificates of Acceptance and Disbursement/Payment Requests, Notice and Acknowledgements of Assignments, and any tax certificate and agreement, each with respect to and as contemplated in the Agreement and/or Escrow Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Transaction Documents. The Designated Officers and all other officers and employees of the Lessee are hereby directed and authorized to take and shall take all action necessary or reasonably required in order to select, purchase, and take delivery of the Equipment. All actions heretofore taken by officers, employees, and agents of the Lessee that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

Section 3. No General Liability. Nothing contained in this Resolution, the Transaction Documents, nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Transaction

Documents, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, as provided therein.

Section 4. Appointment of Authorized Lessee Representatives. The Designated Officers are each hereby designated to act as authorized representatives of the Lessee for purposes of the Transaction Documents until such time as the Governing Body of the Lessee shall designate any other or different authorized representative for purposes of the Transaction Documents.

Section 5. Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

Section 6. Repealer. All bylaws, orders, and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution, or ordinance or part thereof.

Section 7. Qualified Tax Exempt Obligations. The Lessee, and its Governing Body, designate its obligations under the Lease Agreements as "qualified tax exempt obligations" as defined in and for the purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 8. Declaration of Official Intent. This Declaration of Official Intent is being entered into on or before the date on which the expenditure(s) to be reimbursed will be paid. This Declaration of Official Intent is intended to be a Declaration of Official Intent within the meaning of Treas. Reg. 1.150-2. This Declaration of Official Intent shall be made available for general public inspection at 126 W. Main Street, Fredericksburg, TX 78624 the main administrative office of City of Fredericksburg within thirty (30) days of the date hereof and shall remain available for general public inspection until the date of issue of the tax-exempt financing that provides the monies for reimbursement.

Section 9. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

The foregoing Resolution was duly passed and adopted at a meeting of the City Council (the "Governing Body") of City of Fredericksburg, held on January 22, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Langerhans, Mayor

ATTEST:

By: _____
Shelley Goodwin, City Secretary

INDEX TO LEGAL DOCUMENTS
BANK-QUALIFIED, APPROPRIATION-BASED
TAX-EXEMPT MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT
DATED JANUARY 22, 2020 BY AND BETWEEN
SIGNATURE PUBLIC FUNDING CORP.
And
CITY OF FREDERICKSBURG

Lease Documents:

Tab 1:	Master Equipment Lease-Purchase Agreement;
Tab 2:	Exhibit A - Equipment Schedule;
Tab 3:	Exhibit B - Acceptance Certificate;
Tab 4:	Exhibit C-1 - Insurance Coverage Request;
Tab 5:	Exhibit C-2 - Self-Insurance Rider (if applicable); Exhibit C-3 - Questionnaire for Self Insurance (If applicable);
Tab 6:	Exhibit D - Essential Use Certificate;
Tab 7:	Exhibit E - Incumbency Certificate;
Tab 8:	Exhibit F - Form of Opinion of Lessee's Counsel;
Tab 9:	Exhibit G - Bank Qualified Designation;
Tab 10:	Exhibit H - Tax Certificate;
Tab 11:	Exhibit I - Reserved;
Tab 12:	Exhibit J: - Form of Sample Resolution of Lessee;
Tab 13:	UCC-1 - Financing Statement with attached Schedule A;
Tab 14:	Form 8038-G;
Tab 15:	Closing Memorandum/Payment Proceeds Direction; and
Tab 16:	Vendor Invoices, MSOs and Title Applications, Vendor Contract & Payment Bond



SIGNATURE
PUBLIC FUNDING

SIGNATURE PUBLIC FUNDING CORP.

MASTER LEASE AGREEMENT NO. _____

This **MASTER LEASE AGREEMENT** (the "Agreement"), dated as of January 22, 2020 is made and entered into by and between **SIGNATURE PUBLIC FUNDING CORP.**, a New York corporation, as lessor (the "Lessor"), and **CITY OF FREDERICKSBURG**, a body corporate and politic of the State of Texas, which is a political subdivision as defined under the Code, as lessee ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. The following terms have the meanings specified below.

"Acceptance Certificate" means each Acceptance Certificate delivered by Lessee as part of an Equipment Schedule certifying as to the delivery, installation and acceptance of Equipment.

"Agreement" means this Master Lease Agreement and all Equipment Schedules hereto.

"Agreement Date" means the date first written above.

"Code" means the Internal Revenue Code of 1986, as amended, together with Treasury Regulations promulgated from time to time thereunder.

"Default Rate" means the lesser of 12% per annum, or the maximum rated permitted by law.

"Equipment" means all items of property described in Equipment Schedules and subject to this Agreement.

"Equipment Group" means each group of Equipment listed in a single Equipment Schedule.

"Equipment Schedule" means each sequentially numbered schedule executed by Lessor and Lessee with respect to Equipment Group.

"Escrow Account" means the equipment acquisition account, if any, established by Lessor and Lessee with the Escrow Agent pursuant to the Escrow Agreement.

"Escrow Agent" means the escrow agent and, if applicable, any successor escrow agent identified under the Escrow Agreement for any applicable Lease hereunder.

"Escrow Agreement" means the Escrow Fund and Account Control Agreement, substantially in the form of Exhibit I hereto, or another mutually agreeable form of escrow agreement to be executed by Lessor, Lessee and the Escrow Agent upon the first funding of an Equipment Schedule using the procedure described in Section 2.4.

"Events of Default" means those events described in Section 12.1.

"Fiscal Year" means each 12-month fiscal period of Lessee.

"Funding Date" means, with respect to each Lease, the date Lessor makes payment to the Vendor(s) named in the related Equipment Schedule or reimburses Lessee for the purchase price of the related Equipment Group or, if the procedure described in Section 2.4 is utilized, the date Lessor deposits funds equal to such purchase price into the Escrow Account.

"Interest" means the portion of a Rental Payment designated as and comprising interest as provided in a Payment Schedule.

"Lease" means, with respect to each Equipment Group, this Agreement and the Equipment Schedule relating thereto, which together shall constitute a separate contract between Lessor and Lessee relating to such Equipment Group.

"Lease Date" means, with respect to each Lease, the date so designated in the related Equipment Schedule.

"Lease Term" means, with respect to each Equipment Group, the period during which the related Lease is in effect as specified in Section 3.1.

"Net Proceeds" means any insurance proceeds or condemnation awards paid with respect to any Equipment remaining after payment therefrom of all expenses incurred in the collection thereof.

"Non-Appropriation" means the failure of Lessee, Lessee's governing body, or, if applicable, the governmental entity

from which Lessee obtains its operating and/or capital funds to appropriate money for any Fiscal Year sufficient for the continued payment and/or performance by Lessee of all of Lessee's obligations under this Agreement, as evidenced by the passage of an ordinance or resolution prohibiting Lessee from performing its obligations under this Agreement with respect to any Equipment and/or budget, and from using properly appropriated and/or legally available funds to pay any Rental Payments due under this Agreement during any Fiscal Year.

"Payment Date" means each date upon which a Rental Payment is due and payable as provided in a Payment Schedule.

"Payment Schedule" means the schedule of Rental Payments attached to an Equipment Schedule.

"Principal" means the portion of any Rental Payment designated as and comprising principal as provided in a Payment Schedule.

"Prepayment Price" means the amount so designated and set forth opposite a Payment Date in a Payment Schedule indicating the amount for which Lessee may purchase the related Equipment Group as of such Payment Date after making the Rental Payment due on such Payment Date.

"Rental Payment" means each payment due from Lessee to Lessor on a Payment Date.

"Specifications" means the bid specifications and/or purchase order pursuant to which Lessee has ordered any Equipment from a Vendor.

"State" means the state or commonwealth in which Lessee is situated.

"Vendor" means each of the manufacturers or vendors from which Lessee has ordered or with which Lessee has contracted for the manufacture, delivery and/or installation of the Equipment.

Section 1.2. Exhibits.

Exhibit A: Equipment Schedule including Payment Schedule.

Exhibit B: Acceptance Certificate.

Exhibit C-1: Confirmation of Outside Insurance.

Exhibit C-2: Self-Insurance Rider and Lessor Consent (if applicable).

Exhibit C-3: Questionnaire for Self Insurance (If applicable),

Exhibit D: Essential Use Certificate (unless waived).

Exhibit E: Incumbency Certificate.

Exhibit F: Form of Opinion of Counsel to Lessee.

Exhibit G: Bank-Qualified Designation (if applicable).

Exhibit H: Tax and Arbitrage Certificate.

Exhibit I: Escrow Fund and Account Control Agreement (together with Disbursement request Form).

Exhibit J: Form of Resolution of the Governing Body of Lessee relating to each Lease.

ARTICLE II. LEASE OF EQUIPMENT

Section 2.1. Acquisition of Equipment. Prior to the addition of any Equipment Group, Lessee shall provide Lessor with a description of the equipment proposed to be subject to a Lease hereunder, including the cost and vendor of such equipment, the expected delivery date and the desired lease terms for such equipment, and such other information as the Lessor may require. If Lessor, in its sole discretion, determines the proposed equipment may be subject to a Lease hereunder, Lessor shall furnish to Lessee a proposed Equipment Schedule relating to the Equipment Group for execution by Lessee and then Lessor. By execution hereof, Lessor has made no commitment to lease any equipment to Lessee.

Section 2.2. Disbursement. Lessor shall have no obligation to make any disbursement to a Vendor or reimburse Lessee for any payment made to a Vendor for an Equipment Group (or, if the escrow procedure described in Section 2.4 hereof is utilized, consent to a disbursement by the Escrow Agent) until five (5) business days after Lessor has received all of the following in form and substance satisfactory to Lessor: (a) a completed Equipment Schedule executed by Lessee; (b) an Acceptance Certificate in the form included with Exhibit B hereto; (c) a resolution or evidence of other official action taken by or on behalf of the Lessee to authorize the acquisition of the Equipment Group on the terms provided in such Equipment Schedule; (d) a Tax Agreement and Arbitrage Certificate in the form of Exhibit H (as applicable) attached hereto; (e) evidence of insurance with respect to the Equipment Group in compliance with Article VII of this Agreement; (f) Vendor invoice(s) and/or bill(s) of sale relating to the Equipment Group, and if such invoices have been paid by Lessee, evidence of payment thereof and evidence of official intent to reimburse such payment as required by the Code; (g) financing statements naming Lessee as debtor and/or the original certificate of title or manufacturer's certificate of origin and title application, if any, for any Equipment which is part of such Equipment Group and is subject to certificate of title laws; (h) a completed and executed Form 8038-G or 8038-GC, as applicable, or evidence of filing thereof with the Secretary of Treasury; (i) an opinion of counsel to the Lessee substantially in the

form of Exhibit F hereto, and (j) any other documents or items reasonably required by Lessor.

Section 2.3. Lease; Possession and Use. Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon the terms and conditions set forth herein. Lessee shall have quiet use and enjoyment of and peaceably have and hold each Equipment Group during the related Lease Term, except as expressly set forth in this Agreement.

Section 2.4. Escrow Procedure. If Lessor and Lessee agree that the cost of an Equipment Group is to be paid from an Escrow Account: (a) Lessor and Lessee shall execute an Escrow Agreement substantially in the form of Exhibit I or such other form as may be mutually agreeable by the parties thereto; (b) Lessor and Lessee shall execute an Equipment Schedule relating to such Equipment Group; and (c) Lessor shall deposit an amount equal to the cost of the Equipment Group into the Escrow Account. All amounts deposited by Lessor into the Escrow Account shall constitute a loan from Lessor to Lessee secured by proceeds in such Escrow Account and, when such funds are used to acquire the Equipment, shall be repaid by the Rental Payments due under the related Lease.

ARTICLE III. TERM

Section 3.1. Term. This Agreement shall be in effect from the Agreement Date until the earliest of (a) termination under Section 3.2 or (b) termination under Section 12.2; provided, however, no Equipment Schedules shall be executed after any Non-Appropriation or Event of Default. Each Lease with respect to an Equipment Group shall be in effect for a Lease Term commencing upon the Lease Date and ending as provided in Section 3.4.

Section 3.2. Termination by Lessee. In the sole event of Non-Appropriation, this Agreement and each Lease hereunder shall terminate, in whole, but not in part, as to all Equipment effective upon the last day of the Fiscal Year for which funds were appropriated, in the manner and subject to the terms specified in this Article. Lessee may affect such termination by giving Lessor a written notice of termination and by paying to Lessor any Rental Payments and other amounts which are due and have not been paid at or before the end of its then current Fiscal Year. Lessee shall endeavor to give notice of such termination not less than ninety (90) days prior to the end of the Fiscal Year for which appropriations were made, and shall notify Lessor of any anticipated termination. In the event of termination of this Agreement as provided in this Section, Lessee shall comply with the instructions received from Lessor in accordance with Section 12.3. Lessor agrees that it shall not deliberately cause an event of Non-Appropriation so as to permit Lessee to terminate this Agreement or any Lease hereunder in order to acquire any other equipment or obtain funds directly or indirectly to perform essentially the same application for the Equipment is intended.

Section 3.3. Effect of Termination. Upon termination of this Agreement as provided in Section 3.2, Lessee shall not be responsible for the payment of any additional Rental Payments coming due in succeeding Fiscal Years, but if Lessee has not complied with the instructions received from Lessor in accordance with Section 12.3, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments that would thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to comply with Lessor's instructions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required.

Section 3.4. Termination of Lease Term. The Lease Term with respect to any Lease will terminate upon the occurrence of the first of the following events: (a) the termination of this Agreement by Lessee in accordance with Section 3.2; (b) the payment of the Prepayment Price by Lessee pursuant to Article V; (c) an Event of Default by Lessee and Lessor's election to terminate such Lease pursuant to Article XII; or (d) the payment by Lessee of all Rental Payments and all other amounts authorized or required to be paid by Lessee pursuant to such Lease.

ARTICLE IV. RENTAL PAYMENTS

Section 4.1. Rental Payments. The Lessee agrees to pay the Rental Payments due as specified in the Payment Schedule set forth on any Equipment Schedule hereto, the form of which is attached as Exhibit A. A portion of each Rental Payment is paid as interest as specified in the Payment Schedule of each lease, and the first Rental Payment will include Interest accruing from the Funding Date. Lessor is authorized to insert the due date of the first Rental Payment in the Payment Schedule. All Rental Payments shall be paid to Lessor, or to such assignee(s) Lessor has assigned as stipulated in Article XI, at such places as Lessor or such assignee(s) may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor.

Section 4.2. Current Expense. The obligations of Lessee, including its obligation to pay the Rental Payments due in any Fiscal Year of a Lease Term, shall constitute a current expense of Lessee for such Fiscal Year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State. Nothing herein shall constitute a pledge by Lessee of any taxes or other moneys (other than moneys lawfully appropriated from time to time by or for the benefit of Lessee for this Agreement and the Net Proceeds of the Equipment) to the payment of any Rental Payment or other amount coming due hereunder.

Section 4.3. Unconditional Rental Payments. Notwithstanding Lessee's right to terminate as provided in Section 3.2, Lessee's obligation to make Rental Payments shall be absolute and unconditional. Also, any other payments required hereunder shall be absolute and unconditional. Lessee shall make these payments when due and shall not withhold any

of these payments pending final resolution of any disputes. The Lessee shall not assert any right of set-off or counterclaim against its obligation to make these payments. Lessee's obligation to make Rental Payments or other payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment. The Lessee shall be obligated to continue to make payments required of it by this Agreement if title to, or temporary use of, the Equipment or any part thereof shall be taken under exercise of the power of eminent domain.

ARTICLE V. OPTION TO PREPAY

Section 5.1. Option to Prepay. Lessee shall have the option to prepay its obligations under any Lease in whole but not in part on any Payment Date on or after the Prepayment Option Commencement Date for the then applicable Prepayment Price (which may include a prepayment fee) as set forth in the related Payment Schedule, provided there has been no Non-Appropriation or Event of Default.

Section 5.2. Exercise of Option. Lessee shall give notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under the related Lease (including the Rental Payment due on the Payment Date on which the option shall be effective) and the applicable Prepayment Price set forth in the related Payment Schedule. In the event that all such amounts are not received by Lessor on such Payment Date, such notice by Lessee of exercise of its option to prepay shall be void and the related Lease shall continue in full force and effect.

Section 5.3. Release of Lessor's Interest. Upon receipt of the Prepayment Price in good funds with respect to any Equipment Group, the Lease with respect to such Equipment Group shall terminate and Lessee shall become entitled to such Equipment Group AS IS, WHERE IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE, except that such Equipment Group shall not be subject to any lien or encumbrance created by or arising through Lessor.

ARTICLE VI. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 6.1. Representations and Warranties of Lessee. Lessee represents and warrants as of the Agreement Date and as of each Lease Date as follows:

- (a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the Constitution and laws of the State, and is authorized under the Constitution and laws of the State to enter into this Agreement, each Lease and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and each Lease.
- (b) The execution and delivery of this Agreement and each Lease have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement, each Lease and the acquisition and financing of the Equipment by Lessee.
- (c) This Agreement and each Lease have been duly executed and delivered by and constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with their respective terms.
- (d) The execution, delivery and performance of this Agreement and each Lease by Lessee shall not (i) violate any State or federal law or local law or ordinance (including, without limitation, any public bidding, open meeting, notice, and procurement requirements), or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound.
- (e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any Lease or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any Lease.
- (f) Lessee will furnish Lessor (i) within 180 days after the end of each Fiscal Year of Lessee, a copy of its audited financial statements for such Fiscal Year, which audited financial statements shall include a balance sheet, a statement of revenues, expenses and changes in fund balances for budget and actual, a statement of cash flows, notes, schedules and any attachments to the financial statements; (ii) no later than 10 days prior to the end of each Fiscal Year (commencing with the current Fiscal Year), a copy of Lessee's current budget or other proof of appropriation for the ensuing Fiscal Year; (iii) promptly after Lessor's written request, a copy of any interim updates or modifications to Lessee's adopted budget and such other information relating to Lessee's ability to continue the Lease Term of each Lease for such Fiscal Year as may be reasonably requested by Lessor; and (iv) promptly, but not later than 30 days after such information is available, after Lessor's written request, such other financial statements and information as Lessor may reasonably request, including, without limitation, any information relating to the measurement and verification of proposed or guaranteed energy savings. The financial statements described in clause (f)(i) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee

may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(g) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the current Fiscal Year, and such moneys will be applied in payment of all Rental Payments due and payable during such current Fiscal Year.

(h) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the applicable Lease Term. Lessee presently intends to continue each Lease hereunder for its entire Lease Term and to pay all Rental Payments relating thereto.

Section 6.2. Covenants of Lessee. Lessee agrees that so long as any Rental Payments or other amounts due under this Agreement remain unpaid:

(a) Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or regulation or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition would change or impair the originally intended functions, value or use of such Equipment.

(b) Lessee shall provide Lessor access at all reasonable times to examine and inspect the Equipment and provide Lessor with such access to the Equipment as may be reasonably necessary to perform maintenance on the Equipment in the event of failure by Lessee to perform its obligations hereunder.

(c) Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other claim with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such actions as may be necessary duly to discharge or remove any such claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such claim.

(d) The person or entity in charge of preparing Lessee's budget will include in the budget request for each Fiscal Year the Rental Payments to become due during such Fiscal Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Fiscal Year sufficient to pay all Rental Payments coming due therein. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform. Lessee acknowledges that this Agreement does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the applicable Lease Terms.

(e) Lessee shall assure that its obligation to pay Rental Payments is not directly or indirectly secured by any interest in property, other than the Equipment, and that the Rental Payments will not be directly or indirectly secured by or derived from any payments of any type or any fund other than Lessee's general purpose fund.

(f) Upon Lessor's request, Lessee shall provide Lessor with current financial statements, budgets, and proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Agreement and each Lease as may be reasonably requested by Lessor.

(g) Lessee shall promptly and duly execute and deliver to Lessor such further documents, instruments and assurances and take such further action as Lessor 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 Lessor hereunder.

Section 6.3. Tax Related Representations, Warranties and Covenants.

(a) *Incorporation of Tax Agreement and Arbitrage Certificate.* As of each Lease Date and with respect to each Lease, Lessee makes each of the representations, warranties and covenants contained in the Tax Agreement and Arbitrage Certificate delivered with respect to such Lease. By this reference each such Tax Agreement and Arbitrage Certificate is incorporated in and made a part of this Agreement.

(b) *Event of Taxability.* If Lessor either (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of a nationally recognized independent tax counsel, that Lessor may not exclude, for any reason, any Interest (or portion thereof) paid under any Lease from its Federal gross income and/or should any State financial institutions tax or Federal income tax change materially affect Lessor's anticipated yield (an "Event of Taxability"), the Lessee shall pay to Lessor upon demand (x) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the Interest due through the date of such event), will restore to Lessor its anticipated after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Lease through the date of such event and (y) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such anticipated after-tax yield to Lessor.

ARTICLE VII. INSURANCE AND RISK OF LOSS

Section 7.1. Liability and Property Insurance. Lessee shall, at its own expense, procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor and/or assigns from liability in all events, with a coverage of not less than \$1,000,000 per occurrence and either \$3,000,000 aggregate for non-titled Equipment or \$5,000,000/ aggregate for titled Equipment unless specified differently in the related Equipment Schedule, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price of each Equipment Group.

Section 7.2. Workers' Compensation Insurance. If required by State law, Lessee shall carry workers' compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

Section 7.3. Insurance Requirements.

(a) *Insurance Policies.* All insurance policies required by this Article shall be taken out and maintained with insurance companies acceptable to Lessor and shall contain a provision that thirty (30) days prior to any change in the coverage the insurer must provide written notice to the insured parties. No insurance shall be subject to any co-insurance clause. Each insurance policy shall name Lessor and/or its assigns as an additional insured party and loss payee regardless of any breach of warranty or other act or omission of Lessee and shall include a lender's loss payable endorsement for the benefit of Lessor and/or its assigns. Prior to the delivery of Equipment, Lessee shall deposit with Lessor evidence satisfactory to Lessor of such insurance and, prior to the expiration thereof, shall provide Lessor evidence of all renewals or replacements thereof.

(b) *Self Insurance.* With Lessor's prior consent, Lessee may self-insure the Equipment by means of an adequate insurance fund set aside and maintained for that purpose which must be fully described in a letter delivered to Lessor in form acceptable to Lessor.

(c) *Evidence of Insurance.* Lessee shall deliver to Lessor upon acceptance of any Equipment evidence of insurance which complies with this Article VII with respect to such Equipment to the satisfaction of Lessor, including, without limitation, the confirmation of insurance in the form of Exhibit C-1 attached hereto together with Certificates of Insurance, when available, or the Questionnaire for Self-Insurance Rider and Lessor Consent in the form of Exhibit C-2 attached hereto, as applicable.

(d) *Payment and Performance Bond.* If requested by Lessor, which will be solely in circumstances where the Equipment will not be fully delivered and accepted at the time of funding yet partial payment therefor has been or will be made by Lessor or from an Escrow Account, a payment and performance or other type of surety bond and dual obligee rider ("Bond") is required in form and substance and with such insurer as may be required by Lessor, and Lessee will keep such Bond in effect (or require the Vendor to keep such Bond in effect) and provide Lessor with a evidence of such Bond (and any applicable renewals thereof) at all times until the final Acceptance Certificate is delivered to the Lessor. No disbursements from the Escrow Account will be permitted without evidence of such Bond having been delivered to the Lessor.

Section 7.4. Risk of Loss. To the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance relating to any Lease hereunder, for loss or damage to any Equipment and for injury to or death of any person or damage to any property. Whether or not covered by insurance, Lessee hereby assumes responsibility for and agrees to release, defend, and hold harmless Lessor from all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses, including reasonable attorneys' fees, imposed on, incurred by or asserted against Lessor that relate to or arise out of this Agreement, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) a breach of Lessee of any of its covenants or obligations hereunder, (f) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including, but not limited to investigation, removal, cleanup and remedial costs, and (g) any strict liability under the laws or judicial decisions of any state or the United States. This provision shall survive the termination of this Agreement. Nothing in this Section 7.4 shall be deemed to obligate Lessee to spend any monies with regards to the matters set forth herein that are not properly appropriated, designated for such purposes (e.g. insurance proceeds, warranty payments, self-insurance, reserve or sinking funds, etc.) and/or otherwise legally available. Nothing herein shall be deemed to (a) create an unconstitutional or illegal obligation on the part of the Lessee and (b) be a waiver of any constitutional or statutory waivers, rights, immunities, or privileges. Any provision or requirement of the Agreement which is determined or to be illegal, invalid, or unconstitutional shall be stricken solely to the extent of such invalidity with the remainder of the provisions of the Agreement to be in full force and effect.

Section 7.5. Destruction of Equipment. Lessee shall provide a complete written report to Lessor immediately upon any loss, theft, damage or destruction of any Equipment and of any accident involving any Equipment. Lessor may inspect the Equipment at any time and from time to time during regular business hours. If all or any part of the Equipment is stolen, lost, destroyed or damaged beyond repair or taken by an exercise of eminent domain ("Damaged

Equipment”), Lessee shall within thirty (30) days after such event either: (a) replace the same at Lessee’s sole expense with equipment having substantially similar Specifications and of equal or greater value to the Damaged Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor’s approval, whereupon such replacement equipment shall be substituted in the applicable Lease and the other related documents by appropriate endorsement or amendment; or (b) pay the applicable Prepayment Price of the Damaged Equipment determined as set forth in the related Equipment Schedule. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If, within forty-five (45) days of the loss occurrence, (a) Lessee fails to notify Lessor; (b) Lessee and Lessor fail to execute an amendment to the applicable Equipment Schedule to delete the Damaged Equipment and add the replacement equipment or (c) Lessee has failed to pay the applicable Prepayment Price, then Lessor may, at its sole discretion, declare the applicable Prepayment Price of the Damaged Equipment, to be immediately due and payable from the Net Proceeds and any other legally available or proper appropriated funds. The Net Proceeds of insurance with respect to the Damaged Equipment shall be made available by Lessor to be applied to discharge Lessee’s obligation under this Section.

ARTICLE VIII. OTHER OBLIGATIONS OF LESSEE

Section 8.1. Maintenance of Equipment. Lessee shall notify Lessor in writing prior to moving the Equipment to another address and shall otherwise keep the Equipment at the address specified in the related Equipment Schedule. Lessee shall, at its own expense, maintain the Equipment in proper working order and shall make all necessary repairs and replacements to keep the Equipment in such condition including compliance with State and federal laws. Any and all replacement parts must be free of encumbrances and liens. All such replacement parts and accessories shall be deemed to be incorporated immediately into and to constitute an integral portion of the Equipment and as such, shall be subject to the terms of this Agreement.

Section 8.2. Taxes. Lessee shall pay all taxes and other charges which are assessed or levied against the Equipment, the Rental Payments or any part thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor, except as expressly limited by this Section. Lessee shall pay all utilities and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body that may be secured by a lien on the Equipment. Lessee shall not be required to pay any federal, state or local income, succession, transfer, franchise, profit, excess profit, capital stock, gross receipts, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

Section 8.3. Advances. If Lessee shall fail to perform any of its obligations under this Article, Lessor may take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the Default Rate from the date of the advance to the date of repayment.

ARTICLE IX. TITLE

Section 9.1. Title. Except as may be modified on any Schedule hereto or solely if and to the extent as required by any laws of the State, during the Lease Term, ownership and legal title of all Equipment and all replacements, substitutions, repairs and modification shall be in Lessee and Lessee shall take all action necessary to vest such ownership and title in Lessee. Lessor does not own the Equipment and by this Agreement and each Lease is merely financing the acquisition of such equipment for Lessee. Lessor has not been in the chain of title of the Equipment, does not operate, control or have possession of the Equipment and has no control over the Lessee or the Lessee’s operation, use, storage or maintenance of the Equipment.

Section 9.2. Security Interest. Lessee hereby grants to Lessor a continuing, first priority security interest in and to the Equipment, all repairs, replacements, substitutions and modifications thereto and all proceeds thereof (including without limitation any Net Proceeds, warranty payments and guaranteed energy or other savings payments) and in the Escrow Account (if any) in order to secure Lessee’s payment of all Rental Payments and the performance of all other obligations. Lessee hereby authorizes Lessor to prepare and file such financing statements and other such documents to establish and maintain Lessor’s valid first priority lien and perfected security interest. Lessee will join with Lessor in executing such documents and will perform such acts as Lessor may request to establish and maintain Lessor’s valid first priority lien and perfected security interest. If requested by Lessor, Lessee shall obtain a landlord and/or mortgagee’s consent and waiver with respect to the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment, and maintain such markings during the Lease Term, to clearly disclose Lessor’s security interest in the Equipment. Upon termination of a Lease through exercise of Lessee’s option to prepay pursuant to Article V or through payment by Lessee of all Rental Payments and other amounts due with respect to an Equipment Group, Lessor’s security interest in such Equipment Group shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request (at the sole cost and expense) to evidence the termination of Lessor’s security interest in such Equipment Group.

Section 9.3. Modification of Equipment. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment.

Section 9.4. Personal Property. Except as permitted by Lessor in writing in connection to any Equipment Schedules, the Equipment is and shall at all times be and remain personal property and not fixtures.

ARTICLE X. WARRANTIES

Section 10.1. Selection of Equipment. Each Vendor and all of the Equipment have been selected by Lessee. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any Vendor or its sales representative of any order submitted, or any delay or failure by such Vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee.

Section 10.2. Vendor's Warranties. Lessor hereby assigns to Lessee for and during the related Lease Term, all of its interest, if any, in all Vendor's warranties, guarantees and patent indemnity protection, express or implied issued on or applicable to an Equipment Group, and Lessee may obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense. Lessor has no obligation to enforce any Vendor's warranties or obligations on behalf of itself or Lessee.

Section 10.3. Disclaimer of Warranties. LESSEE ACKNOWLEDGES THAT THE EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY, AND MANUFACTURE SELECTED BY LESSEE. LESSEE ACKNOWLEDGES THAT IT SELECTED THE EQUIPMENT WITHOUT ASSISTANCE OF LESSOR, ITS AGENTS OR EMPLOYEES. LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT, AND DOES NOT INSPECT THE EQUIPMENT BEFORE DELIVERY TO LESSEE. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANT-ABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EQUIPMENT OR LESSEE'S USE OF THE EQUIPMENT.

ARTICLE XI. ASSIGNMENT AND SUBLEASING

Section 11.1. Assignment by Lessor. Lessor, without Lessee's consent, may assign and reassign all of Lessor's right, title and/or interest in and to this Agreement or any Lease, including, but not limited to, the Rental Payments and other amounts payable by Lessee and Lessor's interest in the Equipment, in whole or in part to one or more assignees or subassignee(s) by Lessor at any time. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments.

Section 11.2. Assignment and Subleasing by Lessee. Neither this Agreement nor any Lease or any Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

ARTICLE XII. EVENTS OF DEFAULT AND REMEDIES

Section 12.1. Events of Default Defined. The occurrence of any of the following events shall constitute an Event of Default under this Agreement and each Lease:

- (a) Lessee's failure to pay, within ten (10) days following the due date thereof, any Rental Payment or other amount required to be paid to Lessor (other than by reason of Non-Appropriation).
- (b) Lessee's failure to maintain insurance as required by Article VII.
- (c) With the exception of the above clauses (a) & (b), Lessee's failure to perform or abide by any condition, agreement or covenant for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration.
- (d) Lessor's determination that any representation or warranty made by Lessee in this Agreement was untrue in any material respect upon execution of this Agreement or any Equipment Schedule.
- (e) The occurrence of an Event of Taxability and Lessee's failure to comply with the provisions of Section 6.3(b).
- (f) The filing of a petition in bankruptcy by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or liquidation of Lessee.

Section 12.2. Remedies on Default. Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies:

- (a) Lessor, with or without terminating this Agreement or any Lease, may declare all Rental Payments immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable, together with interest at the Default Rate, but solely from properly appropriated, legally available, or other funds designated for such purposes (e.g. insurance proceeds, warranty payments, self-insurance, reserve or sinking funds, etc.).

(b) Lessor, with or without terminating this Agreement or any Lease, may repossess any or all of the Equipment by giving Lessee written notice to deliver such Equipment in the manner provided in Section 12.3; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment and charge Lessee for all actual and reasonable accrued costs incurred, including reasonable attorneys' fees. Lessee hereby expressly waives any damages occasioned by such repossession except those resulting from Lessor's gross negligence or willful misconduct. If the Equipment or any portion has been destroyed, Lessee shall pay the applicable Prepayment Price of the destroyed Equipment as set forth in the related Payment Schedule, but solely from properly appropriated, legally available, or other funds designated for such purposes (e.g. insurance proceeds, warranty payments, self-insurance, reserve or sinking funds, etc.). Regardless of the fact that Lessor has taken possession of the Equipment, Lessee shall continue to be responsible for the Rental Payments due during the Fiscal Year.

(c) If Lessor terminates this Agreement and/or any Lease and, in its discretion, takes possession and disposes of any or all of the Equipment, Lessor shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all costs (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all expenses incurred in completing the disposition; (iii) any sales or transfer taxes; (iv) the applicable Prepayment Prices of the Equipment Groups; (v) the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect; and (vi) interest on any of the foregoing at the Default Rate. Any disposition proceeds remaining after the requirements of Clauses (i), (ii), (iii), (iv), (v) and (vi) have been met shall be paid to Lessee.

(d) Lessor may take any other remedy available, at law or in equity, with respect to such Event of Default, including those sounding in mandamus, specific performance/enforcement, or otherwise requiring Lessee to perform any of its obligations or to pay any moneys due and payable to Lessor, and Lessee shall pay the actual reasonable attorneys' fees and other costs and expenses incurred by Lessor in enforcing any remedy permitted and exercise hereunder together with interest at the Default Rate.

(e) Each of the foregoing remedies is cumulative and may be enforced separately or concurrently. All monetary damages and/or payment remedies set forth in this Section 12, shall be payable solely from properly appropriated, legally available, or other funds designated for such purposes (e.g. insurance proceeds, warranty payments, self-insurance, reserve or sinking funds, etc.). In no event shall the rights and remedies herein constitute a debt, illegal or unconstitutional undertaking of the Lessee or its governing body.

Section 12.3. Return of Equipment: Release of Lessee's Interest. Upon termination of any Lease prior to the payment of all related Rental Payments or the applicable Prepayment Price (whether as result of Non-Appropriation or Event of Default), Lessee shall, within ten (10) days after such termination, at its own expense: (a) perform any testing and repairs required to place the related Equipment in the condition required by Article VIII; (b) if deinstallation, disassembly or crating is required, cause such Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; and (c) return such Equipment to a location specified by Lessor, freight and insurance prepaid by Lessee. If Lessee refuses to return such Equipment in the manner designated, Lessor may repossess the Equipment without demand or notice and without court order or legal process and charge Lessee the costs of such repossession. Upon termination of this Agreement in accordance with Article III or Article XII hereof, at the election of Lessor and upon Lessor's written notice to Lessee, full and unencumbered legal title and ownership of the Equipment shall pass to Lessor. Lessee shall have no further interest therein. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title and ownership to Lessor and termination of Lessee's interest in the Equipment.

Section 12.4 Late Charge. Lessor shall have the right to require late payment charge for each Rental or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of each late payment or the legal maximum. For any Rent Payment and other amount not paid within 30 days of the due date, Lessor shall have the right to resume interest thereof at the Default Rate which shall accrue from the due date. This Section is only applicable to the extent it does not affect the validity of this Agreement.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

Section 13.1. Notices. All written notices to be given under this Agreement shall be given by mail to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail in registered or certified form, with postage fully prepaid, or, if given by other means, when delivered at the address specified in this Section 13.1.

Section 13.2. Binding Effect. This Agreement and each Lease hereunder shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns. Specifically, as used herein the term "Lessor" means any person or entity to which Lessor has assigned its right to receive Rental Payments under any Lease.

Section 13.3. Severability. In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.4. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties with

respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee.

Section 13.5. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or Clauses hereof.

Section 13.6. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Agreement. Lessee hereby authorizes Lessor to file any financing statement or supplements thereto as may be reasonably required for correcting any inadequate description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Agreement

Section 13.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 13.8. Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein or in any Equipment Schedule, in no event shall this Agreement or any Lease hereunder require the payment or permit the collection of Interest or any amount in the nature of Interest or fees in excess of the maximum amount permitted by applicable law. Any such excess Interest or fees shall first be applied to reduce Principal, and when no Principal remains, refunded to Lessee. In determining whether the Interest paid or payable exceeds the highest lawful rate, the total amount of Interest shall be spread through the applicable Lease Term so that the Interest is uniform through such term.

Section 13.9. Lessee's Performance. A failure or delay of Lessor to enforce any of the provisions of this Agreement or any Lease shall in no way be construed to be a waiver of such provision.

Section 13.10. Waiver of Jury Trial. Except as prohibited by the laws and/or constitution of the State, Lessor and Lessee hereby waive any right to trial by jury in any action or proceeding with respect to, in connection with or arising out of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXECUTION PAGE OF MASTER LEASE AGREEMENT

LEASE NUMBER _____

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

CITY OF FREDERICKSBURG,
Lessee

SIGNATURE PUBLIC FUNDING CORP.
Lessor

By: _____

By: _____

Name: Kent Myers
Title: City Manager
Date: _____

Name: Donald S. Keough
Title: Senior Managing Director
Date: _____

Address: 126 W. Main Street
Fredericksburg, TX 78624

Address: 600 Washington Avenue, Suite 305
Towson, MD 21204

Telephone: 830-990-2002
Facsimile:

Telephone: 410-704-0027
Facsimile: 646-927-4005

Invoices:

Mail please 30 days prior to:
Attn: Laura Hollenbeak,
City of Fredericksburg,
126 W. Main Street,
Fredericksburg, TX 78624

E-mail please 30 days prior to: lhollenbeak@fbgtx.org

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. You acknowledge and agree to cooperate with any information that may be requested by us in order to comply with the United States Patriot Act, OFAC and/or BSA regulations. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Counterpart No. _____ of two manually executed and serially numbered counterparts. To the extent that this Master Agreement constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT A: LEASE SCHEDULE

EQUIPMENT SCHEDULE 001 DATED JANUARY 22, 2020

This Equipment Schedule 001 dated as of January 22, 2020 ("Equipment Schedule") is made to and part of that certain Master Equipment Lease-Purchase Agreement dated as of January 22, 2020 (the "Master Agreement," and together with the Equipment Schedule, the "Lease"), and the terms, conditions and provisions of the Master Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules or if they are expressly superseded in this Equipment Schedule) are hereby incorporated into this Equipment Schedule by reference and made a part hereof. This Lease is a separate and individual instrument of lease.

1. DESCRIPTION OF THE EQUIPMENT:

A new custom Pierce Impel PUC Pumper Truck, together with all accessories, attachments, substitutions and accessions, pursuant to that Contract Agreement between Siddons-Martin Emergency Group (the "Vendor") and City of Fredericksburg and financed by this Equipment Schedule dated January 22, 2020 to that Agreement dated January 22, 2020 by and between Signature Public Funding Corp. and the City of Fredericksburg, including, without limitation, the following: Equipment shall consist of those units or items of equipment as set forth below and/or as may be accepted by the Lessee and financed hereunder, together with all embedded software, replacements, additions, attachments, substitutions, modifications, upgrades, and improvements thereto (collectively the "Equipment") pursuant to that "Vendor Contract" (as described below) between each respective "Vendor" and Lessee, which is and financed by this Lease.

<u>Quantity</u>	<u>Equipment Description</u> <u>(with VIN and MSN)</u>	<u>Total Cost</u>	<u>Vendor Name and</u> <u>Contract/Invoice</u>	<u>Location</u>
1	Pierce Impel PUC Pumper Truck	\$811,900.31	Siddons-Martin Emergency Group	
	TOTAL LEASE PROCEEDS:	\$811,900.31		

2. **EQUIPMENT LOCATION:** [Insert Principle Garaged Location, or note the locations set forth above.]

3. **PAYMENT SCHEDULE:** The Rental Payments shall be made for the Equipment as follows:

<u>Payment</u> <u>Number</u>	<u>Due</u> <u>Date</u>	<u>Total Rental</u> <u>Payment Due</u>	<u>Interest</u> <u>Component</u>	<u>Principal</u> <u>Component</u>	<u>Prepayment</u> <u>Price*</u>
1	1/22/2020	\$109,347.09	\$0.00	\$109,347.09	\$709,578.75
2	1/22/2021	\$109,347.09	\$15,385.92	\$93,961.17	\$614,677.97
3	1/22/2022	\$109,347.09	\$13,328.16	\$96,018.93	\$517,698.85
4	1/22/2023	\$109,347.09	\$11,225.36	\$98,121.73	\$418,595.90
5	1/22/2024	\$109,347.09	\$9,076.48	\$100,270.61	\$317,322.59
6	1/22/2025	\$109,347.09	\$6,880.56	\$102,466.53	\$213,831.39
7	1/22/2026	\$109,347.09	\$4,636.55	\$104,710.54	\$108,073.75
8	1/22/2027	\$109,347.09	\$2,343.38	\$107,003.71	\$0.00
Grand Totals		\$874,776.72	\$62,876.41	\$811,900.31	

* Assumes that all rental payments and other amounts due on and prior to that date have been paid.

4. **INTEREST RATE:** 2.19 %

5. **COMMENCEMENT DATE:** January 22, 2020. Interest, if any, accruing from the Commencement Date to the actual date of funding shall be retained by Lessor as additional consideration for entering into this Equipment Schedule.

6. **SCHEDULED LEASE TERM:** 7 Years.

7. **OPTIONAL PREPAYMENT COMMENCEMENT DATE:** January 22, 2020.

8. **FISCAL YEAR:** Lessee's current Fiscal Year extends from October 1, 2019.

9. Lessee hereby represents, warrants, and covenants that (i) its representations, warranties, and covenants set forth in the Master Equipment Lease-Purchase Agreement (particularly Paragraph 7 thereof) are true and correct as though made on the date of execution of this Equipment Schedule, and (ii) sufficient funds have been appropriated by Lessee for the payment of all Rental Payments due under this Lease during Lessee's current Fiscal Year. Funds for making Rental Payments are expected to come from the General Fund of the Lessee.

10. **ESSENTIAL USE:** The Equipment—a new custom Pierce Impel PUC Pumper--will be used by the City for the specific purpose of providing firefighting and emergency response services. The Equipment is essential for the functioning of the Lessee and is immediately needed by the Lessee, and such need is neither temporary, nor expected to diminish during the Lease Term. The Equipment is expected to be used by the Lessee for a period in excess of the Lease Term.

[Signature Pages to Follow.]

**IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS EQUIPMENT SCHEDULE
AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE**

CITY OF FREDERICKSBURG,
as Lessee

SIGNATURE PUBLIC FUNDING CORP.,
as Lessor

By: _____
Name: Kent Myers
Title: City Manager

By: _____
Name: Donald S. Keough
Title: Senior Managing Director

Counterpart No. ____ of two manually executed and serially numbered counterparts. To the extent that this Equipment Schedule constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT B

ACCEPTANCE CERTIFICATE

The undersigned, as Lessee under Schedule No. 001 dated as of January 22, 2020 (the "Schedule") to that certain Master Equipment Lease-Purchase Agreement dated as of January 22, 2020 (the "Master," and together with the Schedule, the "Lease"), acknowledges receipt in good condition those certain units of the Equipment described in the Lease and more specifically listed on Annex I hereto as of the Acceptance Date set forth below. Capitalized terms used herein without definition shall be given their meaning in the Lease.

1. The units of Equipment listed on Annex I hereto represent a portion of the Equipment listed on the Schedule and to be acquired under the Lease. By its execution hereto, the Lessee represents and warrants that: (1) the Equipment listed on Annex I hereto has been delivered, installed and accepted on the date hereof; and (2) it has conducted such inspection and/or testing of the Equipment listed on Annex I hereto as it deems necessary and appropriate and hereby acknowledges that it unconditionally and irrevocably accepts the Equipment listed in Annex I hereto for all purposes. Lessee confirms that it will commence or continue to make Rental Payments in accordance with the terms of the Lease. Copies of invoices, proof of payment (if applicable), reimbursement resolutions (if applicable), and purchase orders and/or agreement have been attached with Annex I hereto. As applicable, the following documents are attached hereto and made a part hereof: (a) Original Invoice(s) and (b) Copies of Certificate(s) of Ownership, MSOs, or Certificates of Title, designating Lessor as first position lienholder, and (c) any other evidence of filing or documents attached hereto

2. Lessee hereby certifies and represents to Lessor as follows: (i) the representations and warranties in the Lease are true and correct as of the Acceptance Date; (ii) the Equipment is covered by insurance in the types and amounts required by the Lease; (iii) no Event of Default or Non-Appropriation, as those terms are defined in the Lease, and no event that with the giving of notice or lapse of time or both, would become an Event of Default or a Non-Appropriation, has occurred and is continuing on the date hereof; and (iv) sufficient funds have been appropriated by Lessee for the payment of all Rental Payments due under the Lease during Lessee's current Fiscal Year.

3. Lessee hereby authorizes and directs Lessor to fund the acquisition cost of the Equipment by paying, or directing the payment by the Escrow Agent (if applicable) of, the invoice prices to the Vendor(s), in each case as set forth above, or by reimbursing Lessee in the event such invoice prices have been previously paid by Lessee.

IF REQUEST IS FINAL REQUEST, CHECK HERE ☐. 4. **Final Acceptance Certificate.** The undersigned hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Certificates of Acceptance and Disbursement Requests previously filed by Lessee with Lessor constitute all of the Equipment subject to the Lease. Lessee certifies that upon payment in accordance with paragraph 3 above, or direction to the Escrow Agent (if applicable) to make payment, Lessor shall have fully and satisfactorily performed all of its covenants and obligations under the Lease.

Accepted and certified this ____ day of _____, 20____. ("Acceptance Date")

CITY OF FREDERICKSBURG, as Lessee

By: _____
Name: Kent Myers
Title: City Manager

ANNEX I TO ACCEPTANCE CERTIFICATE

Payee	Vendor/ Manufacturer	Invoice or PO No.	VIN or MSN	Equipment Description	Location	Cost

EXHIBIT C-1

INSURANCE CERTIFICATION

In connection with Equipment Schedule 001 dated January 22, 2020 to that certain Master Equipment Lease-Purchase Agreement dated January 22, 2020, City of Fredericksburg, as lessee (the "*Lessee*") certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

Name of Agent: TML – Texas Municipal League Intergovernmental Risk Pool
Contact Person: Chase Patton
Address: 1821 Rutherford Lane, First Floor, Austin, TX 78754
Phone: 512-491-2497 or 800-537-6655
E-mail: _____
to issue: _____

Liability Insurance. Lessee is required to maintain public liability insurance, personal injury and property damage with minimum policy limits of \$1,000,000/occurrence and \$5,000,000/aggregate. The policy should be endorsed to name Signature Public Funding Corp., and its successors and assigns as additional insured's.

Casualty Insurance. Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the above-referenced Equipment Schedule in an amount not less than the greater of \$836,257.32 or the full replacement cost of the Equipment. Such insurance shall be endorsed to name Signature Public Funding Corp., and its successors and assigns as loss payees with respect to such Equipment.

The required insurance should also be endorsed to give Signature Public Funding Corp. at least 30 days prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of Signature Public Funding Corp. shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

Proof of insurance coverage will be provided to Signature Public Funding Corp. prior to and/or commensurate with the Commencement Date. Proof of coverage will be mailed to: Signature Public Funding Corp., Attn: Claire Foshee at 600 Washington Avenue, Suite 305, Towson, MD 21204 or sent via e-mail to cfoshee@signatureny.com.

Very truly yours,

CITY OF FREDERICKSBURG, as Lessee

By: _____
Name: Kent Myers
Title: City Manager

EXHIBIT C-2

SELF-INSURANCE RIDER AND LESSOR CONSENT

Signature Public Funding Corp.
600 Washington Avenue, Suite 305
Towson, Maryland 21204

January 22, 2020

Re: Schedule No. 001 dated January 22, 2020 to that certain Master Equipment
Lease-Purchase Agreement dated January 22, 2020 (collectively, the "Lease")

In connection with the above-referenced Lease, City of Fredericksburg, as lessee (the "*Lessee*") certifies that it participates in an actuarially sound self-insurance program for property damage and public liability risks. The Self-Insurance Questionnaire attached hereto is true and correct, and no Event of Default or Non-Appropriation, as such terms are defined in the Lease, has occurred and is continuing.

The following is attached (check all that apply):

- ☐ Letter from risk manager describing self-insurance program
- ☐ Other evidence of Lessee's participation in self-insurance program

Signature Public Funding Corp., as lessor (the "*Lessor*") agrees that the self-insurance program as described by Lessee in this Certificate and the attached Questionnaire and related documents is acceptable in lieu of the coverage for property damage and public liability risks required under the Lease, including §13 of the Master.

CITY OF FREDERICKSBURG,
as Lessee

SIGNATURE PUBLIC FUNDING CORP.,
as Lessor

By: _____
Name: Kent Myers
Title: City Manager

By: _____
Name: Donald S. Keough
Title: Senior Managing Director

EXHIBIT C-3

QUESTIONNAIRE FOR SELF-INSURANCE TO SELF-INSURANCE RIDER AND LESSOR CONSENT

To and part of that Self-Insurance Rider and Lessor Consent to Equipment Schedule No. 001 dated as of January 22, 2020 to that certain the Master Lease Agreement dated January 22, 2020 (collectively, the "Lease"). The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Lease.

1. Property Insurance.

- a. Lessee is self-insured for damage or destruction to the Equipment.

YES NO (circle one)

If yes, the dollar amount limit for property damage to the Equipment under the Lessee's self-insurance program is \$_____.

- b. The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for property damage to the Equipment as indicated above.

YES NO (circle one)

If yes, the umbrella policy provides coverage for all risk property damage.

YES NO (circle one)

If yes, the dollar limit for property damage to the Equipment under such umbrella policy is \$_____.

2. Liability Insurance.

- a. Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Equipment.

YES NO (circle one)

If yes, the dollar limit for such liability claims under the Lessee's self-insurance program is \$_____.

- b. The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for liability including injury or death of persons or damage to property as indicated above.

YES NO (circle one)

If yes, the umbrella policy provides coverage for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Equipment.

YES NO (circle one)

If yes, the dollar amount of the umbrella policy's limits for such liability coverage is \$_____.

3A. Self Insurance Fund.

- a. Lessee maintains a self-insurance fund.

YES NO (circle one)

If yes, please complete the following:

Monies in the self-insurance fund are subject to annual appropriation.

YES NO (circle one)

The total amount maintained in the self-insurance fund to cover Lessee's self-insurance liabilities is \$_____.

- b. Amounts paid from the Lessee's self-insurance fund are subject to limitations for each claim.

YES NO (circle one)

If yes, the dollar amount of limit per claim is \$_____.

3B. No Self Insurance Fund.

- a. If Lessee does not maintain a self-insurance fund, please complete the following:
Lessee obtains funds to pay claims for which it has self-insured from the following sources:

- b. The limitations on the amounts payable for claims from the above sources are as follows:

4. Authority.

- a. The following entity or officer has authority to authorize payment for claim:
- b. In the event the entity or officer named in the prior response denies payment of a claim, does the claimant have recourse to another administrative officer, agency or the courts?

YES NO (circle one)
If yes, to whom does the claimant have recourse?

5. Certificates of Insurance.

Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

EXHIBIT D

ESSENTIAL USE CERTIFICATE

January 22, 2020

Signature Public Funding Corp.
600 Washington Avenue, Suite 305
Towson, Maryland 21204

Re: Equipment Schedule No. 001 dated January 22, 2020 to that certain
Master Equipment Lease-Purchase Agreement dated January 22, 2020

I, Kent Myers, appointed, or designated representative of and City Manager of the City of Fredericksburg, as lessee (the "*Lessee*"), is qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Lease Agreement:

1. *What is the specific use of the Equipment?*
2. *What increased capabilities will the Equipment provide?*
3. *Why is the Equipment essential to your ability to deliver governmental services?*
4. *Does the Equipment replace existing equipment?*
(If so, please explain why you are replacing the existing equipment)
5. *Why did you choose this specific Equipment?*
6. *For how many years do you expect to utilize the Equipment?*

Very truly yours,
CITY OF FREDERICKSBURG, as Lessee

By: _____
Name: Kent Myers
Title: City Manager

EXHIBIT E

INCUMBENCY CERTIFICATE

I, Shelley Goodwin, do hereby certify that I am the City Secretary of the City of Fredericksburg, which is a body corporate and politic duly established and validly existing as a political subdivision of the State under the Constitution and laws of the State, and that I have custody of the records of such entity.

I hereby certify that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the City holding the offices set forth opposite their respective names. I further certify that:

- (i) The signatures set opposite their respective names and titles are their true and authentic signatures, and
- (ii) Such officers have the authority on behalf of such entity to:
 - a. Enter into that certain Equipment Schedule No. 001 dated January 22, 2020 to that certain Master Equipment Lease-Purchase Agreement dated January 22, 2020 (collectively, the "*Lease Agreement*"), between the City of Fredericksburg and Signature Public Funding Corp., as lessor, and
 - b. Execute Certificates of Acceptance, Disbursement Request Forms, and all other certificates documents, and agreements relating to the Lease Agreement.

NAME	TITLE	SIGNATURE
Kent Myers	City Manager	_____

IN WITNESS WHEREOF, I have duly executed this Certificate on behalf of the City of Fredericksburg.

January 22, 2020

Shelley Goodwin, City Secretary

EXHIBIT F

OPINION OF LESSEE'S COUNSEL

January 22, 2020

Signature Public Funding Corp.
600 Washington Avenue, Suite 305
Towson, Maryland 21204

Re: Equipment Schedule No. 001 dated January 22, 2020 to that certain
Master Equipment Lease-Purchase Agreement dated January 22, 2020

Ladies and Gentlemen:

As counsel to the City of Fredericksburg (the "*Lessee*"), I have examined the Master Equipment Lease-Purchase Agreement dated [Date] and Equipment Schedule No. 001 thereto dated January 22, 2020 (collectively, the "*Lease Agreement*"), between the Lessee and Signature Public Funding Corp., as lessor ("*Lessor*"), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement. The Lease Agreement is herein collectively referred to as the "*Transaction Documents*." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. The Lessee is a [describe entity type], which is a body corporate & politic duly established and validly existing as a political subdivision of the State of Texas under the Constitution and laws of the State of Texas with full power and authority to enter into the Transaction Documents.

2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee and are in full compliance with all local, state and federal laws. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally. The execution of the Transaction Documents and the appropriation of monies due under the Lease Agreement will not result in the violation of any constitutional, statutory or limitation relating to the manner, form or amount of indebtedness which may be incurred by the Lessee.

3. The Equipment to be leased pursuant to the Lease Agreement constitutes personal property and, when subjected to use by the Lessee, will not be a fixture under applicable law.

4. The Lessee has complied with all applicable statutes, laws, rules, regulations, notice and public bidding requirements, including, without limitation, [insert statutes if applicable], in connection with the Transaction Documents and the transactions contemplated thereby. The resolution adopted by the Governing Body of the Lessee authorizing the execution and delivery of the Transaction Documents and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings. No approval, consent or withholding of objections is required from any State, federal or local governmental authority or instrumentality with respect to the entry into or performance by Lessee of its obligations under the Transaction Documents, except as have already been obtained.

5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the governing body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge,

threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound.

6. The Lessee has covenanted to comply with any continuing requirements that may be necessary to preserve the exclusion from gross income for purposes of federal income taxation under the Internal Revenue Code of 1986, as amended ("Code"), of the portion of the Rental Payments designated as interest. In the event that the Lessee continuously complies with its covenants under the Transaction Documents and so long as the amounts payable to the Lessor are derived from the Rental Payments made by the Lessee, the portion of the Rental Payments designated as interest is not includible in gross income for federal income tax purposes under the current law. No opinion is expressed as to the tax treatment of payments made to the Lessor from sources other than from Rental Payments made by the Lessee. The Lease Agreement and the obligation to pay Rental Payments thereunder as represented by the Lease Agreement are not "specified private activity bonds" as such term is defined in the Code and the portion of the Rental Payments designated as interest is not includible as an item of tax preference under Section 57 of the Code for purposes of computing the alternative minimum tax. However, the portion of Rental Payments designated as interest and received by the Lessor may be subject to an alternative minimum tax. Except as set forth in paragraphs 6 and 7 herein, we express no opinion regarding other federal tax consequences arising with respect to the Lease Agreement.

7. The Lessee has validly designated the Lease as a "qualified tax exempt obligation" as defined in and for the purposes of Section 265(b)(3) of the Code.

This opinion may be relied upon by purchasers and assignees of Lessor's interests in the Lease Agreement.

Respectfully submitted,

EXHIBIT G

BANK-QUALIFIED DESIGNATION

The CITY OF FREDERICKSBURG, as lessee, (the "*Lessee*") under Equipment Schedule No. 001 dated as of January 22, 2020 to that certain Master Equipment Lease-Purchase Agreement dated as of January 22, 2020 (collectively, the "*Lease*") to which this Designation is attached, hereby designates the Lease as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Lease) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which the Lease is executed and delivered and interest commences to accrue thereunder.

This Designation is attached to and made a part of the Lease and inures to the benefit of the Lessor and its successors and/or assigned.

EXECUTED as of this 22nd day of January, 2022.

CITY OF FREDERICKSBURG, as Lessee

By: _____
Name: Kent Myers
Title: City Manager

EXHIBIT H

TAX & ARBITRAGE CERTIFICATE

Dated: January 22, 2020

The following certificate is delivered in connection with the execution and delivery of Equipment Schedule No. 001 dated January 22, 2020 to that certain Master Equipment Lease-Purchase Agreement dated January 22, 2020 (collectively, the "Lease Agreement"), entered into between the City of Fredericksburg (the "Lessee") and Signature Public Funding Corp. (the "Lessor"). Capitalized terms used herein have the meanings defined in the Lease Agreement.

Section 1. In General.

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply **\$811,900.31** (the "Principal Amount") toward the acquisition of the Equipment and closing costs, and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the resolution or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule.

1.4. Lessee will timely file for each payment schedule issued under the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

1.5. The Equipment Schedule No. is a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. As such, the Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Equipment Schedule) the aggregate principal amount of which exceed \$10,000,000.00 during the calendar year in which Equipment Schedule is executed and delivered and interest commences to accrue thereunder.

Section 2. Non-Arbitrage Certifications.

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents, (ii) issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

Section 3. Disbursement of Funds; Reimbursement to Lessee.

3.1. It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the Vendors or manufacturers thereof or for any financial advisory or closing costs, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following

conditions have been satisfied:

- (a) Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;
- (b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;
- (c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and
- (d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

Section 4. Use and Investment of Funds; Temporary Period.

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by January 22, 2020, but not later than July 22, 2021 (ie. 18 months from funding date).

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.

(c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a "private activity bond" under Section 141 of the Code; (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee; and (iv) the aggregate principal amount of all tax-exempt obligations (including the Lease) issued by Lessee and its subordinate entities, if any, during the current calendar year is not reasonably expected to exceed \$10,000,000. Accordingly, the rebate requirements of Section 148(f) of the Code are treated as being met, in lieu of the spending exceptions set forth in paragraph (b) above.

Section 5. Escrow Account. Reserved.

Section 6. No Private Use; No Consumer Loan.

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

6.2 In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.3, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.4. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

Section 7. No Federal Guarantee.

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 8. Miscellaneous.

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

8.4. The Lessee confirms and acknowledges that its true and correct tax identification number is: 74-6000874 and full, true and correct legal name is CITY OF FREDERICKSBURG. Lessee confirms that it is located in County of Gillespie, State of Texas.

8.5. The Lessee has adopted, by resolution, separate written procedures regarding ongoing compliance with federal tax requirements necessary to keep, ensure and maintain the interest portions of the Rental Payments under the Financing Documents as excluded from Lessor's gross income for federal income tax purposes, and will, on an annual basis, conduct an audit of the Financing Documents to ensure compliance with such procedures.

IN WITNESS WHEREOF, this Tax & Arbitrage Certificate has been executed on behalf of Lessee as of January 22, 2020.

CITY OF FREDERICKSBURG

By: _____
Name: Kent Myers
Title: City Manager

EXHIBIT I:

RESERVED.

CLOSING MEMORANDUM

**\$811,900.31 LEASE OF NEW CUSTOM PIERCE IMPEL PUC PUMPER FIRETRUCK
PURSUANT TO SCHEDULE NO. 001 DATED JANUARY 22, 2020 TO THAT CERTAIN
MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT DATED JANUARY 22, 2020
BETWEEN CITY OF FREDERICKSBURG, AS LESSEE, AND
SIGNATURE PUBLIC FUNDING CORP., AS LESSOR**

Pre-Closing: All documents will be executed and two (2) blue ink originals will be overnighted to Signature Public Funding Corp., Attn: Ms. Claire Foshee, 600 Washington Avenue, Suite 305, Towson, Maryland 21204, for delivery no later than 9:00 am on the morning of January 21, 2020 and held in trust until such time as the wires and original documents are released by the Parties.

Closing: By wire transfer and pending receipt of original, executed Lease Documents, on the morning of January 22, 2020, Lessor is authorized by Lessee to wire the following Total Lease Proceeds as defined below, pursuant to the Wire Instructions as follows:

Bank Name: _____
ABA No: _____
Account No: _____
Account Name: Siddons-Martin Emergency Group
Attn: _____
Amount of Wire: \$811,900.31
Reference: _____

TOTAL DISBURSEMENT: \$811,900.31

and each of the Parties will confirm by e-mail receipt of funds and then the release of all original documents held in trust, when such funds and/or documents are in the possession of each of the Parties.

CITY OF FREDERICKSBURG

By: _____
Name: Kent Myers
Title: City Manager



CITY COUNCIL MEMO

DATE: January 21, 2020

TO: Mayor and City Council

FROM: Brian Jordan, AICP

SUBJECT: Public Hearing on the Voluntary annexation of approximately 13.395 acres proposed as Stone Ridge Unit 10 located near the intersection of Lower Crabapple Road and Ellebracht Drive (2nd of Two Hearings)

Summary:

The annexation consists of approximately 13.4 acres of land situated in Gillespie County, Texas along the south side Lower Crabapple Road and Ellebracht Drive, in the Stone Ridge development. As you can see from the overall plan of Stone Ridge, there will be one remaining phase to complete the project. There are currently 345 lots within Stone Ridge, and this phase will bring the total to 372 lots. The required public hearings are scheduled for January 6 and January 21, 2020. The Institution of Annexation Proceedings is scheduled for the weeks of February 10, 2020 (see attached annexation schedule).

On January 8, 2020, the Planning and Zoning Commission is scheduled to consider establishing R-1, Single Family Residential zoning on the property. This will be consistent with the previous phases of Stone Ridge. The City Council is scheduled to hold a public hearing on the zoning on January 21, 2020.

Recommendation:

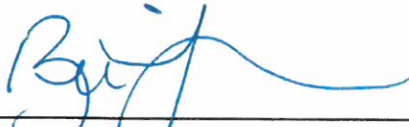
Conduct the Public Hearing, no action is required.

Background / Analysis:

Over the years, Stone Ridge has annexed and zoned the individual phases as they are developed. All public improvements, including utilities, drainage and streets will be the responsibility of the developer.

Attachments:

Overall Map of Stone Ridge, schedule



Department Approval



City Attorney Approval



City Manager Approval

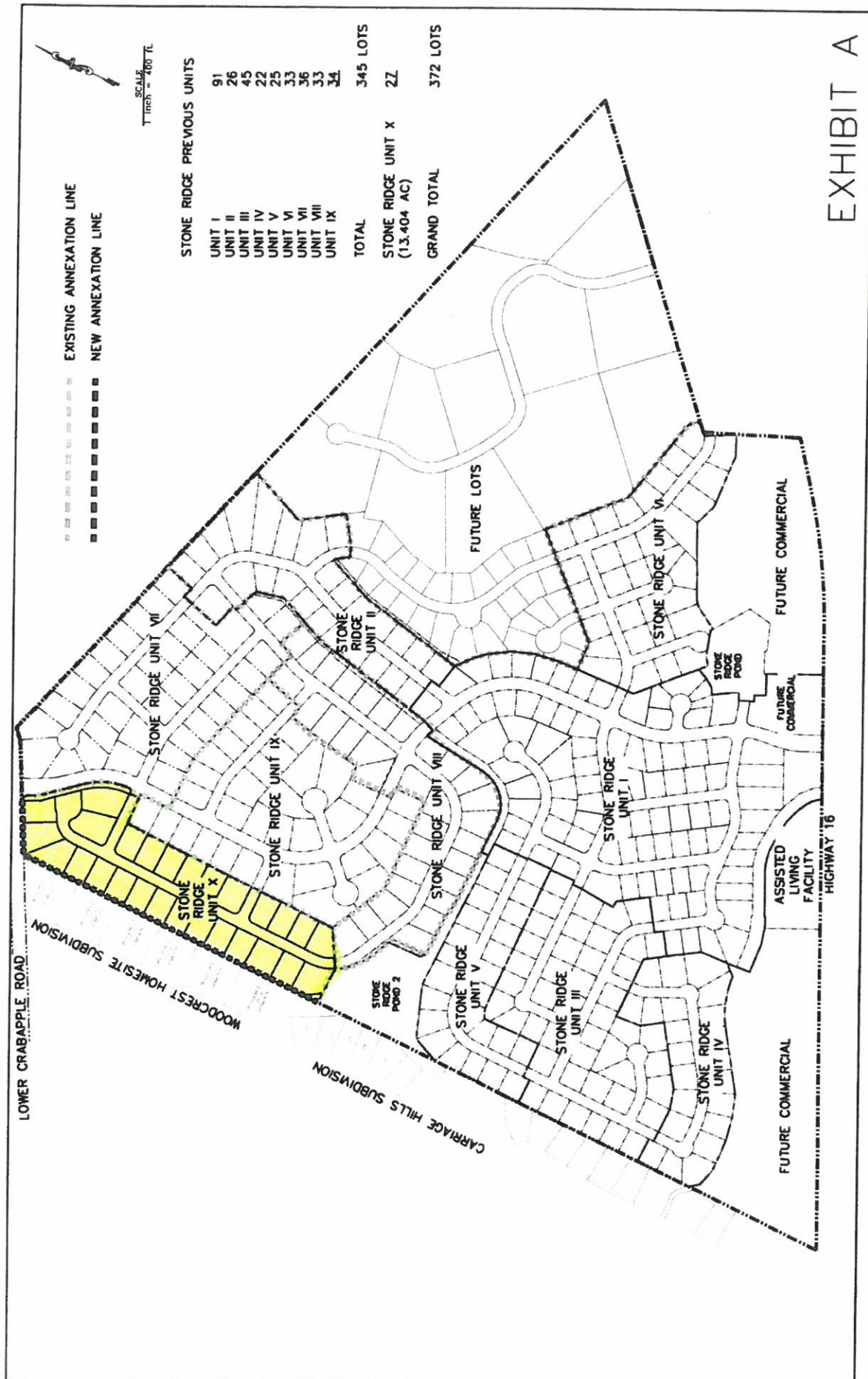


EXHIBIT A

Stone Ridge Unit 10 Annexation Schedule

December 18, 2019	Public Hearing Add for January 6, 2020 Meeting, Post on Website
January 6, 2020	1 st Public Hearing (City Council)
January 8, 2020	Public Hearing Add for January 20, 2020 Meeting, Post on Website Planning and Zoning Commission Meeting on Zoning
January 21, 2020	2 nd Public Hearing (City Council) City Council Meeting on Zoning
February 10-14, 2020	Meeting to Institute Annexation Proceedings (City Council)
May 10, 2020	90 day limitation on taking action



CITY COUNCIL MEMO

DATE: January 21, 2020
TO: City Council
FROM: Brian Jordan, AICP
SUBJECT: Public Hearing to establish R-1 Single Family Residential Zoning on 13.395 acres proposed as Stone Ridge Unit 10.

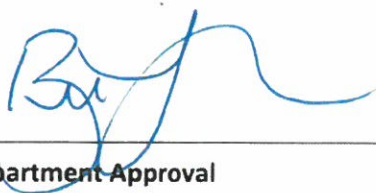
Summary: Over the years, Stone Ridge has annexed and zoned the individual phases as they are developed. The Unit 10 area is located in the northwest portion of the project, near the corner of Lower Crabapple Road and Ellebracht Drive (see the attached exhibit). The proposed R-1, Single Family Residential zoning is consistent with the remainder of the development and previous phases, and the Land Use Plan of the Comprehensive Plan.

Recommendation: Approval of the R-1 Single Family Residential zoning.

Background / Analysis: The City Council will be considering the annexation of this property while we are reviewing the zoning and considering the Preliminary Plat of Stone Ridge Unit 10. As you can see from the attached Schedule, we would anticipate the annexation, zoning and platting to be completed sometime after the Institution of Annexation Proceedings in February 2020.

Attachments:

Annexation schedule, overall Stone Ridge map, Zoning Map



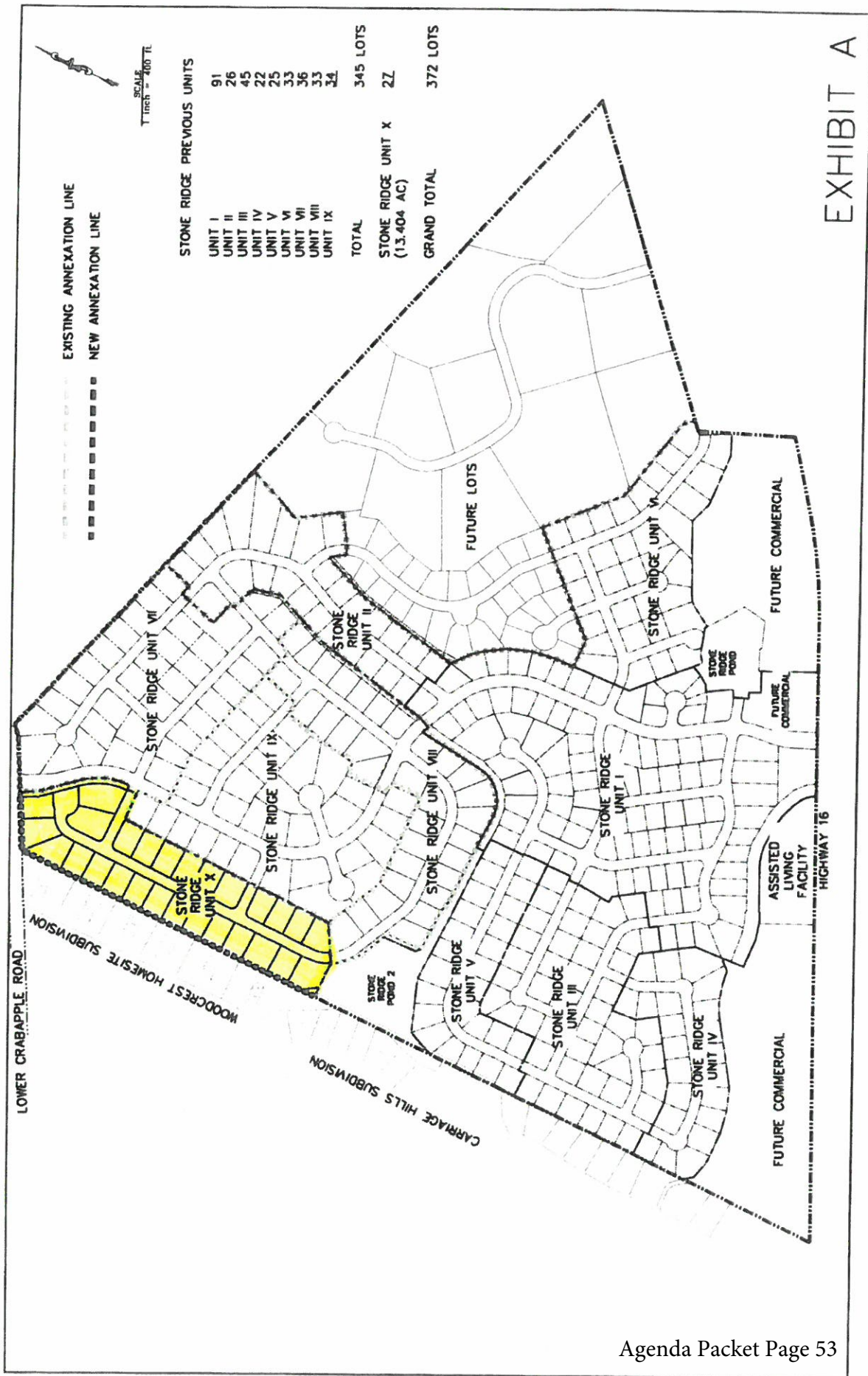
Department Approval



City Manager



City Attorney

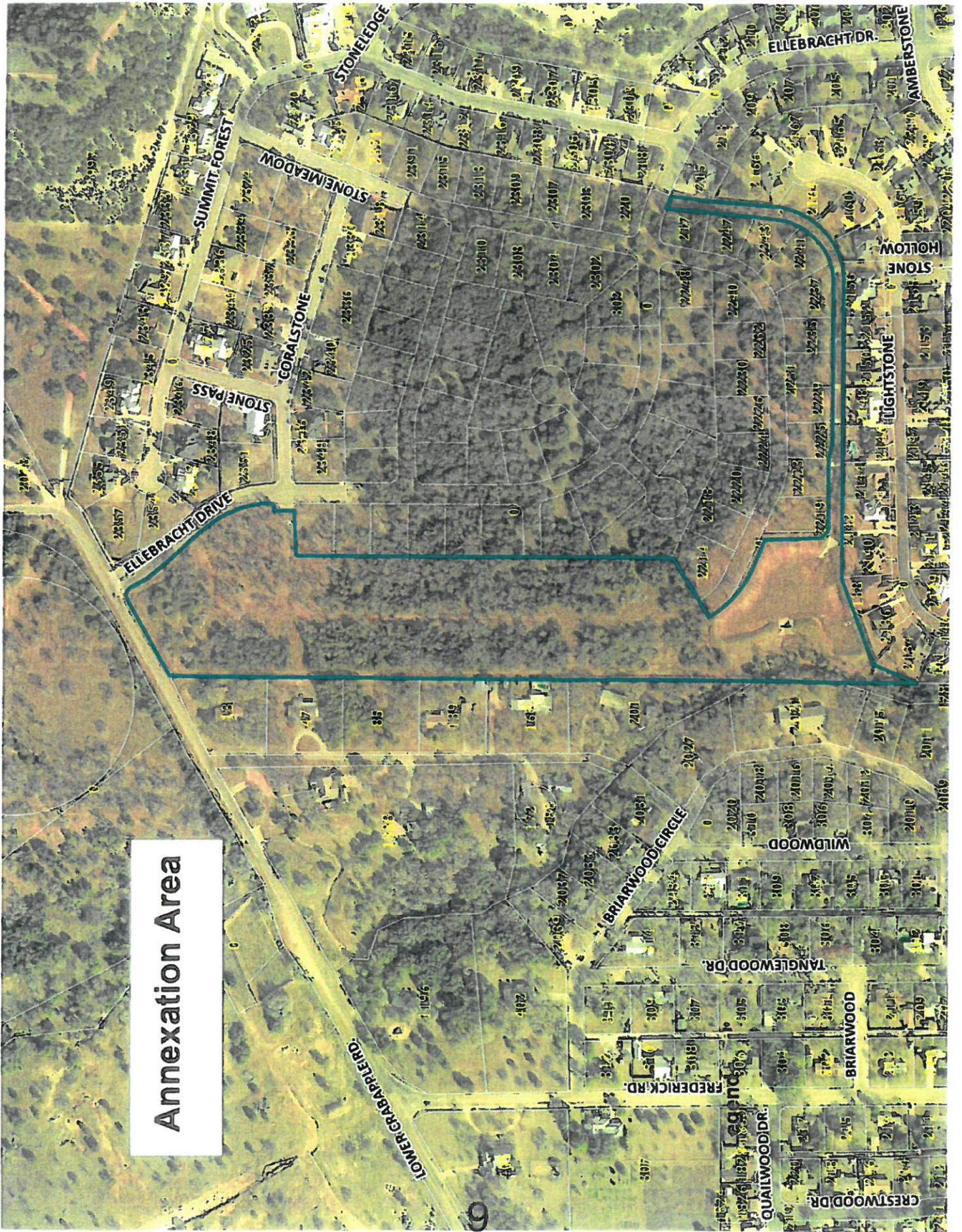


STONE RIDGE PREVIOUS UNITS	
UNIT I	91
UNIT II	26
UNIT III	45
UNIT IV	22
UNIT V	25
UNIT VI	33
UNIT VII	36
UNIT VIII	33
UNIT IX	34
TOTAL	345 LOTS
STONE RIDGE UNIT X (13.404 AC)	22
GRAND TOTAL	372 LOTS

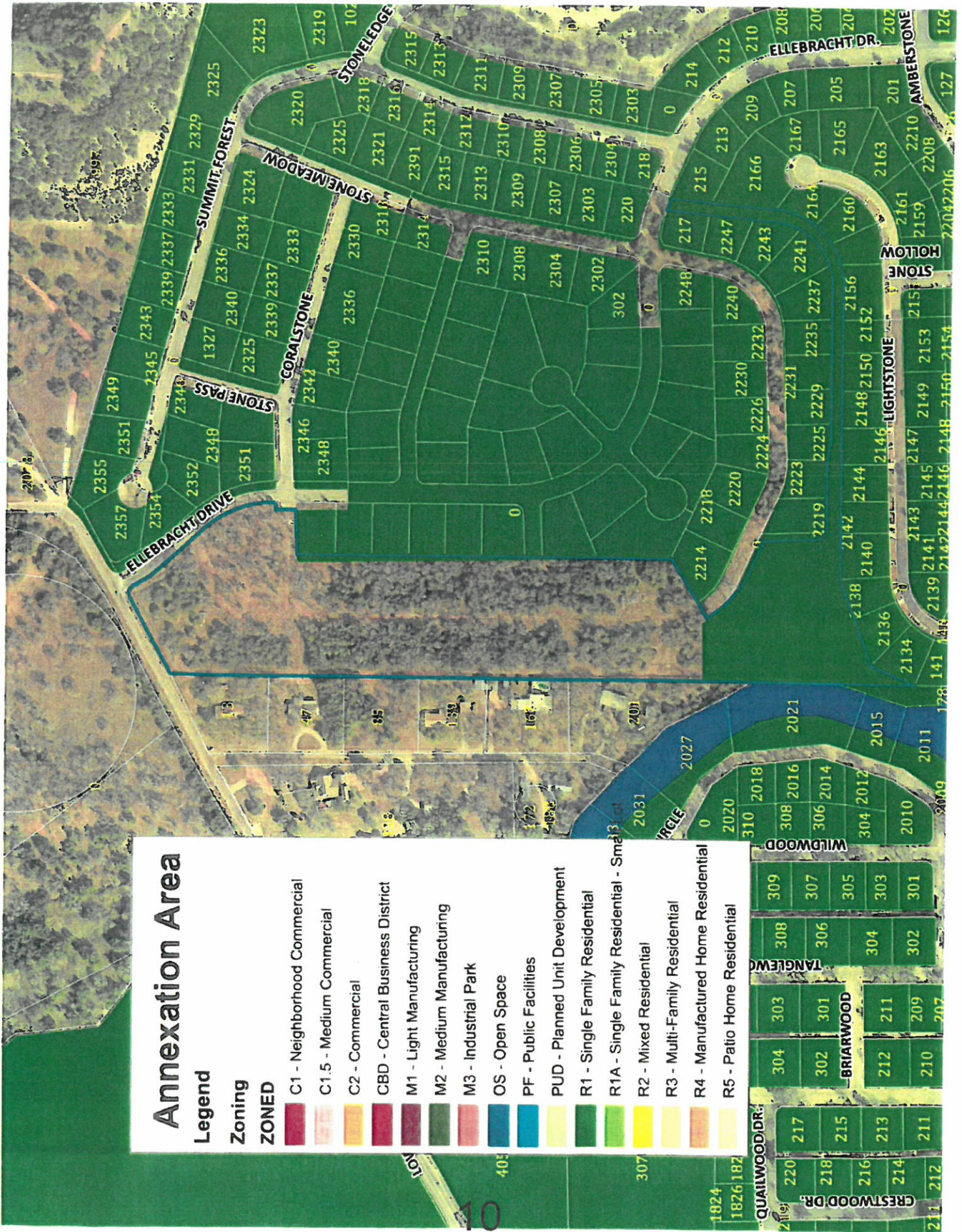
EXHIBIT A

Stone Ridge Unit 10 Annexation Schedule

December 18, 2019	Public Hearing Add for January 6, 2020 Meeting, Post on Website
January 6, 2020	1 st Public Hearing (City Council)
January 8, 2020	Public Hearing Add for January 20, 2020 Meeting, Post on Website
	Planning and Zoning Commission Meeting on Zoning
January 21, 2020	2 nd Public Hearing (City Council)
	City Council Meeting on Zoning
February 10-14, 2020	Meeting to Institute Annexation Proceedings (City Council)
May 10, 2020	90 day limitation on taking action



Annexation Area





CITY COUNCIL MEMO

DATE: January 21, 2020

TO: Mayor and City Council

FROM: Brian Jordan, AICP

SUBJECT: Consider the Annexation of approximately 91.24 acres of land situated in Gillespie County, Texas and located along the south side of W. Live Oak Street, west of Post Oak road and the current City Limits)

Summary:

The annexation originally consisted of approximately 117.1 acres of land situated in Gillespie County, Texas along the south side of W. Live Oak Street, as shown on the accompanying map. Five property owners elected to sign the Pre-Annexation Development Agreement, resulting in the reduction of the area to 91.24 acres. The properties electing not to be annexed are reflected on the map attached to the Annexation Ordinance. The area consists primarily of properties located along the south side of W. Live Oak Street extending from east of Post Oak Road to west of Smokehouse Road. The property is characterized by primarily residences, vacant land and some commercial businesses.

Recommendation:

At the previous meeting, one of the area residents questioned whether or not proper notices were posted on the City's website. After reviewing the notifications and advertisements related to this annexation process, we have been unable to verify that the information was posted on the City's website as required by statute. While we certainly believe we are in substantial compliance with the intent of statutory notification requirements, especially since we have sent numerous letters to property owners and posted notices in the newspaper, we believe it would be prudent to reschedule the hearings. As such, we recommend that we re-start the notification and Public Hearing process in accordance with the schedule attached.

Background / Analysis:

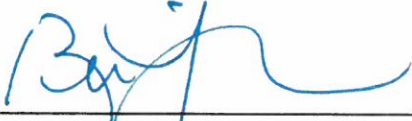
At the retreat in January, 2018, the City Council prioritized areas of the community for annexation. After the U.S. Highway 290 East corridor, the W. Live Oak Street area was determined as the next highest priority. On August 2, 2019, letters were sent to property owners who have a tax exemption for agricultural, wildlife or timber purposes, offering them a pre-annexation development agreement. This agreement allowed these property owners the ability not to be annexed as long as their property remained undeveloped and met certain requirements. A total of 7 properties qualified for the pre-annexation development agreement. Five property owners have signed the agreement and the Pre-Annexation Development Agreements have been finalized.

On September 6, 2019, letters were sent to all property owner's whose properties were included in the proposed annexation, advising them of the public hearing dates. The required public hearings were held October 7 and October 21, 2019, and the Institution of Annexation Proceedings was conducted November 12, 2019. Public Hearings on the Zoning and Land Use Plan were held October 8, 2019 (Planning and Zoning Commission) and October 21, 2019 (City Council). Favorable approval was given for both actions.

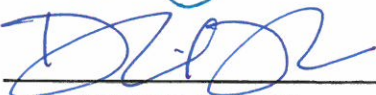
The City is required by statute to prepare a Service Plan for the areas being considered for annexation. The plan sets forth the timing and responsibilities for providing public services. Approval of the Service Plan is required. In addition to the Service Plan for the tracts being annexed, a separate Annexation Agreement has been requested by Mr. Bobby Stewart who owns the property at 740 W. Live Oak Street. Mr. Stewart has been working with the City for a while to develop an apartment complex on his site. Because a portion of Mr. Stewart's property fronting on Post Oak Road is in the process of being sold to LCRA, he has requested that his utilities be extended to the western edge of his property along Live Oak Street. We have revised the Utility extension plan to accommodate this request. The additional cost associated with the request is estimated to be approximately \$138,000.

Attachments:

Map of Area and updated schedule



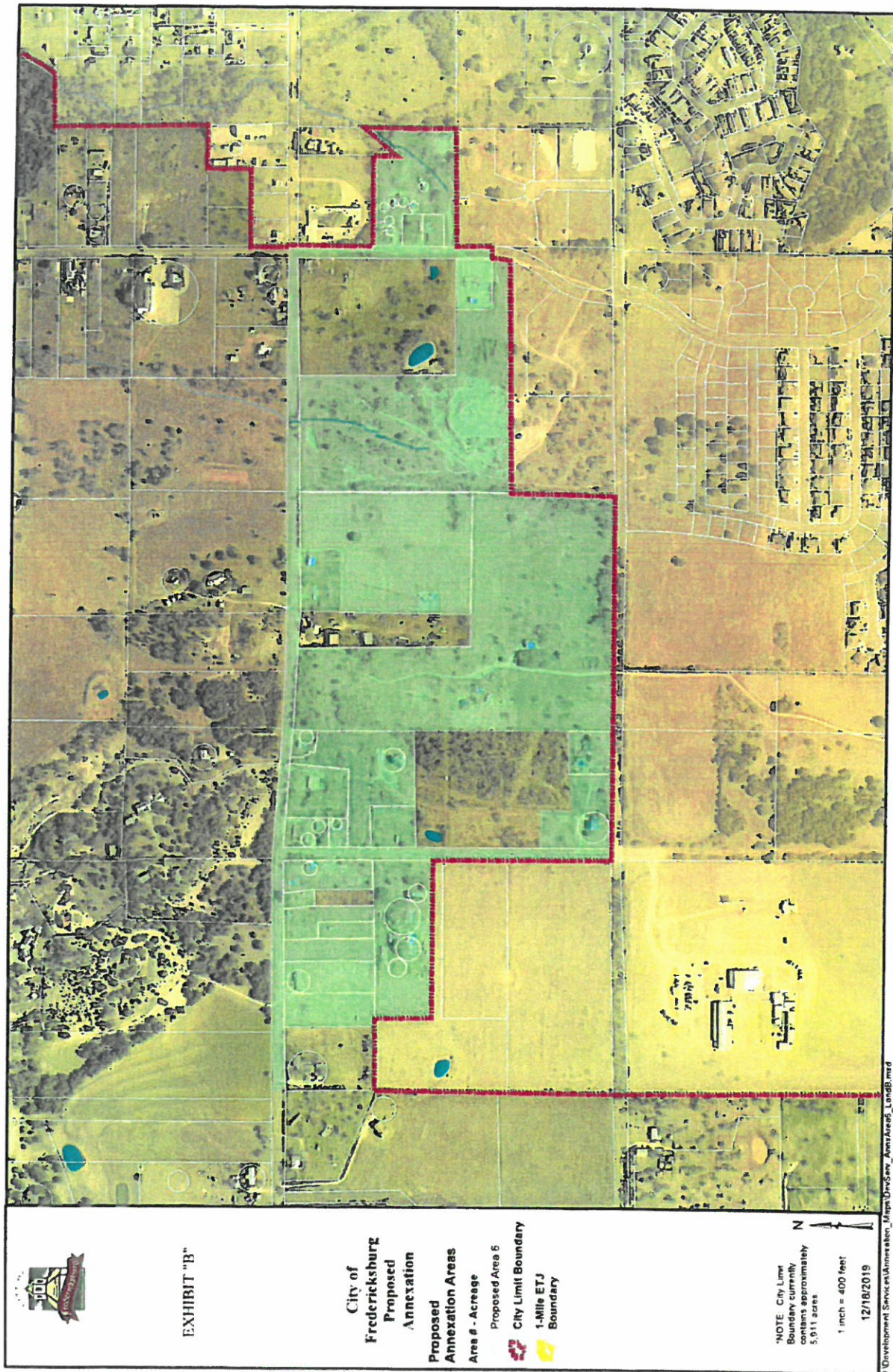
Department Approval



City Attorney Approval



City Manager Approval



West Live Oak Annexation Schedule

- | | |
|---------|---|
| 1-31-20 | Send Letters to all property owners involved in annexation (30 days prior to public hearing) |
| 2-19-20 | Post add in newspaper and on website (date must fall between 10-20 days prior to first public hearing) |
| 3-2-20 | Public Hearing (1 st) |
| 3-4-20 | Post add in newspaper and on website (date must fall between 10-20 days prior to second public hearing) |
| 3-16-20 | Public Hearing (2 nd) |
| 4-6-20 | Institute Annexation Proceedings (date must fall between 20-40 days of public hearings), adoption of the Annexation Ordinance can occur any time after this action and before July 5, 2020 (90 days). |



CITY COUNCIL MEMO

DATE: January 15, 2020
TO: Mayor and City Council
FROM: Kent Myers, City Manager
SUBJECT: Electric System Revenue Notes

Summary:

The attached ordinance approves the issuance of \$2.3 million in Electric System Revenue Notes to finance the construction of the new Electric Services Center. Bids will be open for these notes this Friday. The recommended bid will be provided by Dan Wegmiller at Monday's Council meeting. Once the notes are issued, payments will be made from the Electric Fund and no funding will be provided by the General Fund or any other funds.

Recommendation:

It is recommended that the City Council approve the attached ordinance approving the issuance of the Electric System Revenue Notes with the addition financing information provided by Dan Wegmiller at the meeting.

Background / Analysis:

During the past year, the City has worked with Steve Thomas in designing a new facility for the operation of our Electric Department. Plans for the construction of this facility were recently completed and approved. The low bid of \$2,115,284 from Kendnel Kasper Construction Company was approved at the last Council meeting. Approval of this financing will allow us to start construction with completion scheduled in about 12 months.

Attachments:

Ordinance approving the issuance of the notes.



Department Approval



City Attorney Approval



City Manager Approval

ORDINANCE NO. 2020-04

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS AUTHORIZING THE ISSUANCE OF “CITY OF FREDERICKSBURG, TEXAS UTILITY SYSTEM REVENUE NOTES, SERIES 2020”; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES BY A FIRST AND PRIOR LIEN ON AND PLEDGE OF THE PLEDGED REVENUES OF THE CITY'S ELECTRIC UTILITY SYSTEM; PROVIDING THE TERMS AND CONDITIONS OF SUCH NOTES; RESOLVING OTHER MATTERS INCIDENT AND RELATING TO THE ISSUANCE, PAYMENT, SECURITY, SALE, AND DELIVERY OF SUCH NOTES; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND A PURCHASE AND INVESTMENT LETTER; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council (the *City Council*) of the City of Fredericksburg, Texas (the *City*) has determined that revenue notes (the *Notes*) payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Pledged Revenues (hereinafter defined) of the City's electric utility system (as further defined and described herein, the *System*) should be issued for the purposes of building, improving, extending, enlarging, and repairing the System; and

WHEREAS, the City is empowered to issue the Notes by the provisions of Chapter 1502 as amended, Texas Government Code (*Chapter 1502*) and the City's Home Rule Charter; and

WHEREAS, the City Council hereby finds and determines that this action and the adoption of this Ordinance is in the best interest of the residents of the City; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS THAT:

SECTION 1: Authorization - Designation - Principal Amount - Purpose. Revenue notes of the City shall be and are hereby authorized to be issued in the aggregate principal amount of TWO MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,300,000), to be designated and bear the title of “CITY OF FREDERICKSBURG, TEXAS ELECTRIC SYSTEM REVENUE NOTES, SERIES 2020” (the *Notes*), pursuant to an ordinance adopted by the City Council (the *Ordinance*) for the purpose of (i) building, improving, extending, enlarging, equipping and repairing the System and (ii) paying the costs of issuing the Notes. The Notes shall be payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Pledged Revenues (hereinafter defined) of the System. The Notes are authorized to be issued pursuant to the authority conferred by and in conformity with the laws of the State of Texas, particularly Chapter 1502, the City's Home Rule Charter, and the Ordinance.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates – Note Date. The Notes are issuable in fully registered form only; shall be dated January 1, 2020 (the *Note Date*), and shall be generally in denominations of \$100,00 or

any integral multiple of \$5,000 in excess thereof and shall be lettered “R” and numbered consecutively from One (1) upward. The Notes shall become due and payable on August 15 in each of the years and in principal amounts (the *Stated Maturities*) and bear interest on the unpaid principal amounts from the Closing Date (anticipated to occur on or about February 18, 2020), or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, to the earlier of redemption or Stated Maturity, at the per annum rates, while Outstanding, in accordance with the following schedule:

<u>Year of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2020	270,000	
2021	245,000	
2022	250,000	
2023	365,000	
2024	380,000	
2025	390,000	
2026	400,000	

The Notes shall bear interest on the unpaid principal amount thereof at the per annum rates shown above, computed on the basis of a 360-day year of twelve 30-day months, and interest thereon shall be payable on February 15 and August 15 of each year (each, an *Interest Payment Date*), commencing August 15, 2020, while the Notes are Outstanding.

SECTION 3: Payment of Notes - Interest Payments - Paying Agent/Registrar. The principal of, premium, if any, and interest on the Notes, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable, without exchange or collection charges to the Holder (as hereinafter defined), appearing on the registration and transfer books maintained by the Paying Agent/Registrar (hereinafter defined), in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and such payment of principal of and interest on the Notes shall be without exchange or collection charges to the Holder (as hereinafter defined) of the Notes.

The selection and appointment of _____ (the *Paying Agent/Registrar*), to serve as the initial Paying Agent/Registrar for the Notes is hereby approved and confirmed, and the City agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Notes, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached, in substantially final form, as Exhibit A hereto, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The City covenants to maintain and provide a Paying Agent/Registrar at all times while the Notes are Outstanding, and any successor Paying Agent/Registrar shall be (i) a national or state banking institution or (ii) an association or a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers. Such Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and authorized by law to serve as a Paying Agent/Registrar.

The City reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or ordinance terminating such agency. Additionally, the City agrees to promptly cause a written notice of this substitution to be sent to each Holder of the Notes by United States Mail, first-class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of, premium, if any, and interest on the Notes, due and payable by reason of Stated Maturity, redemption or otherwise, shall be payable only to the registered owner of the Notes appearing on the Security Register (the *Holder* or *Holders*) maintained on behalf of the City by the Paying Agent/Registrar as hereinafter provided (i) on the Record Date (hereinafter defined) for purposes of payment of interest thereon, (ii) on the date of surrender of the Notes for purposes of receiving payment of principal thereof upon redemption of the Notes or at the Notes' Stated Maturity or upon redemption of the Notes, and (iii) on any other date for any other purpose. The City and the Paying Agent/Registrar, and any agent of either, shall treat the Holder as the owner of a Note for purposes of receiving payment and all other purposes whatsoever, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of, and premium, if any, on the Notes shall be payable only upon presentation and surrender of the Notes to the Paying Agent/Registrar at its corporate trust office (provided, however, with respect to principal payments prior to the final Stated Maturity, the Notes need not be surrendered to the Paying Agent/Registrar, who will merely document this payment on an internal ledger maintained by the Paying Agent/Registrar). Interest on the Notes shall be paid to the Holder whose name appears in the Security Register at the close of business on the last business day of the month next preceding an Interest Payment Date for the Notes (the *Record Date*) and shall be paid (i) by check sent on or prior to the appropriate date of payment by United States Mail, first-class postage prepaid, by the Paying Agent/Registrar, to the address of the Holder appearing in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested in writing by the Holder at the Holder's risk and expense.

If the date for the payment of the principal of, premium, if any, or interest on the Notes shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a day. The payment on such date shall have the same force and effect as if made on the original date any such payment on the Notes was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4: Redemption.

(a) Optional Redemption. The Notes having Stated Maturities on and after August 15, 2024 shall be subject to redemption prior to Stated Maturity, at the option of the City, on August 15, 2023, or on any date thereafter, as a whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar), at the redemption price of par plus accrued interest to the date of redemption.

(b) Exercise of Redemption Option. At least forty-five (45) days prior to a date set for the redemption of Notes (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of its decision to exercise the right to redeem Notes, the principal amount of each Stated Maturity to be redeemed, and the date set for the redemption thereof. The decision of the City to exercise the right to redeem Notes shall be entered in the minutes of the governing body of the City.

(c) Selection of Notes for Redemption. If less than all Outstanding Notes of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall select at random and by lot the Notes to be redeemed, provided that if less than the entire principal amount of a Note is to be redeemed, the Paying Agent/Registrar shall treat such Note then subject to redemption as representing the number of Notes Outstanding which is obtained by dividing the principal amount of such Note by \$5,000.

(d) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Notes, the Paying Agent Registrar shall cause a notice of redemption to be sent by United States Mail, first-class postage prepaid, in the name of the City and at the City's expense, by the Paying Agent/Registrar to each Holder of a Note to be redeemed, in whole or in part, at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder. This notice may also be published once in a financial publication, journal, or reporter of general circulation among securities dealers in the City of New York, New York (including, but not limited to, *The Note Buyer* and *The Wall Street Journal*), or in the State of Texas (including, but not limited to, *The Texas Note Reporter*).

All notices of redemption shall (i) specify the date of redemption for the Notes, (ii) identify the Notes to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Notes, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Notes, or the principal amount thereof to be redeemed, shall be made at the corporate trust office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder.

If a Note is subject by its terms to redemption and has been called for redemption and notice of redemption thereof has been duly given or waived as herein provided, such Note (or the

principal amount thereof to be redeemed) so called for redemption shall become due and payable, and if money sufficient for the payment of such Notes (or of the principal amount thereof to be redeemed) at the then applicable redemption price is held for the purpose of such payment by the Paying Agent/Registrar, then on the redemption date designated in such notice, interest on said Notes (or the principal amount thereof to be redeemed) called for redemption shall cease to accrue, and such Notes shall not be deemed to be Outstanding in accordance with the provisions of this Ordinance.

(e) Transfer/Exchange. Neither the City nor the Paying Agent/Registrar shall be required to (i) transfer or exchange any Note during a period beginning forty-five (45) days prior to the date fixed for redemption of the Notes or (ii) to transfer or exchange any Note selected for redemption, provided; however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance of a Note which is subject to redemption in part.

SECTION 5: Execution - Registration. The Notes shall be executed on behalf of the City by its Mayor or Mayor Pro Tem, its seal reproduced or impressed thereon, and attested by its City Secretary. The signature of any of said officers on the Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who were, at the time of the Note Date, the proper officers of the City shall bind the City, notwithstanding that such individuals or either of them shall cease to hold such offices prior to the delivery of the Notes to the Purchasers (hereinafter defined), all as authorized and provided in Chapter 1201, as amended, Texas Government Code.

No Note shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Note either a certificate of registration substantially in the form provided in Section 8C, executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent by manual signature, or a certificate of registration substantially in the form provided in Section 8D, executed by the Paying Agent/Registrar by manual signature, and either such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly certified or registered and delivered.

SECTION 6: Registration - Transfer - Exchange of Notes - Predecessor Notes. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of every owner of the Notes, or, if appropriate, the nominee thereof. Any Note may, in accordance with its terms and the terms hereof, be transferred or exchanged for Notes of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Note to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Note at the corporate trust office of the Paying Agent/Registrar, the City shall execute and the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Notes of authorized denomination and having the same Stated Maturity and of a like interest rate and aggregate principal amount as the Note or Notes surrendered for transfer.

At the option of the Holder, Notes may be exchanged for other Notes of the same series and of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Notes surrendered for exchange upon surrender of the Notes to be exchanged at the corporate trust office of the Paying Agent/Registrar. Whenever any Notes are so surrendered for exchange, the City shall execute, and the Paying Agent/Registrar shall register and deliver, the Notes, to the Holder requesting the exchange.

All Notes issued upon any transfer or exchange of Notes shall be delivered at the corporate trust office of the Paying Agent/Registrar, or be sent by registered mail to the Holder at his request, risk, and expense, and upon the delivery thereof, the same shall be the valid and binding obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Notes surrendered upon such transfer or exchange.

All transfers or exchanges of Notes pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any fee, tax or other governmental charges required to be paid with respect to such transfer or exchange.

Notes cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be Predecessor Notes, evidencing all or a portion, as the case may be, of the same debt evidenced by the new Note or Notes registered and delivered in the exchange or transfer therefor. Additionally, the term Predecessor Notes shall include any Note registered and delivered pursuant to Section 30 in lieu of a mutilated, lost, destroyed, or stolen Note which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Note.

SECTION 7: Initial Note. The Notes herein authorized shall be issued initially either as a single fully-registered Note in the total principal amount of \$_____ with principal installments to become due and payable as provided in Section 2 and numbered T-1, or as one (1) fully-registered Note for each year of Stated Maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (the *Initial Note*) and, in either case, the Initial Note shall be registered in the name of the Purchasers or the designee thereof. The Initial Note shall be the Notes submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the Purchasers. Any time after the delivery of the Initial Note, the Paying Agent/Registrar, upon written instructions from the Purchasers or their designee, shall cancel the Initial Note delivered hereunder and exchange therefor definitive Notes of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates, on the unpaid principal amounts from the Closing Date, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, to Stated Maturity, and shall be lettered "R" and numbered consecutively from one (1) upward for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the Purchasers, or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 8: Forms.

(a) Forms Generally. The Notes, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Notes shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including insurance legends in the event the Notes, or any Stated Maturities thereof, are insured and identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of Bond Counsel (hereinafter referenced)) thereon as may, consistent herewith, be established by the City or determined by the officers executing the Notes as evidenced by their execution thereof. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

The definitive Notes shall be printed, lithographed, or engraved, produced by any combination of these methods, or produced in any other similar manner, all as determined by the officers executing the Notes as evidenced by their execution thereof, but the Initial Note submitted to the Attorney General of the State of Texas may be typewritten or photocopied or otherwise reproduced.

(b) Form of Definitive Note.

REGISTERED
NO.

REGISTERED
PRINCIPAL AMOUNT
\$ _____

United States of America
State of Texas
County of Gillespie
CITY OF FREDERICKSBURG, TEXAS
ELECTRIC SYSTEM REVENUE NOTES,
SERIES 2020

Note Date:
January 1, 2020

Interest Rate:

Stated Maturity:

CUSIP No.

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Fredericksburg, Texas (the *City*), a body corporate and municipal corporation in the County of Gillespie, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner specified above, or the registered assigns thereof, on the Stated Maturity date specified above, the Principal Amount specified above (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid Principal Amount hereof (computed on the basis of a 360-day year of twelve 30-day months) from the Closing Date (anticipated to occur on or about February 18, 2020), or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until such Principal Amount has become due and payment thereof has been made or duly provided for, to the earlier of redemption or Stated Maturity, while Outstanding, at the per annum rate of interest specified above; such interest being payable on February 15 and August 15 of each year (each, an *Interest Payment Date*) commencing August 15, 2020.

Principal and premium, if any, of the Note shall be payable to the Registered Owner hereof (the *Holder*) upon presentation and surrender, at the corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon or a successor thereof (provided, however, with respect to principal payments prior to the final Stated Maturity, the Notes need not be surrendered to the Paying Agent/Registrar, who will merely document this payment on an internal ledger maintained by the Paying Agent/Registrar). Interest shall be payable to the Holder of this Note (or one or more Predecessor Notes, as defined in the Ordinance hereinafter referenced) whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last business day of the month next preceding each Interest Payment Date. All payments of principal of and interest on this Note shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States Mail, first-class postage prepaid, to the Holder hereof at the address appearing in the

Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by the Holder hereof at the Holder's risk and expense.

This Note is one of the series specified in its title issued in the aggregate principal amount of \$2,300,000 (the *Notes*) pursuant to an ordinance adopted by the governing body of the City (the *Ordinance*), for the purpose of (i) building, improving, extending, enlarging, equipping and repairing the System and (ii) paying the costs of issuing the Notes. The Notes are authorized to be issued pursuant to the authority conferred by and in conformity with the laws of the State of Texas, particularly Chapter 1502, as amended, Texas Government Code, the City's Home Rule Charter, and the Ordinance.

The Notes stated to mature on and after August 15, 2024 may be redeemed prior to their Stated Maturities, at the option of the City, on August 15, 2023, or on any date thereafter, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par, together with accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by United States Mail, first-class postage prepaid, to Holders of the Notes to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance. If this Note is subject to redemption prior to Stated Maturity and is in a denomination in excess of \$5,000, portions of the principal sum hereof in installments of \$5,000 or any integral multiple thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Holder hereof, upon the surrender of this Note to the Paying Agent/Registrar at its corporate trust office, a new Note or Notes of like Stated Maturity and interest rate in any authorized denominations provided in the Ordinance for the then unredeemed balance of the principal sum hereof.

If this Note (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption has been duly given, then upon such redemption date this Note (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable hereon from and after the redemption date on the principal amount hereof to be redeemed. If this Note is called for redemption, in whole or in part, the City or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Note within forty-five (45) days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance hereof in the event of its redemption in part.

The Notes of this series are special obligations of the City payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Pledged Revenues, comprised primarily of Net Revenues of the City derived from its ownership and operation of the City's combined water and wastewater system (as further described and defined in the Ordinance, the *System*). In the Ordinance, the City retains the right to issue Additional Prior Lien Obligations, Junior Lien Obligations, Subordinate Lien Obligations, or Limited Pledge Obligations without limitation as to principal amount but subject to any terms, conditions, or restrictions set forth in the Ordinance as may be applicable thereto under law or otherwise. The Notes do not constitute a

legal or equitable pledge, charge, lien, or encumbrance upon any property of the City or System, except with respect to the Pledged Revenues.

The Holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation.

Reference is hereby made to the Ordinance, a copy of which is on file in the corporate trust office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by his acceptance hereof hereby assents, for definitions of terms; the description and nature of the Pledged Revenues of the System pledged for the payment of the Notes; the terms and conditions under which the City may issue Additional Prior Lien Obligations, Junior Lien Obligations, Subordinate Lien Obligations, and Limited Pledge Obligations; the terms and conditions relating to the transfer or exchange of the Notes; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Note may be redeemed or discharged at or prior to the Stated Maturity thereof, and deemed to be no longer Outstanding thereunder; and for the other terms and provisions specified in the Ordinance. Capitalized terms used herein have the same meanings assigned in the Ordinance.

This Note, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register upon presentation and surrender at the corporate trust office of the Paying Agent/Registrar, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by the Holder hereof, or his duly authorized agent, and thereupon one or more new fully registered Notes of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the Holder hereof whose name appears on the Security Register (i) on the Record Date as the owner hereof for purposes of receiving payment of interest hereon, (ii) on the date of surrender of this Note as the owner hereof for purposes of receiving payment of principal hereof at its Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner hereof for all other purposes, and neither the City nor the Paying Agent/Registrar, or any such agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, covenanted, and represented that all acts, conditions, and things required to be performed, exist, and be done precedent to the issuance of this Note in order to render the same a legal, valid, and binding special obligation of the City have been performed, exist, and have been done, in regular and due time, form, and manner, as required by the laws of

the State of Texas and the Ordinance, and that issuance of the Notes does not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Notes by a pledge of and lien on the Pledged Revenues of the System. In case any provision in this Note or any application thereof shall be deemed invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Note and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the City Council of the City has caused this Note to be duly executed under the official seal of the City.

CITY OF FREDERICKSBURG, TEXAS

By _____
Mayor

ATTESTED:

City Secretary

(CITY SEAL)

(c) *Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Note Only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER OF §
PUBLIC ACCOUNTS §
§ REGISTER NO. _____
THE STATE OF TEXAS §

I HEREBY CERTIFY that this Note has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____

Comptroller of Public Accounts
of the State of Texas

(SEAL)

*NOTE TO PRINTER: Not to appear on printed Note.

(d) Form of Certificate of Paying Agent/Registrar to Appear on Definitive Notes Only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Note has been duly issued under the provisions of the within-mentioned Ordinance; the Note or Notes of the above-entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

Registered this date: _____

By: _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number): _____
the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Note in every particular.

Signature guaranteed:

(f) The Initial Note shall be in the form set forth in paragraph B of this Section, except that the form of a single fully registered Initial Note shall be modified as follows:

- (i) immediately under the name of the Note the headings "Interest Rate" and "Stated Maturity" shall both be completed "as shown below";
- (ii) the first two paragraphs shall read as follows:

The City of Fredericksburg, Texas (the *City*), a body corporate and municipal corporation in the County of Gillespie, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, the Principal Amount specified above on the fifteenth day of August in each of the years and in principal amounts and bearing interest at per annum rates in accordance with the following schedule:

<u>Years of</u> <u>Stated Maturity</u>	<u>Principal</u> <u>Amounts (\$)</u>	<u>Interest</u> <u>Rates (%)</u>
---	---	-------------------------------------

(Information to be inserted
from schedule in Section 2 hereof)

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amounts hereof from the Closing Date (anticipated to occur on or about February 18, 2020) or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for until the Principal Amount has become due and payment thereof has been made or duly provided for, to the earlier of redemption or Stated Maturity, at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year (each, an *Interest Payment Date*), commencing August 15, 2020.

Principal of this Note shall be payable to the Registered Owner hereof (the *Holder*), upon its presentation and surrender, at the corporate trust office of _____ (the *Paying Agent/Registrar*). Interest shall be payable to the Holder of this Note whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last business day of the month next preceding each Interest Payment Date. All payments of principal of and interest on this Note shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States Mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof.

[END OF FORM]

(g) Insurance Legend. If bond insurance is obtained by the Purchasers or the City for the Notes, the definitive Notes and the Initial Note(s) shall bear an appropriate legend as provided by the insurer.

SECTION 9: Definitions. For all purposes of this Ordinance (as defined below), except as otherwise expressly provided or unless the context otherwise requires: the terms defined in this Section have the meanings assigned to them in this Section, and certain terms used in Sections 32 and 47 of this Ordinance have the meanings assigned to them in Sections 32 and 47, and all such terms include the plural as well as the singular; all references in this Ordinance to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Ordinance as originally adopted; and the words "herein", "hereof", and "hereunder" and other words of similar import refer to this Ordinance as a whole and not to any particular Section or other subdivision.

(a) The term *Additional Prior Lien Obligations* shall mean (i) any bonds, notes, warrants, certificates of obligation, or other evidences of indebtedness which the City reserves the right to issue or enter into, as the case may be, in the future under the terms and conditions provided in Section 18 of this Ordinance and which are equally and ratably secured, together with the Notes, solely by a prior and first lien on and pledge of the Pledged Revenues of the System and (ii) any obligations hereafter issued to refund any of the foregoing if issued in a manner so as to be payable from and secured by a prior and first lien on and pledge of the Pledged Revenues as determined by the City Council in accordance with applicable law.

(b) The term *Authorized Official* shall mean the Mayor, Mayor Pro Tem, City Manager, Director of Finance, and/or City Secretary.

(c) The term *Average Annual Debt Service Requirements* shall mean that average amount which, at the time of computation, will be required to pay the Debt Service Requirements on the Notes when due (either at Stated Maturity or mandatory redemption) and derived by dividing the total of such Debt Service Requirements by the number of Fiscal Years then remaining before Stated Maturity of such Notes. For purposes of this definition, a fractional period of a Fiscal Year shall be treated as an entire Fiscal Year. Capitalized interest payments provided from any bond proceeds shall be excluded in making the aforementioned computation.

(d) The term *City* shall mean the City of Fredericksburg located in the County of Gillespie, Texas and, where appropriate, the City Council of the City.

(e) The term *Closing Date* shall mean the date of physical delivery of the Initial Notes for the payment in full by the Purchasers.

(f) The term *Debt Service Requirements* shall mean as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the City as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear interest calculated by assuming (i) that the interest rate for every 12-month period on such bonds is equal to the rate of interest reported in the most recently published edition of The Note Buyer (or its successor) at the time of calculation as the "Revenue Note Index" or, if such Revenue Note Index is no longer being maintained by The Note Buyer (or its successor) at the time of calculation, such interest rate shall be assumed to be 80% of the rate of interest then being paid on United States Treasury obligations of like maturity and (ii) that the principal of such bonds is amortized such that annual debt service is substantially level over the remaining stated life of such bonds, and further assuming in the case of obligations required to be redeemed or prepaid as to principal prior to Stated Maturity, the principal amounts thereof will be redeemed prior to Stated Maturity in accordance with the mandatory redemption provisions applicable thereto.

(g) The term *Depository* shall mean an official depository bank of the City.

(h) The term *Fiscal Year* shall mean the twelve month accounting period used by the City in connection with the operation of the System, currently ending on September 30th of each year, which may be any twelve consecutive month period established by the City, but in no event may the Fiscal Year be changed more than one time in any three calendar year period.

(i) The term *Government Securities* shall mean (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; (iii) noncallable

obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; or (iv) any additional securities and obligations hereafter authorized by the laws of the State of Texas as eligible for use to accomplish the discharge of obligations such as the Notes.

(j) The term *Gross Revenues* shall mean all income, receipts, and revenues of every nature derived or received from the operation and ownership of the System excluding refundable meter deposits, restricted gifts, and grants in aid of construction, but including earnings and income derived from the investment or deposit of money (except the Construction Fund established pursuant to Section 31 hereof) in any special fund or account created, established, and maintained for the payment, security, or benefit of the Obligations Similarly Secured.

(k) The term *Holder* or *Holder*s shall mean the registered owner, whose name appears in the Security

(l) The term *Interest Payment Date* shall mean the date semiannual interest is payable on the Notes, being February 15 and August 15 of each year, commencing August 15, 2020, while any of the Notes remain Outstanding.

(m) The term *Junior Lien Obligations* shall mean (i) any bonds, notes, warrants, certificates of obligation or other obligations hereafter issued by the City payable wholly or in part from and equally and ratably secured by a junior and inferior lien and pledge of the Net Revenues of the System, that is junior and inferior to the first lien thereon and pledge thereof that is a part of the Pledged Revenues that secures the payment of the Obligations Similarly Secured, all as further provided in Section 19 of this Ordinance, and (ii) any obligations issued to refund the foregoing that are payable from and secured by such a junior and inferior lien on and pledge of the Net Revenues of the System as determined by the City Council in accordance with any applicable law.

(n) The term *Limited Pledge Obligations* shall mean (i) any bonds, notes, warrants, certificates of obligation, or other evidences of indebtedness hereafter issued by the City payable in part from a pledge of and lien on Net Revenues of the System which pledge of revenues is limited pursuant to Section 1502.052, as amended, Texas Government Code, all as further provided in Section 19 of this Ordinance and (ii) any obligations hereafter issued to refund any of the foregoing as determined by the City Council in accordance with any applicable law.

(o) The term *Maintenance and Operating Expenses* shall mean all current expenses of operating and maintaining the System, including but not limited to all salaries, labor, materials, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the City Council, reasonably and fairly exercised, are necessary to maintain the operations and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair obligations payable from Net Revenues shall be deducted in determining "Net Revenues." Depreciation charges shall not be considered Maintenance and Operating Expenses. Maintenance and Operating Expenses shall include payments under power purchase contracts and

contracts for goods or services for the System, to the extent authorized by law and the provisions of such contract.

(p) The term *Net Earnings* shall be the meaning assigned to such term in Section 18 hereof.

(q) The term *Net Revenues* shall mean Gross Revenues of the System, with respect to any period, after deducting the System's Maintenance and Operating Expenses during such period.

(r) The term *Note Fund* shall mean the special Fund or account created and established by the provisions of Section 13 of this Ordinance.

(s) The term *Notes* shall mean the "City of Fredericksburg, Texas Electric System Revenue Refunding Notes, Series 2020", dated January 1, 2020, authorized by this Ordinance.

(t) The term *Obligations Similarly Secured* shall mean the Notes, the Previously Issued Notes, and any Additional Prior Lien Obligations hereafter issued by the City or bonds issued to refund any of the foregoing if issued in a manner that provides that the refunding bonds are payable from and equally and ratably secured by a first and prior lien on and pledge of the Pledged Revenues of the System.

(u) The term *Ordinance* shall mean this ordinance adopted by the City Council on January 21, 2020.

(v) The term *Outstanding* shall mean when used in this Ordinance with respect to Notes means, as of the date of determination, all Notes theretofore issued and delivered under this Ordinance, except:

(1) those Notes cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Notes for which payment has been duly provided by the City in accordance with the provisions of Section 34 of this Ordinance by the irrevocable deposit with the Paying Agent/Registrar, or an authorized escrow agent, of money or Government Securities, or both, in the amount necessary to fully pay the principal of, premium, if any, and interest thereon to maturity or redemption, as the case may be, provided that, if such Notes are to be redeemed, notice of redemption thereof shall have been duly given pursuant to this Ordinance or irrevocably provided to be given to the satisfaction of the Paying Agent/Registrar, or waived; and

(3) those Notes that have been mutilated, destroyed, lost, or stolen and replacement Notes have been registered and delivered in lieu thereof as provided in Section 30 hereof.

(w) The term *Pledged Revenues* shall mean (1) a first lien on and pledge of the Net Revenues, plus (2) any additional revenues, income, receipts, or other resources, including, without limitation, any grants, donations, or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or

otherwise, for the benefit of the System which hereafter are pledged by the City to the payment of the Obligations Similarly Secured or any Additional Prior Lien Obligations hereafter issued by the City, and excluding those revenues excluded from Gross Revenues.

(x) The term *Purchasers* shall mean the initial purchaser or purchasers of the Notes named in Section 31 of this Ordinance.

(y) The term *Required Reserve Amount* shall mean the amount required to be deposited and maintained in the Reserve Fund under the provisions of Section 14 of this Ordinance.

(z) The term *Required Reserve Fund Deposits* shall mean the monthly deposit required to be deposited and maintained in the Reserve Fund under the provisions of Section 14 of this Ordinance.

(aa) The term *Stated Maturity* shall mean the annual principal payments of the Notes payable on August 15 of each year, as set forth in Section 2 of this Ordinance.

(bb) The term *Subordinate Lien Obligation* shall mean (i) any bonds, notes, warrants, certificates of obligation or any similar obligations hereafter issued by the City that are payable wholly or in part from and equally and ratably secured by a subordinate and inferior lien on and pledge of the Net Revenues of the System that is subordinate and inferior to the lien thereon and pledge thereof securing the payment of the Obligations Similarly Secured (as a result of such first and prior lien on and pledge of Net Revenues being made a part of the Pledged Revenues) and any Junior Lien Obligations hereafter issued by the City, all as further provided in Section 19 of this Ordinance and (ii) any obligations issued to refund the foregoing that are payable from and equally and ratably secured by a subordinate and inferior lien on and pledge of the Net Revenues of the System as determined by the City Council in accordance with any applicable law.

(cc) The term *Surety Policy* shall mean a surety bond, insurance policy, letter of credit, or other agreement or instrument whereby the issuer is obligated to provide funds up to and including the maximum amount and under the conditions specified in such agreement or instrument.

(dd) The term *System* shall mean all properties, facilities and plants currently owned, operated, and maintained by the City for the transmission and distribution of electric service, together with all future extensions, improvements, replacements and additions thereto, whether situated within or without the limits of the City, and the City expressly reserves the right at its sole discretion to include additional utility (including water and wastewater), telecommunications, technology, or similar enterprise services as components of the System (though such additional components are not at this time included); provided, however, that notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term System shall not mean to include facilities of any kind which are declared not to be a part of the System and which are acquired or constructed by or on behalf of the City with the proceeds from the issuance of "Special Facilities Obligations," which are hereby defined as being special revenue obligations of the City which are not payable from Net Revenues, but which are payable from and equally and ratably secured by other liens on and pledges of any revenues, sources or payments, not pledged to the

payment of the Obligations Similarly Secured including, but not limited to, special contract revenues or payments received from any other legal entity in connection with such facilities.

SECTION 10: Pledge of Pledged Revenues. (a) The City hereby covenants and agrees that the Pledged Revenues of the System are hereby irrevocably pledged to the payment and security of the Obligations Similarly Secured including the establishment and maintenance of the special funds or accounts created and established for the payment and security thereof, all as hereinafter provided; and it is hereby ordained that the Obligations Similarly Secured, and the interest thereon, shall constitute a first and prior lien on and pledge of the Pledged Revenues of the System and be valid and binding without any physical delivery thereof or further act by the City, and the lien created hereby on the Net Revenues of the System resulting from this lien on and pledge of the Pledged Revenues for the payment and security of the Obligations Similarly Secured shall be prior in right and claim as to the lien on and pledge of the Net Revenues securing payment of any Junior Lien Obligations, Subordinate Lien Obligations, or Limited Pledge Obligations hereafter issued by the City.

(b) Chapter 1208, as amended, Texas Government Code, applies to the issuance of the Notes and the pledge of Pledged Revenues granted by the City under subsection (a) of this Section, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Notes are outstanding and unpaid such that the pledge of the Pledged Revenues granted by the City is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Notes the perfection of the security interest in this pledge, the City Council agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, as amended, Texas Business & Commerce Code and enable a filing to perfect the security interest in this pledge to occur.

SECTION 11: Rates and Charges. For the benefit of the Holders of the Obligations Similarly Secured and in addition to all provisions and covenants in the laws of the State of Texas and in this Ordinance, the City hereby expressly stipulates and agrees, while any of the Obligations Similarly Secured are Outstanding, to establish and maintain rates and charges for facilities and services afforded by the System that are reasonably expected, together with any other lawfully available funds, on the basis of available information and experience and with due allowance for contingencies, to produce Gross Revenues in each Fiscal Year sufficient:

(a) To pay all Maintenance and Operating Expenses, or any expenses required by statute to be a first claim on and charge against the Gross Revenues of the System;

(b) To produce Pledged Revenues, together with any other lawfully available funds, sufficient to pay (1) 1.20 times the Average Annual Debt Service Requirements on the Obligations Similarly Secured and (2) the amounts required to be deposited in any reserve or contingency fund or account created for the payment and security of the Obligations Similarly Secured, and any other obligations or evidences of indebtedness issued or incurred that are payable from and secured solely by a prior and first lien on an pledge of the Net Revenues of the System;

(c) To produce Net Revenues, together with any other lawfully available funds, sufficient to pay the principal of and interest on any Junior Lien Obligations hereafter issued by

the City as the same become due and payable and to deposit the amounts required to be deposited in any special fund or account created and established for the payment and security of any Junior Lien Obligations hereafter issued by the City, and any other obligations or evidences of indebtedness issued or incurred that are payable from and secured solely by a junior lien on and pledge of the Net Revenues of the System;

(d) To produce Net Revenues, together with any other lawfully available funds, sufficient to pay the principal of and interest on any Subordinate Lien Obligations hereafter issued by the City as the same become due and payable and to deposit the amounts required to be deposited in any special fund or account created and established for the payment and security of any Subordinate Lien Obligations hereafter issued by the City, and any other obligations or evidences of indebtedness issued or incurred that are payable from equally and ratably secured, in part, by a subordinate and inferior lien on and pledge of the Net Revenues of the System;

(e) To produce Net Revenues, together with any other lawfully available funds, sufficient to pay the principal of and interest on any Limited Pledge Obligations hereafter issued by the City as the same become due and payable and to deposit the amounts required to be deposited in any special fund or account created and established for the payment and security of any Limited Pledge Obligations, and any other obligations or evidences of indebtedness issued or incurred that are payable from equally and ratably secured, in part, by a lien on and pledge of a limited amount of the Net Revenues of the System; and

(f) To pay, together with any other lawfully available funds, any other legally incurred indebtedness payable from the Net Revenues of the System and/or secured by a lien on the System.

SECTION 12: System Fund. The City hereby reaffirms its covenant and agreement that the Gross Revenues of the System shall be deposited, as collected and received, into a separate Fund or account to be created, established, and maintained with the Depository known as the "City of Fredericksburg, Texas Utility System Fund" (the *System Fund*) and that the Gross Revenues of the System shall be kept separate and apart from all other funds of the City. All Gross Revenues deposited into the System Fund shall be pledged and appropriated to the extent required for the following uses and in the order of priority shown:

FIRST: to the payment of all necessary and reasonable Maintenance and Operating Expenses as defined herein or required by statute, including, but not limited to, Chapter 1502, as amended, Texas Government Code, to be a first charge on and claim against the Gross Revenues of the System.

SECOND: to the payment of the amounts required to be deposited into the special funds and accounts created and established for the payment, security and benefit of any Obligations Similarly Secured.

THIRD: to the payment of the amounts that must be deposited in any special funds and accounts created and established for the payment, security and benefit of any Junior Lien Obligations hereafter issued by the City.

FOURTH: to the payment of the amounts that must be deposited in any special funds and accounts created and established for the payment, security, and benefit of any Subordinate Lien Obligations hereafter issued by the City.

FIFTH: to the payment of the amounts that must be deposited in any special funds and accounts created and established for the payment, security, and benefit of any Limited Pledge Obligations hereafter issued by the City.

Any Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law.

SECTION 13: Note Fund; Excess Note Proceeds. For purposes of providing funds to pay the principal of and interest on the Obligations Similarly Secured as the same become due and payable, the City reaffirms the creation and agrees to maintain, at the Depository, a separate and special Fund or account to be created and known as the "City of Fredericksburg, Texas Electric System Revenue Notes, Series 2020 Interest and Sinking Fund" (the *Note Fund*). The City covenants that there shall be deposited into the Note Fund prior to each principal and interest payment date from the available Pledged Revenues an amount equal to one hundred percent (100%) of the amount required to fully pay the interest on and the principal of the Obligations Similarly Secured then falling due and payable, such deposits to pay maturing principal and accrued interest on the Obligations Similarly Secured to be made in substantially equal monthly installments on or before the tenth day of each month, beginning on or before the tenth day of the month next following the delivery of the Notes to the Purchasers. If the Pledged Revenues in any month are insufficient to make the required payments into the Note Fund, then the amount of any deficiency in such payment shall be added to the amount otherwise required to be paid into the Note Fund in the next month.

The required monthly deposits to the Note Fund for the payment of principal of and interest on the Obligations Similarly Secured shall continue to be made as hereinabove provided until such time as (i) the total amount on deposit in the Note Fund and Reserve Fund is equal to the amount required to fully pay and discharge all Outstanding Obligations Similarly Secured (principal and interest) or (ii) the Notes are no longer Outstanding.

Accrued interest and premium, if any, received from the Purchasers shall be taken into consideration and reduce the amount of the monthly deposits hereinabove required to be deposited into the Note Fund from the Pledged Revenues of the System. Additionally, any proceeds of the Notes, and investment income thereon, not expended for authorized purposes shall be deposited into the Note Fund and shall be taken into consideration and reduce the amount of monthly deposits required to be deposited into the Note Fund from the Pledged Revenues of the System.

SECTION 14: Reserve Fund. To accumulate and maintain a reserve for the payment of the Obligations Similarly Secured (the "Required Reserve Amount") equal to the lesser of (i) the Average Annual Debt Service Requirements (calculated on a Fiscal Year basis and determined as of the date of issuance of the Notes or the most recently issued series of Additional Prior Lien Obligations then Outstanding) for the Obligations Similarly Secured or (ii) the maximum amount in a reasonably required reserve fund for the Obligations Similarly Secured from time to time that

can be invested without restriction as to yield pursuant to section 148 of the Code (as defined in Section 32), the City agrees to create, establish, and maintain a separate and special fund or account known as the "City of Fredericksburg, Utility System Revenue Note Reserve Fund" (the *Reserve Fund*), which fund or account shall be maintained at the Depository. All funds deposited into the Reserve Fund (excluding earnings and income derived or received from deposits or investments which will be transferred to the System Fund established in Section 12 of this Ordinance during such period as there is on deposit in the Reserve Fund the Required Reserve Amount) shall be used solely for the payment of the principal of and interest on the Obligations Similarly Secured, when and to the extent other funds available for such purposes are insufficient, and, in addition, may be used to retire the last stated maturity or interest on the Obligations Similarly Secured.

In accordance with the provisions of the ordinance authorizing the issuance of the Previously Issued Notes, the total amount currently required to be accumulated and maintained in the Reserve Fund is \$_____. By reason of the issuance of the Notes, the total amount required to be accumulated and maintained in the Reserve Fund is hereby determined to be \$_____, which shall be accumulated, if necessary (and subject to the further conditions on funding such Reserve Fund as provided in this Section), in the following manner. Beginning on or before the tenth day of the month next following the delivery of the Notes to the Purchasers and on or before the tenth day of each following month until the Required Reserve Amount has been accumulated in the Reserve Fund, the City covenants and agrees to deposit to the Reserve Fund from the Net Revenues of the System, at the level of priority specified in Section 12, or any other lawfully available funds, an amount not less than \$_____, being the Required Reserve Fund Deposits (and equaling the minimum amount necessary to cause the accumulation of the Required Reserve Amount to occur over a period of 60 months).

As and when Additional Prior Lien Obligations are delivered or incurred, the Required Reserve Amount shall be increased, if required, to an amount calculated in the manner provided in the first paragraph of this Section. Any additional amount required to be maintained in the Reserve Fund shall be so accumulated by the deposit of the necessary amount of the proceeds of the issue or other lawfully available funds in the Reserve Fund immediately after the delivery of the then proposed Additional Prior Lien Obligations, or, at the option of the City, by the deposit of monthly installments, made on or before the tenth day of each month following the month of delivery of the then proposed Additional Prior Lien Obligations, of not less than 1/60th of the additional amount to be maintained in the Reserve Fund by reason of the issuance of the Additional Prior Lien Obligations then being issued (or 1/60th of the balance of the additional amount not deposited immediately in cash), thereby ensuring the accumulation of the appropriate Required Reserve Amount.

When and so long as the cash and investments in the Reserve Fund equal the Required Reserve Amount, no deposits need be made to the credit of the Reserve Fund; but, if and when the Reserve Fund at any time contains less than the Required Reserve Amount (other than as the result of the issuance of Additional Prior Lien Obligations as provided in the preceding paragraph), the City covenants and agrees to cure the deficiency in the Required Reserve Amount by resuming the Required Reserve Fund Deposits to said Fund or account from the Net Revenues of the System, or any other lawfully available funds, such monthly deposits to be in amounts equal to not less than 1/60th of the Required Reserve Amount covenanted by the City to be maintained in the Reserve Fund with any such deficiency payments being made on or before the tenth day of each

month until the Required Reserve Amount has been fully restored. The City further covenants and agrees that, the Net Revenues shall be applied and appropriated and used to establish and maintain the Required Reserve Amount and to cure any deficiency in such amounts as required by the terms of this Ordinance and any other ordinance pertaining to the issuance of any Additional Prior Lien Obligations.

During such time as the Reserve Fund contains the Required Reserve Amount, the City may, at its option, withdraw all surplus funds in the Reserve Fund in excess of the Required Reserve Amount and deposit such surplus in the System Fund.

The City, at its option and consistent with the provisions of this Section may fund the Reserve Fund at the Required Reserve Amount by purchasing an insurance policy that will unconditionally obligate the insurance company or other entity to pay all, or any part thereof, of the Required Reserve Amount in the event funds on deposit in the Note Fund are not sufficient to pay the debt service requirements on the Obligations Similarly Secured. All ordinances adopted after the date hereof authorizing the issuance of Additional Prior Lien Obligations shall contain a provision to this effect. The City reserves the right to use Gross Revenues of the System to fund the payment of (1) periodic premiums on the insurance policy or Surety Policy as a part of the payment of Maintenance and Operating Expenses and (2) any repayment obligation incurred by the City (including interest) to the issuer of the insurance policy or Surety Policy, the payment of which will result in the reinstatement of such insurance policy or Surety Policy, prior to making payments required to be made to the Reserve Fund pursuant to the provisions of this Section to restore the balance in such fund to the Required Reserve Amount for the Obligations Similarly Secured.

In the event an insurance policy or other Surety Policy issued to satisfy all or part of the City's obligation with respect to the Reserve Fund causes the amount then on deposit in the Reserve Fund to exceed the Required Reserve Amount, the City may transfer such excess amount to any fund or account established for the payment of or security for the Obligations Similarly Secured (including any escrow established for the final payment of any such obligations pursuant to Chapter 1207, as amended, Texas Government Code) or use such excess amount for any lawful purpose now or hereafter provided by law; provided, however, to the extent that such excess amount represents Note proceeds, then such amount must be transferred to the Note Fund or as otherwise permitted in accordance with then applicable Texas law.

Notwithstanding anything to the contrary contained in this Section, the requirements set forth above to fund the Reserve Fund in the amount of the Required Reserve Amount shall be suspended for any Obligations Similarly Secured (including with respect to the Notes) for such time as the Pledged Revenues for each Fiscal Year are equal to at least 135% of the Average Annual Debt Service Requirements. In the event that the Pledged Revenues for any Fiscal Year are less than 135% of the Average Annual Debt Service Requirements, the City will be required to commence making the deposits to the Reserve Fund, as provided above, and to continue making such deposits until the earlier of (i) such time as the Reserve Fund contains the Required Reserve Amount or (ii) the Pledged Revenues in each of two consecutive Fiscal Years have been equal to not less than 135% of the Average Annual Debt Service Requirements.

SECTION 15: Deficiencies; Excess Net Revenues. (a) If on any occasion there shall not be sufficient Pledged Revenues of the System (after making all payments pertaining to the currently Outstanding Obligations Similarly Secured) to make the required deposits into the Note Fund and the Reserve Fund, then such deficiency shall be cured as soon as possible from the next available unallocated Net Revenues of the System, or from any other sources available for such purpose, and such payments shall be in addition to the amounts required to be paid into these Funds or accounts during such month or months.

(b) Subject to making the required deposits to the Note Fund and the Reserve Fund when and as required by this Ordinance, or any ordinance authorizing any Obligations Similarly Secured (or any Junior Lien Obligations, Subordinate Lien Obligations, or Limited Pledge Obligations hereafter issued), the excess Net Revenues of the System may be used by the City for any lawful purpose, including but not limited to, the redemption of any Obligations Similarly Secured.

SECTION 16: Payment of Notes. While any of the Obligations Similarly Secured are outstanding, an Authorized Official shall cause to be transferred to the Paying Agent/Registrar therefor, from funds on deposit in the Note Fund, and, if necessary, in the Reserve Fund, amounts sufficient to fully pay and discharge promptly each installment of interest on and principal of the Obligations Similarly Secured as such installment accrues or matures or comes due by reason of redemption prior to maturity; such transfer of funds must be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Obligations Similarly Secured at the close of the business day next preceding the date a debt service payment is due on the Obligations Similarly Secured.

SECTION 17: Investments. Funds held in any Fund or account created, established, or maintained pursuant to this Ordinance, at the option of the City, be placed in time deposits, certificates of deposit, guaranteed investment contracts or similar contractual agreements as permitted by the provisions of the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, or any other law (collateralized pursuant to the Public Funds Collateral Act, as amended, Chapter 2257, Texas Government Code), and secured (to the extent not insured by the Federal Deposit Insurance Corporation) by obligations of the type hereinafter described, including investments held in book-entry form, in securities including, but not limited to, direct obligations of the United States of America, obligations guaranteed or insured by the United States of America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured, or guaranteed by such governmental agencies as the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, Farmers Home Administration, Federal Home Loan Mortgage Association, or Federal Housing Association; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from any Fund or account will be available at the proper time or times. Such investments (except State and Local Government Series investments held in book entry form, which shall at all times be valued at cost) shall be valued in terms of current market value within 45 days of the close of each Fiscal Year and, with respect to investments held for the account of the Reserve Fund, within 30 days of the date of passage of each ordinance authorizing the issuance of any Additional Prior Lien Obligations. All interest and income derived from

deposits and investments in the Note Fund immediately shall be credited to, and any losses debited to, the Note Fund. All interest and interest income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 14, be credited to and deposited in the System Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Notes.

SECTION 18: Issuance of Additional Prior Lien Obligations. Subject to the provisions hereinafter appearing as to conditions precedent which must be satisfied, the City hereby expressly reserves the right to hereafter issue, from time to time as needed, Additional Prior Lien Obligations for any lawful purpose. Such Additional Prior Lien Obligations may be issued in such form and manner as now or hereafter authorized by the laws of the State of Texas for the issuance of evidences of indebtedness or other instruments, and should new methods or financing techniques be developed that differ from those now available and in normal use, the City reserves the right to employ the same in its financing arrangements provided only that each of the following conditions precedent for the authorization and issuance of the same are satisfied, to wit:

(a) the Director of Finance of the City (or other official of the City, including the City Manager, having primary responsibility for the fiscal affairs of the City) shall have executed a certificate stating that (i) except for a refunding to cure a default, or the deposit of a portion of the proceeds of any Additional Prior Lien Obligations to satisfy the City's obligations under this Ordinance, the City is not then in default as to any covenant, obligation, or agreement contained in any ordinance or other proceedings relating to any obligations of the City payable from and secured by a first and prior lien on and pledge of the Pledged Revenues of the System and (ii) all payments into all special funds or accounts created and established for the payment and security of all outstanding obligations payable from and secured by a first and prior lien on and pledge of the Pledged Revenues of the System have been duly made and that the amounts on deposit in such special funds or accounts are the amounts then required to be deposited therein;

(b) the City has secured a certificate from the Director of Finance of the City (or other official of the City, including the City Manager, having primary responsibility for the fiscal affairs of the City) to the effect that, according to the books and records of the City, the Net Earnings of the System, for the preceding Fiscal Year or for any 12 consecutive months out of the 18 months immediately preceding the month the ordinance authorizing the Additional Prior Lien Obligations is adopted, are at least equal to one and one-fifth (1-1/5) (1.20) times the Average Annual Debt Service Requirements for the payment of principal of and interest on all outstanding Obligations Similarly Secured after giving effect to the Additional Prior Lien Obligations then proposed. In making a determination of the Net Earnings, the Director of Finance may take into consideration a change in the rates and charges for services and facilities afforded by the System that became effective at least sixty (60) days prior to the last day of the period for which Net Earnings are to be determined and, for purposes of satisfying the above Net Earnings test, make a pro forma determination of the Net Earnings for the period of time covered by his certification based on such change in rates and charges being in effect for the entire period covered by the Director of Finance's certificate;

(c) As used in this Section, the term "Net Earnings" shall mean the Gross Revenues of the System after deducting the Maintenance and Operating Expenses of the System, but not

depreciation charges or expenditures which, under generally accepted accounting principles, should be charged to capital expenditures.

(d) The Additional Prior Lien Obligations shall be scheduled to mature or be payable as to principal on February 15 or August 15 (or both) in each year the same are to be outstanding or during the term thereof;

(e) the ordinance authorizing the issuance of the Additional Prior Lien Obligations provides for deposits to be made to the Note Fund in amounts sufficient to pay the principal of and interest on such Additional Prior Lien Obligations as same mature; and

(f) the ordinance authorizing the issuance of the Additional Prior lien Obligations provides that the amount to be accumulated and maintained in the Reserve Fund (subject, however, to any funding suspension mechanism that may at such time be in effect) shall be in an amount equal to not less than the Average Annual Debt Service Requirements for the payment of any Obligations Similarly Secured then Outstanding after giving effect to the issuance of the proposed Additional Prior Lien Obligations, and provides that any additional amount to be maintained in the Reserve Fund shall be accumulated within sixty (60) months from the date the Additional Prior Lien Obligations are delivered.

All calculations of principal and interest requirements made pursuant to this Section are made as of and from the date of the Additional Prior Lien Obligations then proposed to be issued.

SECTION 19: Obligations of Inferior Lien and Pledge. The City hereby reserves the right to issue, at any time, obligations including, but not limited to, Junior Lien Obligations, Subordinate Lien Obligations, and/or Limited Pledge Obligations payable from and equally and ratably secured, in whole or in part, by a lien on and pledge of the Net Revenues of the System, subordinate and inferior in rank and dignity to the lien on and pledge of such first lien on and pledge of Net Revenues of the System included in the Pledged Revenues securing the payment of the Note Similarly Secured, as may be authorized by the laws of the State of Texas upon satisfying any conditions precedent contained in the ordinances authorizing the issuance of any Obligations Similarly Secured.

SECTION 20: Refunding Notes. The City reserves the right to issue refunding bonds to refund all or any part of the Outstanding Obligations Similarly Secured, pursuant to any law then available, upon such terms and conditions as the City Council of the City may deem to be in the best interest of the City and its inhabitants, and if less than all such Outstanding Obligations Similarly Secured are refunded, the conditions precedent prescribed, for the issuance of Additional Prior Lien Obligations, set forth in Section 18 of this Ordinance shall be satisfied and the certificate required in subparagraph (b) shall give effect to the Debt Service Requirements of the proposed refunding bonds (but shall not give effect to the Debt Service Requirements of the bonds being refunded following their cancellation or provision being made for their payment); provided, however, if the refunding of any then-Outstanding Obligations Similarly Secured (in whole or in part) produces an aggregate net present value debt service savings, then the certificate identified in Section 18(b) above shall not be required as a condition to the issuance of such refunding obligations (notwithstanding the fact that, upon issuance, such refunding obligations shall be Obligations Similarly Secured for all purposes).

SECTION 21: Maintenance of System - Insurance. The City covenants, agrees, and affirms its covenants that while the Obligations Similarly Secured remain outstanding it will maintain and operate the System with all possible efficiency and maintain casualty and other insurance on the properties of the System and its operations of a kind and in such amounts customarily carried by municipal corporations in the State of Texas engaged in a similar type of business (which may include an adequate program of self-insurance); and that it will faithfully and punctually perform all duties with reference to the System required by the laws of the State of Texas. All money received from losses under such insurance policies, other than public liability policies, shall be retained for the benefit of the holders of the Notes until and unless the proceeds are paid out in making good the loss or damage in respect of which such proceeds are received, either by replacing the property destroyed or repairing the property damaged, and adequate provision for making good such loss or damage must be made within ninety (90) days after the date of loss. The payment of premiums for all insurance policies required under the provisions hereof shall be considered Maintenance and Operating Expenses. Nothing in this Ordinance shall be construed as requiring the City to expend any funds which are derived from sources other than the operation of the System but nothing herein shall be construed as preventing the City from doing so.

SECTION 22: Records and Accounts – Annual Audit. The City covenants, agrees, and affirms its covenants that so long as any of the Obligations Similarly Secured remain outstanding, it will keep and maintain separate and complete records and accounts pertaining to the operations of the System in which complete and correct entries shall be made of all transactions relating thereto, as provided by Chapter 1502, as amended, Texas Government Code, or other applicable law. The Holder or Holders of any Obligations Similarly Secured or any duly authorized agent or agents of such Holders shall have the right at all reasonable times to inspect such records, accounts and data relating thereto, and to inspect the System and all properties comprising the same. The City further agrees that following (and in no event later than 180 days) the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of certified public accountants. Expenses incurred in making the annual audit of the operations of the System are to be regarded as Maintenance and Operating Expenses.

SECTION 23: Special Covenants. The City further covenants and agrees by and through this Ordinance as follows:

(a) It has the lawful power to pledge the Pledged Revenues supporting the Obligations Similarly Secured and has lawfully exercised this power under the laws of the State of Texas, including the power existing under Chapter 1502, as amended, Texas Government Code.

(b) The Obligations Similarly Secured shall be equally and ratably secured by a first and prior lien on and pledge of the Pledged Revenues of the System in a manner that one bond shall have no preference over any other bond.

(c) Other than for the payment of the Notes, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

(d) As long as any Notes, or any interest thereon, remain Outstanding, the City will not sell, lease, or encumber the System or any substantial part thereof (except as provided in Sections

18, 19, or 20 of this Ordinance) provided that this covenant shall not be construed to prohibit the sale of such machinery, or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System;

(e) The City, to the extent and in the manner authorized by law, may sell or exchange for consideration representing the fair value thereof, as determined by the City Council of the City, any property not necessary or required in the efficient operations of the System, or any equipment not necessary or useful in the operations thereof or which is obsolete, damaged or worn out or otherwise unsuitable for use in the operation of the System. The proceeds of any sale of properties of the System shall be deposited in the System Fund.

(f) No free service of the System (except water provided to the City for municipal fire-fighting purposes) shall be allowed, and, should the City or any of its agents or instrumentalities make use of the services and facilities of the System, payment of the reasonable value thereof shall be made by the City out of funds from sources other than the revenues and income of the System; and

(g) To the extent that it legally may, the City further covenants and agrees that, so long as any of the Obligations Similarly Secured, or any interest thereon, are Outstanding, no franchise shall be granted for the installation or operation of any competing utility systems, other than those owned by the City, and the operation of any such systems by anyone other than the City is hereby prohibited; provided, however, the City expressly reserves the right to eliminate or modify this covenant, at its sole discretion, for any purpose or in order to comply with then existing federal or Texas law.

SECTION 24: Limited Obligations of the City. The Obligations Similarly Secured are limited, special obligations of the City payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Pledged Revenues of the System, and the Holders thereof shall never have the right to demand payment of the principal or interest on the Obligations Similarly Secured from any funds raised or to be raised through taxation by the City.

SECTION 25: Security of Funds. All money on deposit in the Funds or accounts for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested as provided herein) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and money on deposit in such Funds or accounts shall be used only for the purposes permitted by this Ordinance.

SECTION 26: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas and specifically to confirm that the Purchasers have all rights and remedies available under Texas law hereunder, the City also covenants and agrees particularly that in the event the City (a) defaults in the payments to be made to the Note Fund or Reserve Fund, or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Ordinance, the Holders of any of the Notes shall be entitled to seek a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition, or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

SECTION 27: Notices to Holders Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first-class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Holders. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 28: Notes Are Negotiable Instruments. Each of the Notes authorized herein shall be deemed and construed to be a "security" and as such a negotiable instrument with the meaning of the Chapter 8 of the Texas Uniform Commercial Code.

SECTION 29: Cancellation. All Notes surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Notes previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Notes held by the Paying Agent/Registrar shall be destroyed as directed by the City.

SECTION 30: Mutilated, Destroyed, Lost, and Stolen Notes. If any mutilated Note is surrendered to the Paying Agent/Registrar, or the City and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Note, and there is delivered to the City and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the City or the Paying Agent/Registrar that such Note has been acquired by a bona fide purchaser, the City shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Note, a new Note of the same Stated Maturity and interest rate and of like tenor and principal amount, bearing a number not contemporaneously outstanding. In case any such mutilated, destroyed, lost, or stolen Note has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Note, pay such Note. Upon the issuance of any new Note or payment in lieu thereof, under this Section, the City may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including attorney's fees and the fees and expenses of

the Paying Agent/Registrar) connected therewith. Every new Note issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Note shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Notes. The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Notes.

SECTION 31: Sale of Notes at a Negotiated Sale – Authorization of Execution of Purchase and Investment Letter – Note Proceeds. The Notes authorized by this Ordinance are hereby sold by the City to _____ (the *Purchasers*) against payment of the aggregate principal amount of \$ _____, and no accrued interest. The Initial Note shall be registered in the name of _____. Delivery of the Notes shall be made to the Purchasers as soon as practicable after the adoption of this Ordinance, upon payment therefor in accordance with the terms of sale established in a Purchase and Investment Letter dated January 21, 2020 (the *Purchase Contract*), attached hereto as Exhibit B and incorporated herein by reference as a part of this Order for all purposes. The pricing and terms of the sale of the Notes are hereby found and determined to be the most advantageous reasonably obtainable by the City. Each Authorized Official is hereby authorized and directed to execute the Purchase Contract for and on behalf of the City and as the act and deed of the City Council and in regard to the approval and execution of the Purchase Contract, the City Council hereby finds, determines, and declares that the representations, warranties, and agreements of the City contained in the Purchase Contract are true and correct in all material respects and shall be honored and performed by the City. Delivery of the Notes to the Purchasers shall occur as soon as practicable after the adoption of the Ordinance, upon payment therefor in accordance with the terms of the Purchase Contract.

Proceeds derived from the sale of the Notes, after payment of costs of issuance, shall be deposited into the construction fund (the *Construction Fund*), created for the projects to be constructed with the proceeds of the Notes. This Construction Fund shall be established and maintained at the Depository and shall be invested in accordance with the provisions of Section 17, but any money deposited into the Construction Fund shall not be commingled with any other funds of the City. Interest earned on the proceeds of the Bonds pending completion of the projects financed with such proceeds shall be accounted for, maintained, deposited, and expended as permitted by the provisions of Chapter 1201, as amended, Texas Government Code, or as required by any other applicable law. Thereafter, such amount shall be expended in accordance with Section 13.

SECTION 32: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

“*Closing Date*” means the date on which the Notes are first authenticated and delivered to the initial purchasers against payment therefor.

“*Code*” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Notes.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Notes are invested and which is not acquired to carry out the governmental purposes of the Notes.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Notes. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of

any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

the Notes has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Note to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Note, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause the Notes to become "private activity bonds" within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Notes:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Notes, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the

general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Notes or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except as would not cause the Notes to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Notes to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if- (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause the Notes to become “arbitrage bonds” within the meaning of section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Notes directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, materially exceeds the Yield of the Notes.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Notes to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Note

is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Notes with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Notes until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Notes by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Note Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Notes equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Notes, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection H of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Notes not been relevant to either party.

(j) Notes Not Hedge Notes.

(1) The City reasonably expects to spend at least 85% of the spendable proceeds of the Notes within three years after such Notes are issued.

(2) Not more than 50% of the proceeds of the Notes will be invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(k) Elections. The City hereby directs and authorizes any Authorized Official, either individually or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Notes, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document. Such elections shall be deemed to be made on the Closing Date.

(l) Qualified Tax-Exempt Obligations. The District hereby designates the Obligations as *qualified tax-exempt obligations* for purposes of section 265(b) of the Code. In furtherance of such designation, the City represents, covenants and warrants the following: (a) during the calendar year in which the Obligations are issued, the City (including any subordinate entities) has not designated nor will designate obligations, which when aggregated with the Obligations, will result in more than \$10,000,000 of "qualified tax-exempt obligations" being issued; (b) the City reasonably anticipates that the amount of tax-exempt obligations issued during the calendar year 2020 by the City (including any subordinate entities) will not exceed \$10,000,000; and (c) the City will take such action or refrain from such action as is necessary in order that the Obligations will not be considered "private activity bonds" within the meaning of section 141 of the Code.

SECTION 33: Control and Custody of Notes. The Mayor shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas and shall take and have charge and control of the Notes pending their approval by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery of the Notes to the Purchasers.

Furthermore, any Authorized Official, either or all, are hereby authorized and directed to furnish and execute such documents relating to the City and its financial affairs as may be necessary for the issuance of the Notes, the approval of the Attorney General and their registration by the Comptroller of Public Accounts and, together with the City's financial advisor, bond counsel, and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Notes to the Purchasers.

SECTION 34: Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Notes, at the times and in the manner stipulated in this Ordinance, then the pledge of the Pledged Revenues of the System under this Ordinance and all other obligations of the City to the Holders shall thereupon cease, terminate, and become void and be discharged and satisfied.

Notes, or any principal amount(s) thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Notes or the principal amount(s) thereof at Stated Maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, and/or (ii) Government Obligations shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Obligations will mature as to principal and interest

in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Notes, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. In the event of a defeasance of the Notes, the City shall deliver a certificate from its financial advisor, the Paying Agent/Registrar, an independent accounting firm or another qualified third party concerning the deposit of cash and/or Government Obligations to pay, when due, the principal of, redemption premium (if any), and interest due on any defeased Notes. As and to the extent applicable, if at all, the City covenants that no deposit of money or Government Obligations will be made under this Section and no use made of any such deposit which would cause the Notes to be treated as arbitrage bonds within the meaning of section 148 of the Code (as defined in Section 32).

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Notes, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Notes and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Notes such moneys were deposited and are held in trust to pay shall, upon the request of the City, be remitted to the City against a written receipt therefor, subject to the unclaimed property laws of the State of Texas.

Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem defeased Notes that is made in conjunction with the payment arrangements specified in subsections (i) or (ii) above shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the City expressly reserves the right to call the defeased Notes for redemption; (2) gives notice of the reservation of that right to the owners of the defeased Notes immediately following the defeasance; (3) directs that notice of the reservation be included in any redemption notices that it authorizes; and (4) at the time of the redemption, satisfies the conditions of (i) or (ii) above with respect to such defeased debt as though it was being defeased at the time of the exercise of the option to redeem the defeased Notes, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the defeased Notes.

SECTION 35: Ordinance a Contract – Amendments – Outstanding Notes. The City acknowledges that the covenants and obligations of the City herein contained are a material inducement to the purchase of the Notes. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Note remains Outstanding except as permitted in this Section. The City, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the written consent of Holders holding a majority in aggregate principal amount of the Obligations Similarly Secured then Outstanding affected thereby, amend, add to, or rescind any of the

provisions of this Ordinance; provided; however, that, without the consent of all Holders of Outstanding Notes, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Notes, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Notes, (2) give any preference to any Note over any other Note, or (3) reduce the aggregate principal amount of Notes required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 36: Printed Opinion. The Purchasers' obligation to accept delivery of the Notes is subject to its being furnished a final opinion of Norton Rose Fulbright US LLP, as Bond Counsel, approving certain legal matters as to the Notes, said opinion to be dated and delivered as of the date of initial delivery and payment for such Notes. Printing of a true and correct copy of said opinion on the reverse side of each of said Notes, with appropriate certificate pertaining thereto executed by facsimile signature of the City Secretary of the City is hereby approved and authorized.

SECTION 37: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Notes. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Notes shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving said Notes as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Notes.

SECTION 38: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 39: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, Bond Counsel, Paying Agent/Registrar, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, Bond Counsel, the Paying Agent/Registrar, and the Holders.

SECTION 40: Inconsistent Provisions. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters ordained herein.

SECTION 41: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 42: Severability. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 43: Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 44: Authorization of Paying Agent/Registrar Agreement. The City Council hereby finds and determines that it is in the best interest of the City to authorize the execution of a Paying Agent/Registrar Agreement concerning the payment, exchange, and transferability of the Notes. A copy of the Paying Agent/Registrar Agreement is attached hereto, in substantially final form, as Exhibit A and is incorporated by reference to the provisions of this Ordinance.

SECTION 45: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 46: No Recourse Against City Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Note or for any claim based thereon or on this Ordinance against any official of the City or any person executing any Note.

SECTION 47: Continuing Disclosure of Information.

A. Definitions.

As used in this Section, the following terms have the meanings ascribed to such terms below:

Rule means SEC Rule 15c2-12, as amended from time to time.

SEC means the United States Securities and Exchange Commission.

The Notes are being sold pursuant to a private placement with the Purchasers, generally in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof, to less than thirty-five sophisticated investors, and therefore the Rule is not applicable to the offering of the Notes. Accordingly, no contract to provide continuing disclosure information after the issuance of the Notes has been made by the City with investors.

SECTION 48: Book-Entry Only System.

The Notes may be registered so as to participate in a securities depository system (the *DTC System*) with The Depository Trust Company, New York, New York, or any successor entity thereto (*DTC*), as set forth herein. Each Stated Maturity of the Notes shall be issued (following cancellation of the Initial Notes described in Section 7) in the form of a separate single definitive Note. Upon issuance, the ownership of each such Note shall be registered in the name of Cede & Co., as the nominee of DTC, and all of the Outstanding Notes shall be registered in the name of Cede & Co., as the nominee of DTC. The City and the Paying Agent/Registrar are authorized to execute, deliver, and take the actions set forth in such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Letter of Representations attached hereto as Exhibit C (the *Representation Letter*).

With respect to the Notes registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds the Notes from time to time as securities depository (a *Depository Participant*) or to any person on behalf of whom such a Depository Participant holds an interest in the Notes (an *Indirect Participant*). Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to any ownership interest in the Notes, (ii) the delivery to any Depository Participant or any other person, other than a registered owner of the Notes, as shown on the Security Register, of any notice with respect to the Notes, including any notice of redemption, or (iii) the delivery to any Depository Participant or any Indirect Participant or any other Person, other than a Holder of a Note, of any amount with respect to principal of, premium, if any, or interest on the Notes. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a bond certificate evidencing the obligation of the City to make payments of principal, premium, if any, and interest on the Notes pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the Holder, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

In the event that (a) the City determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason, or (c) DTC or the City determines that it is in the best interest of the beneficial owners of the Notes that they be able to obtain certificated Notes, the City shall notify the Paying Agent/Registrar, DTC, and the Depository Participants of the availability within a reasonable period of time through DTC of bond certificates, and the Notes shall no longer be restricted to being registered in the name of Cede & Co., as nominee of DTC. At that time, the City may determine that the Notes shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the City, or such depository's agent or designee, and if the City and the Paying Agent/Registrar do not select such alternate securities depository system then the Notes may be registered in whatever name or names the Holders of Notes transferring or exchanging the Notes shall designate, in accordance with the provisions hereof.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Note is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Note and all notices with respect to such Note shall be made and given, respectively, in the manner provided in the Representation Letter.

SECTION 49: Accounting Reports. The Issuer shall provide annually to the Purchasers for so long as the Purchasers remain a holder of the Obligations, within 210 days after the end of each fiscal year ending in or after 2019, financial information and operating data with respect to the Issuer; provided that such financial statements so to be provided shall be (1) prepared in accordance with the generally accepted accounting principles, or such other accounting principles as the Issuer may be required to employ from time to time pursuant to Texas law or regulations, and (2) audited, if the Issuer commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is

not complete within such period, then the Issuer shall provide (1) unaudited financial statements for the applicable fiscal year within 180 days after the end of such fiscal year, and (2) audited financial statements for the applicable fiscal year to the Purchasers when and if the audit report on such statements become available.

SECTION 50: Unavailability of Authorized Publication. If, because of the temporary or permanent suspension of any newspaper, journal, or other publication, or, for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Ordinance shall be given in such other manner and at such time or times as in the judgment of the City or of the Paying Agent/Registrar shall most effectively approximate such required publication and the giving of such notice in such manner shall for all purposes of this Ordinance be deemed to be in compliance with the requirements for publication thereof.

SECTION 51: No Recourse Against City Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Note or for any claim based thereon or on this Ordinance against any official of the City or any person executing any Note.

SECTION 52: Further Procedures. The officers and employees of the City are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Notes, the Paying Agent/Registrar Agreement, and the Purchase Contract. In addition, prior to the initial delivery of the Notes, any Authorized Official, and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Notes by the Texas Attorney General's office. In case any officer of the City whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 53: Effective Date. Pursuant to the provisions of Section 1201.028, as amended, Texas Government Code, this Ordinance shall be effective immediately upon adoption, notwithstanding any provision in the City's Home Rule Charter to the contrary concerning a multiple reading requirement for the adoption of ordinances.

PASSED AND ADOPTED on the 21st day of January, 2020.

CITY OF FREDERICKSBURG, TEXAS

Mayor

ATTEST:

City Secretary

(CITY SEAL)

I, the undersigned, City Attorney of the City of Fredericksburg, Texas, hereby certify that I read, passed upon, and approved as to form and legality the foregoing Ordinance prior to its adoption and passage as aforesaid.

City Attorney

INDEX TO EXHIBITS

Exhibit A	Paying Agent/Registrar Agreement
Exhibit B.....	Purchase and Investment Letter
Exhibit C.....	DTC Letter of Representations

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

SEE TAB NO. ____

EXHIBIT B

PURCHASE AND INVESTMENT LETTER

SEE TAB NO. ____

EXHIBIT C

DTC LETTER OF REPRESENTATIONS

SEE TAB NO. ____



CITY COUNCIL MEMO

DATE: January 15, 2020

TO: Mayor and City Council

FROM: Kent Myers, City Manager

SUBJECT: Resolution Approving Participation in the Texas PACE Program

Summary:

The attached resolution confirms our participation in the Texas PACE program which will provide some low interest financing for new projects that include energy efficient facilities. As proposed, the program will be administered by AACOG with no financial obligation on the City's part.

Recommendation:

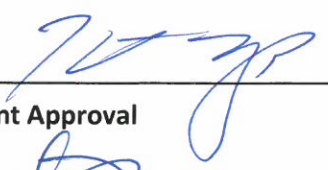
It is recommended that the City Council approved this resolution.

Background / Analysis:

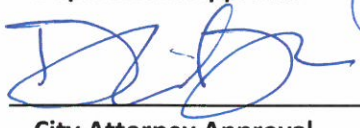
The Texas PACE program was initially presented to the City Council in November. Following this presentation, the Council voted to consider participation in the program and schedule a public hearing. At the last Council meeting the public hearing was held with several positive comments offered in support of the program. It is anticipated that at least one or two local developers will take advantage of the program during the coming year.

Attachments:

Resolution Supporting Involvement in Texas PACE program.



Department Approval



City Attorney Approval



City Manager Approval

RESOLUTION 2020-01R

CITY OF FREDERICKSBURG CITY COUNCIL
RESOLUTION ESTABLISHING THE CITY OF FREDERICKSBURG PACE PROGRAM

STATE OF TEXAS §
 §
CITY OF FREDERICKSBURG §

WHEREAS, the 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the “PACE Act”), which allows the governing body of a local government, including a City, to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease energy or water consumption or demand;

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, and large multifamily residential real property in the City of Fredericksburg will further the goals of energy and water conservation without cost to the public;

WHEREAS, the City Council finds that third-party financing of energy and water conserving projects through contractual assessments maintained by the City (“PACE financing”) furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, conserving water resources, and reducing greenhouse gas emissions;

WHEREAS, the City Council adopted a Resolution of Intent to establish a PACE program for City of Fredericksburg on December 2, 2019, including a reference to the report on the proposed program prepared as required by Section 399.009 of the PACE Act and made the report available to the public on the City’s website and for inspection in the City Manager’s office;

WHEREAS, The City Council finds that the administration of the PACE program by a qualified non-profit organization as an independent third-party Authorized Representative contracted by the City and compensated by application and administration fees paid by the participating property owners, will enable the program to be administered without use of City resources, will assure the objectives of impartiality and confidentiality of owner information, and will be convenient and advantageous to City; and

WHEREAS, The City intends to enter into an interlocal agreement with the Alamo Area Regional Council of Government, which will serve as the independent third-party Authorized Representative; and

WHEREAS, the City Council held a public hearing on January 6, 2020 at 6:00 pm in the Law Enforcement Center, 1601 East Main Street, Fredericksburg, Texas, at which the public hearing could comment on the proposed program, including the report available for public inspection as mentioned above and as required by Section 399.008(a)(2):

NOW THEREFORE, be it resolved by the City Council of the City of Fredericksburg, Texas that:

1. Recitals. The recitals to this Resolution are true and correct and are incorporated into this resolution for all purposes.

2. Establishment of Program. The City of Fredericksburg hereby adopts this Resolution Establishing the City of Fredericksburg Property Assessed Clean Energy Program ("Fredericksburg PACE"), herein called "the Program," and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to the City and its citizens.
3. Contractual Assessments. The City will, at the property owner's request, impose contractual assessments on the property to repay PACE financing for qualified energy and water conserving projects available to owners of privately owned commercial, industrial, and large multifamily property.
4. Qualified Projects. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

5. Region. The boundaries of the entire geographic area within the City's jurisdiction and extra-territorial jurisdiction (ETJ) are included in the boundaries of the region where PACE financing and assessments can occur.
6. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the Authorized Representative to service the debt through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. The City will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. The City will not, at this time, provide financing of any sort for the City's PACE program.
7. Authorized Representative. The City Council will enter into an interlocal agreement with the Alamo Area Council of Governments (AACOG) through which AACOG will act as the Authorized Representative with authority to enter into written contracts with the record owners of real property in City to impose assessments pursuant to the PACE Act to repay the financing of qualified projects on the owners' property, to enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments, and to file written notice of each contractual assessment in

the real property records of Gillespie County, all on behalf of the City. The Authorized Representative may. make technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute. The City Manager or his designee will be the liaison with the Authorized Representative.

8. Enforcement. The City will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.
9. Report. The final report on the - PACE program, prepared in accordance with Section 399.009 of the Texas Local Government Code is attached and incorporated into this resolution. The City will post the resolution and report on the City's website.
10. Amendment of Program. The City Council may amend the City's PACE Program by resolution. However, another public hearing is required before the Program may be amended to provide for City financing of qualified improvements through assessments.

Adopted this __ day of _____, 20__.

Honorable Linda Langerhans, Mayor

Honorable Charlie Kiehne

Honorable Gary Neffendorf

Honorable Tom Musselman

Honorable Bobby Watson



CITY COUNCIL MEMO

DATE: January 21,2020

TO: Mayor and City Council

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

SUBJECT: Consideration of Resolution for Lease of Golf Course Equipment

Summary:

This item is for the consideration of adopting a resolution authorizing the negotiation, execution and delivery of a lease with TCF National Bank for three Club Car Carryall 300 Gas Utility Vehicles.

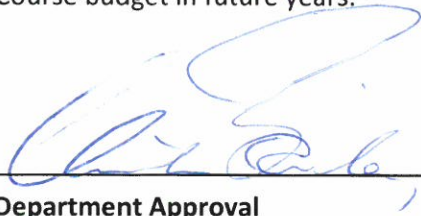
Recommendation:

City Staff recommends adoption of the proposed resolution.

Background / Analysis:

The Golf Course Maintenance Department currently utilizes three small golf course maintenance vehicles that have reached the end of their useful life. The proposed lease agreement is for three new gasoline powered golf cart maintenance vehicles. The term of the proposed lease is 48 months with a monthly lease payment of \$504.09. According to Golf Course General Manager Mr. Chris Meade, this unbudgeted expense is necessary and can be compensated for in Golf Course Maintenance Department savings over the remaining nine months of the fiscal year through budget reductions without

compromising the quality of the golf course. The proposed equipment lease will be included in the Golf Course budget in future years.



Department Approval



City Manager Approval

RESOLUTION 2020-02R
LEASE NO. 008-0637041-103
DATED AS OF DECEMBER 17, 2019

A resolution authorizing the negotiation, execution, and delivery of Lease No. **008-0637041-103** dated **December 17, 2019** (the "Lease"), between **City of Fredericksburg, Texas dba Lady Bird Johnson Golf Course, 341 Golfers Loop, Fredericksburg, TX 78624** and **TCF National Bank, 1111 West San Marnan Dr, Suite A2 West, Waterloo, IA 50701-8926**; and prescribing other details in connection therewith.

WHEREAS, City of Fredericksburg, Texas dba Lady Bird Johnson Golf Course, (the "Lessee") is a political subdivision duly organized and existing pursuant to the Constitution and laws of the State of Texas; and

WHEREAS, Lessee is duly authorized by applicable law to acquire such items of personal property as are needed to carry out its governmental functions and to acquire such personal property by entering into lease-purchase agreements; and

WHEREAS, Lessee hereby finds and determines that the execution of a Lease for the purpose of leasing with the option to purchase the property designated and set forth in the Lease is appropriate and necessary to the function and operations of the Lessee; and

WHEREAS, TCF National Bank, (the "Lessor") shall act as Lessor under said Lease; and

WHEREAS, the Lease shall not constitute a general obligation indebtedness of the Lessee within the meaning of the Constitution and laws of the State;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF City of Fredericksburg, Texas dba Lady Bird Johnson Golf Course:

Section 1. The Lease, in substantially the form as presently before the governing body of the Lessee, is hereby approved, and the City Manager of the Lessee, is hereby authorized to negotiate, enter into, execute, and deliver the Lease and related documents in substantially the form as presently before the governing body of the Lessee, with such changes therein as shall be approved by such officer, and which Lease will be available for public inspection at the offices of Lessee.

Section 2. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Lease.

Section 3. The Lessee's obligations under the Lease shall be expressly subject to annual appropriation by Lessee; and such obligations under the Lease shall not constitute a general obligation of Lessee or indebtedness of Lessee within the meaning of the Constitution and laws of the State of Texas.

Section 4. All other related contracts and agreements necessary and incidental to the Lease are hereby authorized, ratified and approved.

Section 5. This resolution shall take effect immediately upon its adoption and approval.

CERTIFIED AS TRUE AND CORRECT this ____ day of _____, 20 ____.

Signature of Clerk, Secretary or Assistant Secretary

Printed Name of Clerk, Secretary or Assistant Secretary

Linda Langerhans
Mayor



CITY COUNCIL MEMO

DATE: January 21, 2020

TO: Mayor and City Council

FROM: Laura Hollenbeak, Director of Finance

SUBJECT: Professional Services Agreements with Avenu Insights & Analytics, LLC

Summary:

As part of the fiscal year 2020 budget discussion, the City Council approved recommendations by City staff for:

Local Hotel Occupancy Tax Program – Discovery/Recovery, Audit and Administration Services

Sales and Use Tax Discovery and Recovery Services

Short-term Rental (STR) Permitting Services

Recommendation:

City Staff recommends approval of the Professional Services Agreements with Avenu Insights & Analytics, LLC to perform professional services as outlined in the attached agreements.

Background / Analysis:

Avenu Insights' Local Occupancy Tax Program Audit service is intended to assist the City in maximizing lodging tax revenue it is entitled to through on-site and or remote examination of records and education of the lodging providers to ensure the appropriate collection and remittance of the lodging tax. The Administration service offers a turnkey approach to ensure appropriate collection, deposit, recording,

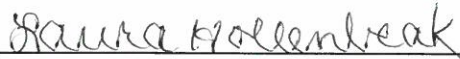
delinquency follow up and reporting of the local lodging tax. This service includes all correspondence, forms and other such services to ensure appropriate and timely remittance of the tax.

Avenu Insights' Sales/Use Tax Compliance Review is designed to assist the City in enhancing its sales/use tax revenues by detecting, documenting, and correcting sales/use tax errors thereby producing previously unrealized revenue for the City.

Avenu Insights' STR Permitting and Administration Services Program consists of an Implementation Phase, leading up to a live cutover from the City's current administration at a mutually agreeable date; and a recurrent ongoing administration cycle, in which Avenue will serve as the City's full-service administrator for STR Permitting within the City.

Attachments:

1. Consultant Services Agreement – Sales/Use Tax Compliance Review
2. Consultant Services Agreement – Local Occupancy Tax Program – Discovery/Recovery, Audit and Administration Services
3. Short-term Rental Permitting Services Agreement



Department Approval



City Manager Approval



City Attorney Approval

**Avenu Insights & Analytics, LLC
Consultant Services Agreement**

This Consultant Services Agreement (the "Agreement") is made as of the _____ day of _____, 2019 ("Effective Date") by and between Avenu Insights & Analytics, LLC, dba AVENU MuniServices, LLC, a Delaware limited liability company ("CONSULTANT") and The City of Fredericksburg, a municipal corporation of the State of Texas ("CITY"). In consideration of the mutual promises herein contained and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

A. Services

1. CONSULTANT will provide CITY with the services described in EXHIBIT A which is attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and in the manner specified in EXHIBIT A.
2. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

B. Compensation

1. Upon execution of this Agreement, CITY will pay CONSULTANT as outlined in EXHIBIT B, incorporated and included herein.

C. General Provisions

1. Term of the Agreement: The initial term of this Agreement shall be for a period of one (1) year following the date of execution, and automatically renew for three subsequent one-year terms if neither party has cancelled (the "Term"). Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing sixty (60) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial sixty (60) days' notice. Notwithstanding the foregoing, either party may terminate the Agreement at any time and for any reason by providing thirty-days (30) written notice to the other party; provided however, that if CONSULTANT has not breached the Agreement and has commenced services identified in EXHIBIT A prior to the date of termination, CONSULTANT shall be entitled to payment as described in EXHIBIT B.
2. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay CONSULTANT for services performed through the effective date of termination for which CONSULTANT has not been previously paid. In addition, because the services performed by CONSULTANT prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to CONSULTANT's fee, the CITY shall remain obligated after termination or non-renewal to provide to CONSULTANT such information as is necessary for CONSULTANT to calculate compensation due as a result of the receipt of revenue by the CITY.
3. Independent Contractor: It is understood that CONSULTANT and its subcontractors, if any, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the CITY. CITY understands that CONSULTANT may perform similar services for others during the term of this Agreement and agrees that CONSULTANT representation of other government sector

clients is not a conflict of interest. CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

4. **Subcontractors:** CONSULTANT shall have the right to hire subcontractors to provide the services described herein. CONSULTANT, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
5. **Notice:** Any notice required to be given under this Agreement shall be in writing and either served personally, sent prepaid first-class mail, or by express mail courier (i.e. FedEx, UPS, etc.). Any such notice shall be addressed to the other party at the address set forth below. All notices, including notices of address changes, provided under this Agreement are deemed received on the third day after mailing if sent by regular mail, or the next day if sent overnight delivery.

If to CITY:

City of Fredericksburg
Attn: Laura Hollenbeak
126 W Main Street
Fredericksburg, TX 78624
Phone: 830-997-7521
Email: lhollenbeak@fbgtx.org

If to CONSULTANT:

Avenu Insights & Analytics, LLC
Attn: Contracts Department
7625 N. Palm Ave., Ste. 108
Fresno, CA 93711
Phone: 559.271.6852
Email: contracts@avenuinsights.com

6. **Representative or designees:** CONSULTANT Primary Representative/Project Manager shall be:

Brenda Anderson, Client Services Manager
12301 Kurland Dr. Ste 150, Houston, TX 77034
Phone: 817.771.4066 /Email: Brenda.Anderson@avenuinsights.com

For the convenience of the CITY, a short list of helpful contacts is attached and incorporated herein as EXHIBIT C.

7. **Indemnity:** CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to extent occurring or resulting from CONSULTANT's negligent or unlawful performance of its obligations under or breach of the terms of this Agreement, unless such claims, liabilities, or losses arise out of, or are caused at least in part by the sole negligence or willful misconduct of the CITY. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subcontractors.
8. **Limitation of Liability:** In no event shall CONSULTANT, its employees, contractors, directors, affiliates and/or agents be liable for any special, incidental, or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not CONSULTANT has been advised of the possibility of any such loss or damage. In addition, CONSULTANT's total liability hereunder, including reasonable attorneys' fees and costs, shall in no event exceed an amount equal to the fees described in EXHIBIT B. The foregoing sets forth the CITY's exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between CONSULTANT and the CITY and CONSULTANT's pricing reflects the allocation of risk and limitation of liability specified herein.

9. Insurance: CONSULTANT shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability and fidelity insurance. The insurance certificate shall name the City, its agents, officers, servants and employees as additional insureds under the CGL and Automobile policies with respect to the operations and work performed by the named insured as required by written contract. The General Liability policy is Primary & Non-Contributory. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The CGL insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence and \$2,000,000 aggregate. The Automobile Liability insurance minimum coverage shall be at least \$1,000,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to the CITY, except in the case of cancellation for non-payment of premium which shall be at least 10-days written notice.
10. Equal Opportunity to Draft: The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
11. Assignment: This Agreement shall be binding upon and inure to the benefit of the parties, their successors, representatives and assigns. CONSULTANT shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, CONSULTANT may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which CONSULTANT has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of CONSULTANT; or any corporation or entity which acquires all or substantially all of the assets of CONSULTANT. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
12. Ownership of Documents: Except for CONSULTANT's preexisting proprietary information and processes, any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by CONSULTANT pursuant to this agreement shall be the property of the CITY at the moment of their completed preparation.
13. Intellectual Property Rights: The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in CONSULTANT or its subcontractors. The foregoing notwithstanding, in no event shall any CITY-owned data provided to CONSULTANT be deemed included within the Work Product.
14. Public Release and Statements: Neither party or its representatives or agents shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other party. Neither party shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other party. No party or its agent will use the name, mark or logo of the other party in any advertisement or printed solicitation without first having prior written approval of the other party. The parties shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other party without that party's prior written approval. In addition, the parties agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.

15. Force Majeure: CONSULTANT shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
16. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written amendment signed by both parties.
17. Counterparts: This Agreement may be signed in separate counterparts including facsimile copies. Each counterpart (including facsimile copies) is deemed an original and all counterparts are deemed on and the same instrument and legally binding on the parties.
18. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. Implementation: Implementation should begin as soon as possible from the signing of this Agreement (the "Effective Date") for the performance of services under the terms of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

"CITY"

City of Fredericksburg
a Municipal Corporation

By: _____

Name: _____

Title: _____

ATTEST:

Name: _____

Title: _____

APPROVED AS TO FORM:

Name: _____

Title: _____

"CONSULTANT"

Avenu Insights & Analytics, LLC
a Delaware limited liability company

By: _____

Daryl Savage
General Counsel

EXHIBIT A – SCOPE OF WORK SALES/USE TAX COMPLIANCE REVIEW

Objectives and Methods

CONSULTANT's Sales/Use Tax Compliance Review is designed to assist CITY in enhancing its sales/use tax revenues by detecting, documenting, and correcting sales/use tax errors thereby producing previously unrealized revenue for CITY.

Scope of Work

In providing the Sales/Use Tax Compliance Review, CONSULTANT shall:

- Meet with CITY's designated staff to review service objectives, scope, procedures, coordination of effort, work plan schedule, public relations, and logistical matters.
- Establish an appropriate liaison with the CITY and define logical checkpoints for reviewing progress.
- Perform a review of the CITY's businesses' sales/use tax remittances in an effort to ensure proper application of local sales/use tax law and achieve past and/or prospective compliance, as applicable.
- On behalf of the CITY, CONSULTANT will assist the businesses, as necessary, in the preparation and filing of amended returns and/or reallocation requests with the Comptroller's office in order to gain compliance. CONSULTANT and/or the CITY may also provide additional documentation to the Comptroller's office to request its assistance in gaining compliance from taxpayers as needed.

Deliverables

Progress Reports

CONSULTANT will provide periodic progress reports to CITY in the form of status updates. CONSULTANT's progress reports will identify errors detected, documented and corrected.

CITY Assistance

CITY shall assist CONSULTANT by providing information and assistance necessary to perform the Sales/Use Tax Compliance Review to include, without limitation, the following:

- Providing CONSULTANT historical sales/use tax information including but not limited to confidential reports previously received from the Comptroller for past periods, if available.
- Issuing necessary documentation to the Comptroller to allow CONSULTANT to access and receive detailed confidential reports on an on-going monthly basis.
- Providing a letter of introduction identifying CONSULTANT as an authorized agent of the CITY to perform the Sales/Use Tax Compliance Review and to receive and examine taxpayer records necessary to assure sales/use tax compliance.
- Pursuing in good faith corrective action on errors detected by CONSULTANT.
- Issuing necessary documentation to the Comptroller to correct errors validated by CONSULTANT.

The parties agree that the CITY and/or the Comptroller retain exclusive authority and responsibility to administer, interpret and enforce the CITY's sales/use tax, recognizing that CONSULTANT's role is limited to employing its unique expertise and proprietary tools for: i) detecting and documenting errors by taxpayers in the application, calculation, collection, and/or remittance of sales/use taxes and, ii) providing CITY with technical assistance, without assuming or being delegated the authority or responsibility of CITY to administer, interpret, and enforce CITY's sales/use taxes.

EXHIBIT B - COMPENSATION SALES/USE TAX COMPLIANCE REVIEW

Provided that the Effective Date is on or before _____, in exchange for CONSULTANT performing the work indicated above, the CITY will pay CONSULTANT as follows:

The CITY shall pay CONSULTANT a thirty percent (30%) contingency fee. The fee applies to the additional sales/use tax revenue received by the CITY, resulting from a correction of taxpayer reporting errors detected and documented by the CONSULTANT's Sales Tax Compliance Review. The Contingency Fee applies to both: (a) past compliance (as applicable) – additional sales/use tax revenues received by the CITY from prior periods; and (b) prospective compliance (as applicable) -- incremental increase in sales/use tax revenues received for the first eight consecutive reporting quarters (24 months) following correction of the errors and confirmation of receipt of revenue by the CITY. An incremental increase is calculated as the current month's correct tax remittance less the monthly average of the prior 12 months immediately prior to the first month of correct tax remittance.

CONSULTANT will invoice CITY quarterly based on past and/or prospective compliance secured on behalf of CITY. Invoices are due and payable upon receipt.

All expenses incurred by CONSULTANT in providing the Sales/Use Tax Compliance Review are the sole and exclusive responsibility of CONSULTANT, except those expenses that receive prior written approval by CITY.

Completion of Services

Notwithstanding anything else in this Agreement to the contrary, the CITY will pay CONSULTANT per the terms of this Agreement for services performed before termination or expiration of the Agreement, even if the sales/use tax revenues are received after termination or expiration. CONSULTANT will provide CITY with a list of taxpayer accounts submitted but not yet corrected as of the expiration or termination within a reasonable time after the expiration or termination ("completion list"). CONSULTANT is allowed to continue working those taxpayer accounts on the completion list for a reasonable time, not to exceed 180 days, to obtain a correction.

Additional Consulting

CITY may request that CONSULTANT provide additional consulting services at any time during the term of this Agreement. If CONSULTANT and CITY agree on the scope of the additional consulting services requested, then CONSULTANT shall provide the additional consulting on a Time and Materials basis. Depending on the personnel assigned to perform the work, standard hourly rates range from \$75 per hour to \$300 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

EXHIBIT C
AVENU Helpful Contacts

Contact	Project Role	Phone	Email
Brenda Anderson	Client Services Manager	817.771.4066	brenda.anderson@avenuinsights.com
Patrick Scott	Senior Vice President	856.272.7483	patrick.scott@avenuinsights.com
Chris Yeary, CPA	VP, Sales & Use Tax	972.447.4953	chris.yeary@avenuinsights.com
Irene Reynolds	Client Relations Manager	559.271.6867	irene.reynolds.@avenuinsights.com
Jaimie Lewis	Billing Department	571.485.7875	billing@avenuinsights.com
Francesco Mancia, MBA	VP Government Relations	559.288.7296	fran.mancia@avenuinsights.com
Francis Enaholo	Contracts Director	559.441.1863	francis.enaholo@avenuinsights.com

Avenu Insights & Analytics, LLC Consultant Services Agreement

This Consultant Services Agreement (the "Agreement") is made as of the _____ day of _____, 2019 ("Effective Date") by and between Avenu Insights & Analytics, LLC, dba AVENU MuniServices, LLC, a Delaware limited liability company ("CONSULTANT") and The City of Fredericksburg, a municipal corporation of the State of Texas ("CITY"). In consideration of the mutual promises herein contained and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

A. Services

1. CONSULTANT will provide CITY with the services described in EXHIBIT A which is attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and in the manner specified in EXHIBIT A.
2. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

B. Compensation

1. Upon execution of this Agreement, CITY will pay CONSULTANT as outlined in EXHIBIT B, incorporated and included herein.

C. General Provisions

1. Term of the Agreement: The initial term of this Agreement shall be for a period of one (1) year following the date of execution, and automatically renew for three subsequent one-year terms if neither party has cancelled (the "Term"). Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing sixty (60) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial sixty (60) days' notice. Notwithstanding the foregoing, either party may terminate the Agreement at any time and for any reason by providing thirty-days (30) written notice to the other party; provided however, that if CONSULTANT has not breached the Agreement and has commenced services identified in EXHIBIT A prior to the date of termination, CONSULTANT shall be entitled to payment as described in EXHIBIT B.
2. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay CONSULTANT for services performed through the effective date of termination for which CONSULTANT has not been previously paid. In addition, because the services performed by CONSULTANT prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to CONSULTANT's fee, the CITY shall remain obligated after termination or non-renewal to provide to CONSULTANT such information as is necessary for CONSULTANT to calculate compensation due as a result of the receipt of revenue by the CITY.
3. Independent Contractor: It is understood that CONSULTANT and its subcontractors, if any, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the CITY. CITY understands that CONSULTANT may perform similar services for others during the term of this Agreement and agrees that CONSULTANT representation of other government sector

clients is not a conflict of interest. CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

4. **Subcontractors:** CONSULTANT shall have the right to hire subcontractors to provide the services described herein. CONSULTANT, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
5. **Notice:** Any notice required to be given under this Agreement shall be in writing and either served personally, sent prepaid first-class mail, or by express mail courier (i.e. FedEx, UPS, etc.). Any such notice shall be addressed to the other party at the address set forth below. All notices, including notices of address changes, provided under this Agreement are deemed received on the third day after mailing if sent by regular mail, or the next day if sent overnight delivery.

If to CITY:

City of Fredericksburg
Attn: Linda Hollenbeak
126 W Main Street
Fredericksburg, TX 78624
Phone: 830-997-7521
Email: lhollenbeak@fbgtx.org

If to CONSULTANT:

Avenu Insights & Analytics, LLC
Attn: Contracts Department
7625 N. Palm Ave., Ste. 108
Fresno, CA 93711
Phone: 559.271.6852
Email: contracts@avenuinsights.com

6. **Representative or designees:** CONSULTANT Primary Representative/Project Manager shall be:

Brenda Anderson, Client Services Manager
12301 Kurland Dr. Ste 150, Houston, TX 77034
Phone: 817.771.4066 /Email: Brenda.Anderson@avenuinsights.com

For the convenience of the CITY, a short list of helpful contacts is attached and incorporated herein as EXHIBIT C.

7. **Indemnity:** CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to extent occurring or resulting from CONSULTANT's negligent or unlawful performance of its obligations under or breach of the terms of this Agreement, unless such claims, liabilities, or losses arise out of, or are caused at least in part by the sole negligence or willful misconduct of the CITY. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subcontractors.
8. **Limitation of Liability:** In no event shall CONSULTANT, its employees, contractors, directors, affiliates and/or agents be liable for any special, incidental, or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not CONSULTANT has been advised of the possibility of any such loss or damage. In addition, CONSULTANT's total liability hereunder, including reasonable attorneys' fees and costs, shall in no event exceed an amount equal to the fees described in EXHIBIT B. The foregoing sets forth the CITY's exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between CONSULTANT and the CITY and CONSULTANT's pricing reflects the allocation of risk and limitation of liability specified herein.

9. Insurance: CONSULTANT shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability and fidelity insurance. The insurance certificate shall name the City, its agents, officers, servants and employees as additional insureds under the CGL and Automobile policies with respect to the operations and work performed by the named insured as required by written contract. The General Liability policy is Primary & Non-Contributory. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The CGL insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence and \$2,000,000 aggregate. The Automobile Liability insurance minimum coverage shall be at least \$1,000,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to the CITY, except in the case of cancellation for non-payment of premium which shall be at least 10-days written notice.
10. Equal Opportunity to Draft: The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
11. Assignment: This Agreement shall be binding upon and inure to the benefit of the parties, their successors, representatives and assigns. CONSULTANT shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, CONSULTANT may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which CONSULTANT has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of CONSULTANT; or any corporation or entity which acquires all or substantially all of the assets of CONSULTANT. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
12. Ownership of Documents: Except for CONSULTANT's preexisting proprietary information and processes, any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by CONSULTANT pursuant to this agreement shall be the property of the CITY at the moment of their completed preparation.
13. Intellectual Property Rights: The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in CONSULTANT or its subcontractors. The foregoing notwithstanding, in no event shall any CITY-owned data provided to CONSULTANT be deemed included within the Work Product.
14. Public Release and Statements: Neither party or its representatives or agents shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other party. Neither party shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other party. No party or its agent will use the name, mark or logo of the other party in any advertisement or printed solicitation without first having prior written approval of the other party. The parties shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other party without that party's prior written approval. In addition, the parties agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.

15. Force Majeure: CONSULTANT shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
16. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written amendment signed by both parties.
17. Counterparts: This Agreement may be signed in separate counterparts including facsimile copies. Each counterpart (including facsimile copies) is deemed an original and all counterparts are deemed on and the same instrument and legally binding on the parties.
18. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. Implementation: Implementation should begin as soon as possible from the signing of this Agreement (the "Effective Date") for the performance of services under the terms of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

"CITY"

City of Fredericksburg
a Municipal Corporation

By: _____

Name: _____

Title: _____

ATTEST:

Name: _____

Title: _____

APPROVED AS TO FORM:

Name: _____

Title: _____

"CONSULTANT"

Avenu Insights & Analytics, LLC
a Delaware limited liability company

By: _____

Daryl Savage
General Counsel

**EXHIBIT A - SCOPE OF WORK
LOCAL OCCUPANCY TAX PROGRAM
DISCOVERY/RECOVERY, AUDIT AND ADMINISTRATION SERVICES**

Objectives and Methods

CONSULTANT's Local Occupancy Tax Program Audit service is intended to assist the CITY in maximizing lodging tax revenue it is entitled to through on-site and or remote examination of records and education of the lodging providers to ensure the appropriate collection and remittance of the lodging tax. The Administration service offers a turnkey approach to ensure appropriate collection, deposit, recording, delinquency follow up and reporting of the local lodging tax. This service includes all correspondence, forms and other such services to ensure appropriate and timely remittance of the tax.

Scope of Work

1. Field Audit Services

- a. Perform on-site and or remote examinations of the records of those lodging providers requested by CITY to warrant further investigation;
- b. Provide CITY staff with a detailed list of all records required to be made available by lodging providers for the further reviews, together with draft authorization and audit initiation letters to be sent to each lodging provider requiring examination;
- c. In coordination with CITY staff, schedule and conduct reviews at the property locations or in some cases remotely, of those lodging providers identified and authorized for examination;
- d. Verify accuracy of filed lodging tax returns with daily and monthly activity summaries;
- e. Review a sample of the daily and monthly summaries to determine if the daily summaries reconcile to the monthly summaries;
- f. Review bank statements to verify that deposits reconcile with the reported revenue on the lodging tax returns;
- g. Review exempted revenue for appropriate supporting documentation;
- h. Review a sample of exempted guest revenue and trace registration and/or other source documents to verify compliance with the CITY ordinance;
- i. Where available, compare the lodging tax filings filed with the State to the lodging tax filings filed with the CITY;
- j. For each error/omission identified and confirmed, submit substantiating documentation to designated CITY staff in order to facilitate collection of lodging tax revenue due to City from lodging providers for prior periods;
- k. Coordinate with designated CITY official(s) as necessary to review findings and recommendations;
- l. Prepare draft reports of examination and other correspondence, as applicable, for CITY to advise lodging providers of examination results;
- m. Assist the CITY in reviewing any evidence submitted by lodging providers in contesting a deficiency determination; and
- n. Prepare and document any changes to the review findings and provide revised tax, interest or penalty amounts due the CITY.

2. Administration Services

A. Remittance Processing

1. Taxes Processed: CONSULTANT will perform remittance processing for lodging taxes as designated by the CITY.
2. Taxpayer Notification and Remittance: CONSULTANT will send individualized tax forms to all known lodging providers ("Taxpayer(s)"). Taxpayers will remit payments as indicated in Attachment A, Distribution Confirmation, attached and incorporated herein by reference. Upon reasonable notice to CITY, CONSULTANT may change the address for payments.

Online filing and remittance using standard CONSULTANT formatting is provided for the Taxpayers convenience.

3. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the CITY for each type of tax collected, as shown in more detail on Attachment A.
4. Posting Process: Taxpayer accounts are posted with payment information captured in the CONSULTANT revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change and address change is captured and added to the payment data and taxpayer master file (as determined necessary by CONSULTANT). Late payments (postmarked by U.S. Postal Service after the due date) are invoiced at penalty

amounts required by Texas law and CITY ordinance. Under-payments are invoiced for remaining tax due plus any required penalties.

5. Changes to Attachment A: The CITY shall notify CONSULTANT in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended Attachment A shall be prepared and executed by the Parties as soon as reasonably possible. In addition, CONSULTANT shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the CITY, then the CITY shall immediately notify CONSULTANT and, thereafter, CONSULTANT shall take the steps necessary to insure that designated recipients receive the amounts intended by the CITY.

B. Compliance Services

1. Taxes Reviewed: CONSULTANT will perform compliance services for lodgings taxes designated by CITY under Remittance Processing Services. CONSULTANT will provide delinquency notification and follow-up. This includes correspondence, calls, and collection procedures and the related documentation. Delinquency policies and procedures will be applied consistently and within applicable tax laws. Unless otherwise directed by the CITY, CONSULTANT will make reasonable efforts to collect taxes designated by the CITY hereunder. Where deemed reasonably appropriate accounts may be turned over to audit or third-party collection. If the CITY elects to have its attorney pursue collection of certain uncollected accounts, CONSULTANT will assist the CITY attorney as reasonably requested at CONSULTANT'S normal hourly rate as reflected herein.
2. Conduct of Compliance Services: To assure that all taxpayers are treated fairly and consistently and all compliance services are performed in a similar manner, CONSULTANT representatives who perform compliance services will use a similar compliance plan for each compliance service conducted. All funds due from compliance services will be remitted to CITY in the same manner as provided for pursuant to *Section 2(A)*, above.

C. General Provisions

1. Information Provided: The CITY represents that the information provided to CONSULTANT in the performance of services hereunder shall be provided free and clear of the claims of third parties. The CITY represents that it has the right to provide this information to CONSULTANT and that said information shall not be defamatory or otherwise expose CONSULTANT to liability to third parties.
2. Compliance with laws: Each Party accepts responsibility for its compliance with federal, state, or local laws and regulations.
3. Taxpayer service: CONSULTANT will provide a taxpayer assistance number for taxpayer questions. CONSULTANT will provide standard informational brochures for placement in the CITY offices, Chamber of Commerce offices, libraries and any other facilities as requested and/or deemed necessary.

3. Discovery/Recovery Services

Discovery/Recovery Services are designed to provide a full-service solution to the CITY'S lodging tax enforcement procedures. It does not replace current functions but provides a focused and fulltime solution to the identification of entities subject to taxation by the CITY, which are not properly registered with the CITY, or otherwise not reporting lodging taxes to the CITY. In performing the Discovery Services, CONSULTANT shall:

- a. Establish a comprehensive inventory of the entities subject to taxation by the CITY and the database elements needed to facilitate a comprehensive comparative analysis with the CITY'S records of those entities that are properly registered with the CITY;
- b. Compare CONSULTANTS' database of business records with the CITY's records to identify potential non-reporting and non-registered entities subject to taxation;
- c. For unregistered or non-reporting entities identified and confirmed, assist the entities, as necessary, to complete the CITY'S applicable registration forms;
- d. Invoice entities (including supporting documentation) on behalf of the CITY for the amount of identified deficiencies, with payment to be remitted to CONSULTANT;
- e. Exhaust all reasonable efforts to work with the taxpayer in submitting registration forms correctly;
- f. Collect the amount of identified deficiencies, together with supporting documentation, and remit payment received to the City as agreed upon pursuant to *Section 2(A)*, above..
- g. Payments will be disbursed minus CONSULTANT fees together with reporting reconciling collections. Applications and forms collected by CONSULTANT will be provided to CITY with monthly reports.

- h. Establish a call center open during normal business hours to assist entities with questions concerning application of the CITY'S taxes, and reporting and remittance requirements;
- i. Educate entities regarding the CITY'S reporting requirements to prevent recurring deficiencies in future years.

Deliverables

1. Field Audit Services

- a. Provide CITY staff with draft Authorization and Audit Initiation Letters to be sent to each lodging provider to be examined;
- b. For each error/omission identified and confirmed, submit a written report of examination and supporting documentation to designated CITY staff in order to facilitate collection of revenue due from lodging providers for prior periods together with draft Notices of Deficiency Determination, and/or credit, warning or commendation letters as applicable;
- c. Review any extenuation or mitigation evidence proffered to deficiency determinations and prepare draft response to CITY staff; and
- d. Provide other collections advice to CITY upon request.

2. Administration Services

- a. CONSULTANT will make available to CITY detailed online reporting, including detailed payment listing, daily/weekly/monthly reconciliation reports, etc.
- b. CONSULTANT will provide the CITY with monthly reports including, but not limited to, payment listings showing all taxes received related to net receipts reported, a general ledger distribution that corresponds to the CITY's account numbers and all fees paid to CONSULTANT. These reports will be provided by the 10th of the month following the tax month;
- c. The CITY AGREES TO EXAMINE THIS REPORT IMMEDIATELY. IF NO ERROR IS REPORTED BY THE CITY TO CONSULTANT WITHIN 60 DAYS, THE STATEMENT WILL BE DEEMED ACCURATE; All items credited will be subject to receipt of payment.

3. Discovery/Recovery Services

- a. CONSULTANT will provide reports to CITY identifying each taxpayer not reporting, including the business name, address, and telephone number; and
- b. CONSULTANT will monitor and analyze the business license registration files of the CITY each quarter in order to determine non-reporting businesses.

CITY Assistance

The CITY shall assist CONSULTANT by providing necessary information and assistance to include, but not be limited to, the following:

Field Audit Services

Send Audit Announcement Letter to each lodging provider to be examined with a copy to CONSULTANT.

Administration Service and Discovery/Recovery

Prior to the start of the work to be performed, provide CONSULTANT with

- a. the most recent registration to collect the tax and
- b. returns for the time period requested as needed to compile a historical database for the period of the statute of limitations;
- c. Inform CONSULTANT of any circumstances concerning current existing payees;
- d. Inform CONSULTANT of the development of new lodging properties no later than the Certificate of Occupancy being granted;
- e. Cooperate in the transition by reviewing proposed processing and materials, offering comments and suggestions and providing timely approvals;
- f. Undergo training in the use of online applications.

Distribution Confirmation

The CITY will fill in the account information requested on Attachment A and attach the same to the fully executed Agreement. Should there be any changes to the account or percentages in Attachment A, the CITY shall immediately notify CONSULTANT in writing of all changes in amounts to be deposited into the accounts of designated recipients.

ATTACHMENT A
Distribution Confirmation

11/12/2019

City of Fredericksburg
126 W Main Street
Fredericksburg, TX 78624

Dear Ms. Hollenbeak:

Funds will be distributed in the following accounts pursuant to this Agreement:

Agency	Routing #	Account #	Distribution %	Tax Type
			100%	Lodging

If at any time there are any discrepancies between the schedule set out above and the City's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

Avenu Insights & Analytics, LLC
600 Beacon Parkway West, Suite 900
Birmingham, AL 35209
Attn.: Daryl Savage, General Counsel

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Connie Taylor, Client Relations Manager
Avenu Insights & Analytics, LLC
Phone: 205-423-4144
Fax: 205-423-4097
E-mail: connie.taylor@avenuinsights.com

I have reviewed the above distribution and verify that it is correct.

By: _____

Name: _____

Title: _____

**EXHIBIT B – COMPENSATION
LOCAL OCCUPANCY TAX PROGRAM
DISCOVERY/RECOVERY, AUDIT AND ADMINISTRATION SERVICES**

Provided that the Effective Date is on or before _____ in exchange for CONSULTANT performing the work indicated above, the CITY will pay CONSULTANT as follows:

Audit

The Audit Services shall be provided for a fixed fee of \$2,000 for each lodging property audited with 50% due at the time of audit approval and 50% upon completion of the audit. A minimum of 2 audits must be performed at any one time.

Administration

The Administration Services shall be provided for a one-time set up fee of \$2,500, plus an annual fixed fee of \$200 per each lodging property. Fees are due at the beginning of each contract year based on the number of properties registered to report occupancy tax.

Discovery/Recovery

The Discovery/Recovery Services shall be provided for a contingency fee of forty percent (40%) of the additional revenue received by the CITY for the services. The 40% shall apply to the current tax year, all eligible prior period revenues collected, and any applicable penalties, interest, and late charges. The contingency fee only applies to revenue actually received by the CITY. The term "current tax year" shall mean the most recent tax year for which local taxes are due and payable to the CITY, and in which CONSULTANT has identified deficiencies.

Discount

If the CITY permits on-site examination of the records of ten percent (10%) of the total lodging properties per year, to insure compliance in collecting and returning the local hotel occupancy tax, CONSULTANT shall discount the Administration services to an annual fixed fee of \$185 per each lodging property.

Travel and Out-of-Pocket

CITY shall reimburse CONSULTANT for reasonable travel and other out-of-pocket expenses associated with the performance of the field audits including but not limited to lodging, parking, mileage, per diem, etc. (Mileage and per diem shall be according to IRS regulations). Such reimbursement shall be billed incrementally.

Additional Consulting

CITY may request that CONSULTANT provide additional consulting services at any time during the term of this Agreement. If CONSULTANT and CITY agree on the scope of the additional consulting services requested, then CONSULTANT shall provide the additional consulting on a Time and Materials basis. Depending on the personnel assigned to perform the work, standard hourly rates range from \$75 per hour to \$300 per hour.

These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

EXHIBIT C
AVENU Helpful Contacts

Contact	Project Role	Phone	Email
Brenda Anderson	Client Success Manager	817.771.4066	brenda.anderson@avenuinsights.com
Patrick Scott	Senior Vice President	559.288.5687	patrick.scott@avenuinsights.com
Jonathan Gerth, Esq.	VP Audit Services	205.423.4177	jonathan.gerth@avenuinsights.com
Christy Cato	VP Tax Administration	205.423.4136	Christy.cato@avenuinsights.com
Carol Dyar	Tax Administration Manager	205.423.4145	carol.dyar@avenuinsights.com
Jaimie Lewis	Billing Department	571.485.7875	billing@avenuinsights.com
Jaimie Lewis	Billing Department	571.485.7875	billing@avenuinsights.com
Francesco Mancia	VP Government Relations	559.288.7296	fran.mancia@avenuinsights.com
Francis Enaholo	Contracts Director	559.441.1863	francis.enaholo@avenuinsights.com

Avenu Insights & Analytics, LLC
Short-term Rental Permitting Services Agreement

This Consultant Services Agreement (the "Agreement") is made as of the _____ day of _____, 2019 ("Effective Date") by and between Avenu Insights & Analytics, LLC, dba AVENU MuniServices, LLC, a Delaware limited liability company ("CONSULTANT") and the City of Fredericksburg, a municipal corporation of the State of Texas ("CITY"). In consideration of the mutual promises herein contained and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

A. Services

1. CONSULTANT will provide CITY with the services described in EXHIBIT A which is attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and in the manner specified in EXHIBIT A.
2. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

B. Compensation

1. Upon execution of this Agreement, CITY will pay CONSULTANT as outlined in EXHIBIT B, incorporated and included herein.

C. General Provisions

1. Term of the Agreement: The initial term of this Agreement shall be for a period of one (1) year following the date of execution, and automatically renew for three subsequent one-year terms if neither party has cancelled (the "Term"). Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing sixty (60) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial sixty (60) days' notice. Notwithstanding the foregoing, either party may terminate the Agreement at any time and for any reason by providing thirty-days (30) written notice to the other party; provided however, that if CONSULTANT has not breached the Agreement and has commenced services identified in EXHIBIT A prior to the date of termination, CONSULTANT shall be entitled to payment as described in EXHIBIT B.
2. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay CONSULTANT for services performed through the effective date of termination for which CONSULTANT has not been previously paid. In addition, because the services performed by CONSULTANT prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to CONSULTANT's fee, the CITY shall remain obligated after termination or non-renewal to provide to CONSULTANT such information as is necessary for CONSULTANT to calculate compensation due as a result of the receipt of revenue by the CITY.
3. Independent Contractor: It is understood that CONSULTANT and its subcontractors, if any, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the CITY. CITY understands that CONSULTANT may perform similar services for others during the term of this Agreement and agrees that CONSULTANT representation of other government sector

clients is not a conflict of interest. CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

4. **Subcontractors:** CONSULTANT shall have the right to hire subcontractors to provide the services described herein. CONSULTANT, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
5. **Notice:** Any notice required to be given under this Agreement shall be in writing and either served personally, sent prepaid first-class mail, or by express mail courier (i.e. FedEx, UPS, etc.). Any such notice shall be addressed to the other party at the address set forth below. All notices, including notices of address changes, provided under this Agreement are deemed received on the third day after mailing if sent by regular mail, or the next day if sent overnight delivery.

If to CITY:

City of Fredericksburg
Attn: Laura Hollenbeak
126 W Main Street
Fredericksburg, TX 78624
Phone: 830-997-7521
Email: lhollenbeak@fbgtx.org

If to CONSULTANT:

Avenu Insights & Analytics, LLC
Attn: Contracts Department
7625 N. Palm Ave., Ste. 108
Fresno, CA 93711
Phone: 559.271.6852
Email: contracts@avenuinsights.com

6. **Representative or designees:** CONSULTANT Primary Representative/Project Manager shall be:

Brenda Anderson, Client Services Manager
12301 Kurland Dr. Ste 150, Houston, TX 77034
Phone: 817.771.4066 /Email: Brenda.Anderson@avenuinsights.com

For the convenience of the CITY, a short list of helpful contacts is attached and incorporated herein as EXHIBIT C.

7. **Indemnity:** CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to extent occurring or resulting from CONSULTANT's negligent or unlawful performance of its obligations under or breach of the terms of this Agreement, unless such claims, liabilities, or losses arise out of, or are caused at least in part by the sole negligence or willful misconduct of the CITY. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subcontractors.
8. **Limitation of Liability:** In no event shall CONSULTANT, its employees, contractors, directors, affiliates and/or agents be liable for any special, incidental, or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not CONSULTANT has been advised of the possibility of any such loss or damage. In addition, CONSULTANT's total liability hereunder, including reasonable attorneys' fees and costs, shall in no event exceed an amount equal to the fees described in EXHIBIT B. The foregoing sets forth the CITY's exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between CONSULTANT and the CITY and CONSULTANT's pricing reflects the allocation of risk and limitation of liability specified herein.

9. Insurance: CONSULTANT shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability and fidelity insurance. The insurance certificate shall name the CITY, its agents, officers, servants and employees as additional insureds under the CGL and Automobile policies with respect to the operations and work performed by the named insured as required by written contract. The General Liability policy is Primary & Non-Contributory. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The CGL insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence and \$2,000,000 aggregate. The Automobile Liability insurance minimum coverage shall be at least \$1,000,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to the CITY, except in the case of cancellation for non-payment of premium which shall be at least 10-days written notice.
10. Equal Opportunity to Draft: The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
11. Assignment: This Agreement shall be binding upon and inure to the benefit of the parties, their successors, representatives and assigns. CONSULTANT shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, CONSULTANT may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which CONSULTANT has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of CONSULTANT; or any corporation or entity which acquires all or substantially all of the assets of CONSULTANT. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
12. Ownership of Documents: Except for CONSULTANT's preexisting proprietary information and processes, any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by CONSULTANT pursuant to this agreement shall be the property of the CITY at the moment of their completed preparation.
13. Intellectual Property Rights: The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in CONSULTANT or its subcontractors. The foregoing notwithstanding, in no event shall any CITY-owned data provided to CONSULTANT be deemed included within the Work Product.
14. Public Release and Statements: Neither party or its representatives or agents shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other party. Neither party shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other party. No party or its agent will use the name, mark or logo of the other party in any advertisement or printed solicitation without first having prior written approval of the other party. The parties shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other party without that party's prior written approval. In addition, the parties agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.

15. Force Majeure: CONSULTANT shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
16. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written amendment signed by both parties.
17. Counterparts: This Agreement may be signed in separate counterparts including facsimile copies. Each counterpart (including facsimile copies) is deemed an original and all counterparts are deemed on and the same instrument and legally binding on the parties.
18. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. Implementation: Implementation should begin as soon as possible from the signing of this Agreement (the "Effective Date") for the performance of services under the terms of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

"CITY"

City of Fredericksburg
a Municipal Corporation

By: _____

Name: _____

Title: _____

ATTEST:

Name: _____

Title: _____

APPROVED AS TO FORM:

Name: _____

Title: _____

"CONSULTANT"

Avenu Insights & Analytics, LLC
a Delaware limited liability company

By: _____

Daryl Savage
General Counsel

EXHIBIT A

Short-term Rental (STR) Permitting and Administration Services

Objectives and Methods

CONSULTANT'S STR Permitting and Administration Services Program consists of an Implementation Phase, leading up to a live cutover from the CITY's current administration at a mutually agreeable date; and a recurrent ongoing administration cycle, in which CONSULTANT will serve as the CITY's full-service administrator for STR Permitting within the CITY.

Scope of Work

In performing the STR Permitting and Administration Services, CONSULTANT shall:

Implementation:

1. Convert and load to CONSULTANT's Administration system all existing CITY STR permit records (to be provided by the CITY.)
2. Verify with the CITY all STR permit letters, forms, notices and any other STR related correspondence.
3. Configure secure web filing and payment portal for use by members of the public to file for and obtain CITY permits for operation of an STR in the CITY.
4. Contact all STR operators a) by mail, including introductory letter with new filing address, telephone contact for support, and web filing instructions; and then b) by telephone follow-up.
5. Cutover from CITY's current STR permitting system to CONSULTANT's STR administration system, according to schedule to be developed with the CITY.

Ongoing STR Permitting and Administration Cycle:

1. Beginning as of the scheduled cutover date, CONSULTANT accepts the CITY STR Permit applications, payments, and related filings on behalf of the CITY, by: a) mail; and b) online web portal.
2. All paper filings, checks and correspondence will be opened by CONSULTANT and batched in CONSULTANT's secure facility. Paper filings will be reconciled with payments by CONSULTANT, and any errors, omissions or balance discrepancies logged for follow-up. Web filings are reconciled daily by CONSULTANT. CONSULTANT also performs the administration of NSF check processing, returns and refunds.
3. Generate and send invoices to any STR operator for balances due, and payments received will be deposited and disbursed to the CITY 10 - 12 times per month.
4. Identify unpermitted STR properties operating or advertising within the CITY limits, and maintain a comprehensive list of unpermitted STR properties currently out of compliance with the CITY STR permitting requirement. For unregistered or unpermitted STR properties identified and confirmed, CONSULTANT shall assist the STR operators, as necessary, to complete the CITY'S STR Permit applications, payments, and related filings.
5. Flag any delinquent STR permit filings for follow-up, and notify STR operators that a filing has not been received as of the due date. CONSULTANT will continue to follow-up with the delinquent STR permit filings until permit application and payments are received and the STR is in compliance with the CITY's STR permitting requirement.
6. Provide complete STR permitting support via toll-free number and e-mail to STR operators seeking assistance with STR permit application filing or payment, mailing address or contact changes, and any other related issues.

Deliverables

Short-term Rental Permitting Reporting and Deliverables

CONSULTANT's online Client Reporting Portal shall provide the CITY access to reports and business information, including but not limited to, the following reports:

1. New Account Listing
2. Transfer and Distribution Report
3. Daily, Weekly and Monthly Reconciliation Reports
4. Detailed Payment History Reports
5. Top Remitters Reports

In addition to the regular reports listed above, CONSULTANT shall, in such time and in such form as the CITY may require, furnish reports concerning the status of services required under this Agreement. CONSULTANT shall, upon request by the CITY and upon completion or termination of this Agreement, deliver to the CITY all data and materials furnished to CONSULTANT by the CITY.

City Assistance

The CITY shall assist CONSULTANT by providing necessary information and assistance to include, but not be limited to, the following:

Short-term Rental (STR)

- a. CITY will provide CONSULTANT all existing CITY STR permit records
- b. CITY will provide authorization for CONSULTANT to act as an agent of the CITY to accept STR permit application filings, payments, and to pursue compliance/collection efforts; and
- c. CITY will provide CONSULTANT with a designated CITY contact person(s) to whom CONSULTANT will provide reports (via the online Client Reporting Portal) to enable responsible CITY oversight of the STR Permitting and Administration Services.

Distribution Confirmation

The CITY will fill in the account information requested on Attachment A and attach the same to the fully executed Agreement. Should there be any changes to the account or percentages in Attachment A, the CITY shall immediately notify CONSULTANT in writing of all changes in amounts to be deposited into the accounts of designated recipients.

EXHIBIT B
Short-term Rental (STR) Permitting and Administration Services

Compensation

Provided that the Effective Date is on or before _____ in exchange for CONSULTANT performing the work indicated above, the CITY will pay CONSULTANT as follows:

Short-term Rental (STR) Permitting and Administration Services

CONSULTANT provided two options for the CITY to choose from. (initial option below)

Option 1 CONSULTANT will provide full STR permitting and administration services with online filing.

OPTION 2 CITY will retain STR administration services.

_____ OPTION 1 One-time setup fee of \$6,500-\$7,500; plus a \$12.00 fee for each STR permit application processed by CONSULTANT under this Agreement (new or renewal)

_____ OPTION 2 One-time setup fee of \$25,000; plus an Annual License Fee of \$4,500

ATTACHMENT A
Distribution Confirmation

January 8, 2020

City of Fredericksburg
Attn: Laura Hollenbeak
126 W Main Street
Fredericksburg, TX 78233

Dear Ms. Hollenbeak:

Funds will be distributed in the following accounts pursuant to this Agreement:

Agency	Routing #	Account #	Distribution %	Tax Type
			100%	Short-term Rental (STR) Permitting fees

If at any time there are any discrepancies between the schedule set out above and the City's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

Avenu Insights & Analytics, LLC
600 Beacon Parkway West, Suite 900
Birmingham, AL 35209
Attn.: Daryl Savage, General Counsel

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Connie Taylor, Client Relations Manager
Avenu Insights & Analytics, LLC
Phone: 205-423-4144
Fax: 205-423-4097
E-mail: connie.taylor@avenuinsights.com

I have reviewed the above distribution and verify that it is correct.

By: _____

Name: _____

Title: _____

EXHIBIT C
AVENU HELPFUL CONTACTS

Contact	Project Role	Phone	Email
Brenda Anderson	Client Services Manager	817.771.4066	brenda.anderson@avenuinsights.com
Patrick Scott	Senior Vice President	559.288.5687	patrick.scott@avenuinsights.com
Jonathan Gerth, Esq.	VP Audit Services	205.423.4177	jonathan.gerth@avenuinsights.com
Christy Cato	VP Tax Administration	205.423.4136	christy.cato@avenuinsights.com
Chris Wills, CRE	Audit Manager	205.423.4128	chris.wills@avenuinsights.com
Carol Dyar	Tax Administration Manager	205.423.4145	carol.dyar@avenuinsights.com
Irene Reynolds	Client Relations Manager	559.271.6867	irene.reynolds@avenuinsights.com
Jaimie Lewis	Billing Department	571.485.7875	billing@avenuinsights.com
Francesco Mancia	VP Government Relations	559.288.7296	fran.mancia@avenuinsights.com



CITY COUNCIL MEMO

DATE: January 14, 2020

TO: Mayor and City Council

FROM: Shelley Goodwin, City Secretary-TRMC

SUBJECT: Appointment of Market Square Redevelopment Commission members

Summary: While doing research on the Committee/Commission the City Council Minutes only reflect the appointment of several members in 1987 and early 90s.

Recommendation City Staff is asking that the Market Square Redevelopment Commission members of 15 and 2 ex-officio members be formally appointed (see list below).

Background / Analysis:

In 1987 The City purchased the northern half of the Square and appointed a group of twelve people as the Market Square Steering Committee. The Committee's name changed to the Market Square Study Committee and in 1990 the Committee became known as the Market Square Redevelopment Commission. Staff has been unable to find minutes that reflect the formal name change, creation of Commission, and the appointment of members.

In an effort to cleanup records, City Staff is working on a Resolution that would provide the Commission with their terms, purpose and their role as an Advisory Commission. This Resolution will be brought to the City Council for approval, but until then the following citizens currently serve on the Commission:

Tim Crenwelge
Linda Langerhans
Peggy Benson
Debbie Farquhar-Reeh
Marty Kaderli
Karen Oestreich
Tony Klein
Joe Kammlah
Robert Spies

Timothy Koock
Jimmy Alexander
Jerry Luckenbach
Jennifer Segner (recently recommended to serve)
Jessie Barter (recently recommended to serve)
Justin or Amy Cop (recently recommended to serve; Staff will let you know which Cop needs to be appointed)
Ex Officio Member John Klein
Ex Officio Member Stan Klein

Attachments:


Department Approval


City Manager Approval


City Attorney Approval



CITY COUNCIL MEMO

DATE: January 15, 2020
TO: Mayor and City Council
FROM: Kent Myers, City Manager
SUBJECT: Interlocal Agreement-Texas PACE Program

Summary:

In order for AACOG to administer the Texas PACE program, an interlocal agreement between the City and AACOG is required.

Recommendation:

If the Texas PACE program is approved by the City Council, then the attached interlocal agreement should be approved which would allow AACOG to administer the program in the City and in our ETJ.

Background / Analysis:

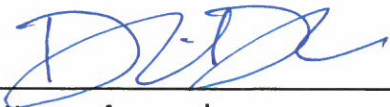
The Texas PACE program has been presented and discussed at several City Council meetings.

Attachments:

Interlocal Agreement


Department Approval


City Manager Approval



City Attorney Approval

**PACE PROGRAM INTERLOCAL AGREEMENT
BY AND BETWEEN THE ALAMO AREA COUNCIL OF GOVERNMENTS
AND THE CITY OF FREDERICKSBURG, TEXAS**

This Interlocal agreement is entered into between the Alamo Area Council of Governments ("AACOG"), a regional Planning Commission and political subdivision of the State of Texas and the City of Fredericksburg, Texas ("**Local Government**"), a body politic and a political subdivision of the State of Texas.

1. STATEMENT OF PURPOSE:

This Interlocal agreement is for the purpose of providing the program administration services needed to implement and administer the Property Assessed Clean Energy (PACE) Program for Local Government.

2. STATEMENT OF SERVICES TO BE PERFORMED BY THE AACOG:

In recognition of the economic benefits for Local Government, AACOG agrees to administer these services in order to help the City create and/or retain jobs and to assist in the growth and stability of the business sector. Businesses in Local Government will be able to take advantage of low-cost, long-term loans for 100% of the cost of energy-efficiency and water conservation improvements. The services to be performed under this agreement are as follows:

A. Community Outreach

1. Establish a PACE Program information page on AACOG's website;
2. Develop a marketing plan and market PACE financing and promote owner participation in the Program;
3. Respond to inquiries from property owners, vendors, contractors, consultants, and the general public;
4. Publish link to the Technical Standards Manual on AACOG's website;
5. List interested, qualified lenders on the Program website or link to another neutral non-profit directory of lenders to enable property owners to identify potential sources of private third-party financing;
6. Coordinate training of contractors and independent third-party reviewers on how to apply for PACE financing and comply with the PACE-in-a-Box Technical Standards Manual; and
7. Establish quality assurance measures

B. Application and Approval Process

1. Publish a Project Application Form based on PACE-in-a-Box model application form on the Program website;
2. Review submitted Application forms for administrative completeness and notify the applicants of any missing information;
3. Maintain the confidentiality of owner information;
4. When Applications are complete, make a preliminary determination of eligibility for participation in the PACE Program and issue preliminary letters to owners and lenders indicating whether, subject to verification of all lender underwriting and closing requirements, the information submitted indicates that the proposed project meets Program requirements;
5. Require independent third-party verification of expected energy or water savings resulting from a project (provided by engineer or consultant retained by applicant), according to the PACE-in-a-Box Technical Standards Manual;
6. Require independent third-party verification, according to the PACE-in-a-Box Technical Services Manual, that the period of an assessment does not exceed the expected life of the improvements or thoroughly review waiver application and justification (provided by engineer or consultant retained by applicant);
7. Confirm that the lender has determined, based on underwriting factors established by the lender, that the owner has demonstrated the financial ability to repay the financial obligations to be repaid through assessment;
8. Require the owner to notify the holder of any mortgage lien on the property of the owner's intention to participate in the Program and obtain the lienholder's written consent prior to the imposition of the PACE assessment;
9. Review and finalize the terms of every Owner Contract and Lender Contract prior to execution;
10. Collect and retain owner application fees as compensation for administrative services;
11. Perform closing verification reviews and schedule assessment transaction closing when all requirements are met;
12. Coordinate and take part in assessment transaction closings;

13. Arrange for recording of a Notice of Contractual Assessment Lien for each approved project in the official public records of the county where the project is located;
14. Require independent post-closing third-party verification (by engineer or consultant retained by Applicant) that each project was properly completed and is operating as intended; and
15. Collect and retain administration fees collected by lenders from owners that receive PACE financing.

C. MANAGEMENT AND REPORTING:

1. Manage communications with lenders regarding assessment servicing, payment, and default;
2. Upon notification by a lender of an owner's default in payment of an assessment and the lender's compliance with the requirements of the Lender Contract on collection after default, notify the Local Government to enforce the assessment lien in accordance with law and the agreements between the parties;
3. Receive and store owner reports on energy and water savings;
4. At the request of property owners, prepare annual notices of assessment to be issued by Local Government to the owners, stating the total amount of the payments due on each assessment in the coming calendar year according to the Owner Contract and the financing documents;
5. Determine the amounts of the application and administration fees to be paid by owners; and
6. Report annually to Local Government on Program usage and the resulting energy and water savings enabled through PACE Assessments.

3. PAYMENT FOR SERVICES:

It is agreed and understood that Local Government will not pay nor be liable to AACOG for any services provided by AACOG or its agents, employees, subcontractors, lenders, or any other related entity. All expenses, application and servicing fees, or costs are paid by the Program applicants pursuant to an established fee structure. AACOG will collect and retain for its own use fees paid by Program applicants during the application process and the subsequent administration of the Program. These fees will be used primarily to offset the costs of administering the program.

Program application and administrative fees are allowed to be included in the total amount financed through the assessments.

4. CITY RESPONSIBILITIES:

The Local Government will negotiate with its enforcement contractor to add PACE Loans to its enforcement policies. Reference Local Government Code, Section 399.014(c).

Local Government will collect and retain interest and penalties as properly assessed.

5. CONFIDENTIALITY:

During the process of the loan and/or services to be provided under this agreement, AACOG will treat as confidential the information or knowledge that becomes known during the application process and shall disclose it only to its officers, directors, or employees with a specific need to know. It will not release, use, copy, or disclose such information and agrees not to share it with any third party or individual except with the specific prior written authorization of the loan applicant. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. AACOG shall promptly notify Local Government of any misuse or unauthorized disclosure of its confidential information. This Program will comply with all security policies that may apply. The parties agree and understand that AACOG is subject to the Texas Public Information Act and other applicable state and federal open records laws.

6. TERM OF AGREEMENT:

This contract shall begin upon the last date of execution by a party to this agreement for a term of one year and shall automatically renew for successive one year terms unless otherwise terminated as provided herein.

7. TERMINATION:

This contract may be terminated by either party for any reason, with or without cause, upon thirty (30) days written notice.

8. AMENDMENTS:

Amendments to this Interlocal Agreement shall be in writing and signed upon final approval by both Parties.

9. INDEMNIFICATION:

To the extent permitted by the Texas Constitution and Texas State Laws without the creation of sinking fund, each party shall indemnify and hold the other party, its affiliated entities, and their respective directors, officers, employees, agents, and representatives, harmless from and against any claims liabilities, damages and expenses arising out of the indemnifying party's act or omissions, or the acts omissions of the indemnifying party's employees, students, facility, staff, agents or representatives, under this Agreement excluding claims, liabilities, damages, expenses

resulting from the negligence or willful misconduct of the other party, its employees, staff, agents or representatives.

10. IMMUNITY:

No provision of this Agreement shall affect or waive any sovereign or governmental immunity available to LOCAL GOVERNMENT and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to the City and/or its elected officials, officers, employees and agents under Federal or Texas law.

11. CHOICE OF LAW/VENUE:

This Agreement shall be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Exclusive venue shall be in a court of competent jurisdiction in Bexar County, Texas.

12. SEVERABILITY

If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

13. AUTHORIZATION:

This Agreement is entered into by the duly authorized officials of each respective party. Each person signing this Agreement on behalf of a party hereby confirms for the benefit of the other party to this Agreement that any requisite approvals from the governing body of such party have been obtained, and all prerequisites to the execution, delivery and performance hereof have been obtained by or on behalf of that party. Each party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party.

CITY OF FREDERICKSBURG, TEXAS ALAMO AREA COUNCIL OF
GOVERNMENTS

By: _____

By: _____
Diane Rath,
Executive Director

Date: _____

Date: _____



CITY COUNCIL MEMO

DATE: January 21, 2020
TO: Mayor and City Council
FROM: Kris Kneese, P.E. – Assistant Director of Public Works and Utilities
SUBJECT: Amendment No. 2 to Boot Ranch Reclaimed Water Agreement

Summary:

Boot Ranch has requested the City amend the Reclaimed Water Agreement to allow for the use of the City's groundwater well, known as the Achtzen Well, for blending with reclaimed water for golf course irrigation.

Recommendation:

Consider amending Reclaimed Water Agreement with Boot Ranch to allow them to blend groundwater with reclaimed water for golf course irrigation.

Background / Analysis:

Boot Ranch has requested the City amend the Reclaimed Water Agreement to allow them to pump a specific volume of water out of the City's groundwater well, known as the Achtzen Well, to blend with the reclaimed water for golf course irrigation.

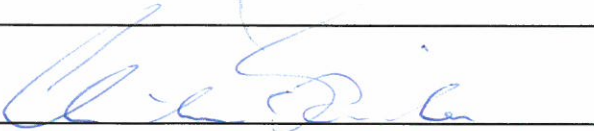
The Hill Country Underground Water Conservation District (HCUWCD) regulations limits the volume of water available to the City out of the groundwater well to 168 acre-feet per year. Additionally, the HCUWCD regulation limits the volume of groundwater used for irrigation to a half an acre-foot of water per irrigated acre of land per year. Boot Ranch irrigates approximately 105 acres of golf course and common areas with reclaimed water, so the maximum amount of groundwater allowed for irrigation is

equal to 52.5 ac-ft per year (17,100,000 gallons). Additionally, groundwater well flow test data from 2007 suggests that a maximum of 300,000 gallon per day should be pumped from the well to minimize drawdown in the well's aquifer.

Boot Ranch would pay the City at the raw groundwater rate established in the proposed amendment.

Attachments:

Second Amendment to Reclaimed Water Agreement



Department Approval



City Manager Approval



City Attorney Approval

STATE OF TEXAS §

COUNTY OF GILLESPIE §

**SECOND AMENDMENT TO RECLAIMED WATER SERVICE UTILITY
CONSTRUCTION AND SERVICE CONTRACT**

This Second Amendment to Reclaimed Water Service Utility Construction and Service Contract ("**Second Amendment**") is dated as of October _____, 2019, by and between Boot Ranch Holdings, LLC ("**Boot Ranch**" or "**Developer**"), a Delaware limited liability company, successor in interest to TX 77 Boot Ranch Circle, LLC, and the City of Fredericksburg, Texas ("**City**").

WITNESSETH:

WHEREAS, the City and Developer entered into that certain RECLAIMED WATER SERVICE UTILITY CONSTRUCTION AND SERVICE CONTRACT ("**Agreement**"), dated March 6, 2008, related to the provision of reclaimed water for golf course irrigation; and

WHEREAS, the City and Developer entered into that certain FIRST AMENDMENT OF RECLAIMED WATER SERVICE UTILITY CONSTRUCTION AND SERVICE CONTRACT ("**First Amendment**"), in 2017; and

WHEREAS, Boot Ranch has made a request of the City to amend the Agreement and the First Amendment, to allow for the use of raw ground water to supplement the use of reclaimed water for golf course irrigation ("**Reclaimed Water**"); and

~~WHEREAS, the Reclaimed Water under this Agreement is treated effluent that has a high concentration of minerals and must be mixed with other water sources to be used in the Boot Ranch irrigation system; and~~

~~WHEREAS, the City and Boot Ranch are contemporaneously entering into a Sewer Utility and Lift Station Easement agreement, whereby Boot Ranch is granting an easement to the City to construct and place sewer pipe lines and a lift station, and other related facilities and improvements ("**Lift Station Easement**"); and~~

Formatted: Font color: Red

~~WHEREAS, the easement and other promises and mutual covenants granted and conveyed by Boot Ranch to the City in the Lift Station Easement shall serve as additional consideration to this Agreement.~~

Formatted: Font color: Red

NOW, THEREFORE, in consideration of the mutual agreements set forth in the Agreement, the First Amendment, and this Second Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Agreement is amended by the addition of Section III. F.3, to read as follows:

III. CONSTRUCTION AND ALLOCATIONS

F. Ownership and Operation

F.3 Notwithstanding Section III. F.2 of this Agreement, the Developer shall have non-exclusive access to purchase and utilize raw groundwater from the City owned well identified as Boot Ranch Well #1 ("Well"), to supplement the Developer's use of Reclaimed Water under this Agreement, subject to the following conditions:

- a. The Well location is shown on the map attached hereto as Exhibit "A-1", a copy of which is attached hereto and incorporated herein by reference;
- b. A maximum of three hundred thousand (300,000) gallons of groundwater per day, not to exceed a total of ~~nine-five~~ million ~~(9,000,000)~~ 5,000,000 gallons of groundwater per month and no greater than seventeen million one hundred thousand (17,100,000) or sixty million (60,000,000) gallons of groundwater per year, will be sold to the Developer from the Well;

- c. Developer shall pay to the City, in addition to the fees set forth in Section IV of this Agreement, the following fees based on the amount of groundwater from the Well that is sold to the Developer in a calendar month: water fees in the amount of \$0.66(?) per thousand (1000) gallons:

Rate per Thousand (1,000) gallons	Gallons Usage in a Calendar Month
\$1.50	1 to 1,500,000
\$2.00	1,500,001 to 3,000,000
\$2.50	3,000,001 to 5,000,000

e.d.

- d.e. Developer's use of the groundwater from the Well shall be in conformance with all Hill Country Underground Water Conservation District rules and regulations;

- e.f. Developer agrees and acknowledges that all groundwater pumped from the Well is raw, untreated water;

- f.g. Developer agrees and acknowledges that Developer's use of all groundwater pumped from the Well is limited to Golf Course irrigation, and no groundwater from the Well may be resold by the Developer or used for any other commercial purpose by the Developer;

Formatted: Normal, No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Normal, No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Normal, No bullets or numbering

Formatted: Normal, No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

g. The City shall make available to Developer a designated connection point with an industry standard fitting, located at or near the Well, and the **Developer shall be responsible for the cost of completing the connection point, and for all maintenance, including replacement of any equipment, and all operation costs of the Well, pumping equipment, pipes, meters, and related infrastructure on the well side of the connection point, including electric utility cost.**

h. Developer shall be responsible for maintenance, replacement and operation costs of all piping and other infrastructure on the Developer's side of the connection point; and

Formatted: Justified, Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 + Alignment:
Left + Aligned at: 1.5" + Indent at: 2"

i. The City may temporarily halt and/or cease the Developer's access to groundwater under this Section III.F.3.i, with five (5) days written notice to Developer, during a bona fide emergency relating to water resources in Gillespie County, Texas, as determined by the Hill Country Underground Water District, or if a disaster declaration is issued by Gillespie County, Texas, or if the City deems it necessary to supplement its available water resources with water from the Well during such times of emergency conditions. The cessation of Developer's access to groundwater under this Paragraph is intended to be temporary in nature, and in no event shall the cessation extend beyond the length of the disaster declaration or the City's bona fide needs; and

Formatted: Highlight

j. If during the period of temporary cessation referenced in the immediately preceding paragraph, there are intervals of days that water is not being taken from the Well by the City, Developer may take up to the maximum amount of the daily allowable use. Such temporary intermittent use by the Developer is subject to the City's first right of usage and will require the Developer's immediate cessation of use upon short notice with the City having the right to close the valves to the Developer's distribution system; and

k. The City shall not sell or allow any non-governmental entity to purchase or utilize raw groundwater from the Well without the prior, written consent of the Developer; and

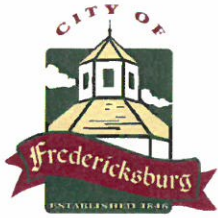
l.k. The City hereby grants and conveys to the Developer a right of first refusal on the sale of the Well, should the City ever choose to sell the Well to a bona fide third party

2. In the event of any inconsistency or conflict between the provisions of this Second Amendment and those of the Agreement or First Amendment, this Second Amendment

shall prevail. Except as specifically amended by this Second Amendment, the Agreement and First Amendment shall remain unchanged and in full force and effect. Capitalized terms used herein and not otherwise defined have the meaning set forth in the Agreement and the First Amendment, as defined therein.

3. This Second Amendment contains the entire agreement between the parties with respect to its subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein.
4. This Second Amendment shall be binding upon and inure to the benefit of Developer and the City and their successors and permitted assigns.

[SIGNATURES TO FOLLOW ON NEXT PAGE]



CITY COUNCIL MEMO

DATE: January 21, 2020

TO: Mayor and City Council

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

SUBJECT: Lift Station Easement

Summary:

As part of the Boot Ranch Lift Station Project, the City has requested Boot Ranch convey a lift station easement to the City for the construction of the new lift station.

Recommendation:

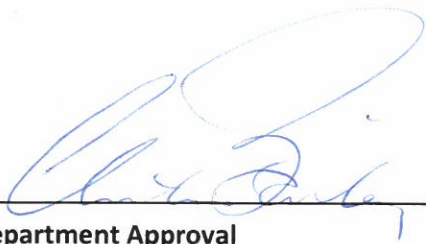
City Staff recommends the City Council accept the Lift Station Easement granted from Boot Ranch.

Background / Analysis:

The Boot Ranch Lift Station Project has been designed by HDR Engineering. As part of the project design, a new lift station is being recommended to solve the current operational problems with Boot Ranch Lift Station C. The City has requested that Boot Ranch convey a lift station easement to the City for the purpose of constructing a new lift station. City Staff recommends that City Council accept the lift station easement granted by Boot Ranch.

Attachments:

Lift Station Easement



Department Approval



City Manager Approval



City Attorney Approval

NOTICE OF CONFIDENTIALITY RIGHTS - IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER AND/OR YOUR DRIVER'S LICENSE NUMBER.

BOOT RANCH HOLDINGS, LLC, TO CITY OF FREDERICKSBURG

SEWER UTILITY AND LIFT STATION EASEMENT

THE STATE OF TEXAS §

COUNTY OF GILLESPIE §

THAT the undersigned BOOT RANCH HOLDINGS, LLC, a Delaware limited liability company, ("Grantor") for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL AND CONVEY unto the CITY OF FREDERICKSBURG ("Grantee"), a municipal corporation, of Gillespie County, Texas, its successors and assigns, whose address is 126 West Main Street, Fredericksburg, Texas 78624, an easement (the "Easement") upon, over, across and through the property (the "Easement Area") situated in Gillespie County, Texas, as described by metes and bounds in Exhibit "A" which is attached hereto and incorporated herein by reference.

There is hereby granted unto the CITY OF FREDERICKSBURG:

1. the right to erect, place, construct, reconstruct, install, operate, repair, inspect, modify, maintain, relocate and replace on, along, across, under or through or remove from the Easement Area, sewer pipe lines and lift stations and all laterals and appurtenances necessary or incident thereto (the "Facilities"), of any size and for any purpose and for any purpose deemed advisable by the City of Fredericksburg, provided, however that only the Facilities described in this grant, and no other utilities, may be constructed within the Easement Area; and
2. the right within the Easement Area to erect, place, construct, reconstruct, install, operate, repair, inspect, modify, maintain, relocate and replace thereon or therein or remove any facilities, structures, grading or other improvements or alterations necessary or collateral to Grantee's operation of the Facilities, including the right to clear, remove, cut and trim trees and shrubbery, to the extent necessary to prevent interference with the lines, pipe lines or system, grade, drain, fence if required by law, power and surface within said Easement Area; and

3. the right, to the extent necessary, in Grantee's construction of the Facilities, to enter Grantor's adjoining property, for the purpose of, and incident to, constructing, operating, maintaining, replacing, upgrading, and repairing said Facilities; it is agreed and understood that the right to use Grantor's adjoining property is a temporary construction easement to use in connection with the construction of said Facilities only and said temporary construction easement shall automatically expire upon completion of construction by the Grantee of said Facilities. Upon completion of the construction of the Facilities, the Grantee will restore the surface of Grantor's adjoining property; and

4. the right and privilege of ingress and egress by Grantee, its assigns, agents, employees, workmen and representatives, to move in, along, upon and across the Easement Area for the purposes hereof.

TO HAVE AND TO HOLD the above described premises, together with all and singular the right and appurtenances thereto in anywise belonging, unto the said CITY OF FREDERICKSBURG, its successors and assigns forever, and we do hereby bind ourselves, our heirs, executors and administrators, to WARRANT AND FOREVER DEFEND, all and singular the said premises unto the said CITY OF FREDERICKSBURG, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this _____ day of October, 2019.

BOOT RANCH HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: Authorized Signatory

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me this ____ day of October, 2019, by _____, the duly authorized signatory of Boot Ranch Holdings, LLC, a Delaware limited liability company, in said capacity and on behalf of said limited liability company.

Notary Public in and for
the State of _____

PFEIFFER LAND SURVEYING

918 Adler Street, Boerne, Texas 78006
Phone: 830-249-3385

FIELD NOTES FOR 0.159 ACRE UTILITY EASEMENT

Being a 0.159 acre utility easement out of Lot 20R, Boot Ranch Phase 1 Subdivision recorded in Volume 4, Pages 176-179, Plat Records, Gillespie County, Texas, said 0.159 acre easement being more particularly described by metes and bounds as follows:

Beginning at a calculated point in the westerly right-of-way line of Boot Ranch Circle and an easterly line of the above mentioned Lot 20R for the southeast corner of the herein described easement, said point bears along a chord, North 15 degrees 23 minutes 48 seconds East, a distance of 155.85 feet from a ½" iron rod found with a yellow "Grogan" plastic cap found at the southernmost corner of said Lot 20R and the easternmost corner of Lot 63, Boot Ranch Phase 1 Subdivision recorded in Volume 3, Pages 36-39, Plat Records, Gillespie County, Texas;

Thence, crossing through said Lot 20R, the following three (3) courses and distances:

North 88 degrees 48 minutes 26 seconds West, a distance of **64.02 feet** to a calculated point for the southwest corner of the herein described easement;

North 01 degrees 11 minutes 34 seconds East, a distance of **105.00 feet** to a calculated point for the northwest corner of the herein described easement;

and **South 88 degrees 48 minutes 26 seconds East**, a distance of **70.10 feet** to a calculated point in the westerly right-of-way line of Boot Ranch Circle and an easterly line of said Lot 20R for the northeast corner of the herein described easement, said point bears along a chord, South 14 degrees 15 minutes 42 seconds West, a distance of 39.62 feet from a ½" iron rod found with a yellow "Grogan" plastic cap found;

Thence, with the westerly right-of-way line of Boot Ranch Circle and multiple easterly lines of said Lot 20R, the following two (2) courses and distances:

along a curve in a counterclockwise direction having a central angle of **09 degrees 48 minutes 28 seconds**, an arc distance of **56.49 feet**, a radius of **330.00 feet** and a chord that bears **South 05 degrees 54 minutes 59 seconds West**, a distance of **56.42 feet** to a ½" iron rod found with a yellow "Grogan" plastic cap;

and along a curve in a clockwise direction having a central angle of **05 degrees 57 minutes 03 seconds**, an arc distance of **48.82 feet**, a radius of **470.00 feet** and a chord that bears **South 02 degrees 52 minutes 40 seconds West**, a distance of **48.79 feet** to the **Point of Beginning** containing **0.159 acres** of land.

Note: The bearings are based on the Texas State Plane Coordinate System, Central Zone, 4203, NAD83. A drawing was prepared for the above described easement.



Wes Rexrode
Registered Professional Land Surveyor No. 6001
Job Number: 94-15 (0.159 acre easement)

NOTES:

1) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT, THEREFORE ALL SETBACKS, EASEMENTS AND ENCUMBRANCES MAY NOT BE SHOWN HEREON.

2) ADJOINING PROPERTY INFORMATION SHOWN HEREON IS FOR INFORMATIONAL PURPOSES ONLY.

3) BASIS OF BEARING: TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, 4204, NAD 83.

4) ONLY APPARENT UTILITIES WERE LOCATED. NO ATTEMPT HAS BEEN MADE AS PART OF THIS SURVEY TO SHOW THE EXISTENCE, SIZE, DEPTH, CONDITION, OR LOCATION OF ANY UNDERGROUND UTILITY. FOR INFORMATION REGARDING UNDERGROUND UTILITIES PLEASE CONTACT THE APPROPRIATE AGENCY.

5) FENCES NEAR THE BOUNDARY LINE MEANDER AND ARE NOT NECESSARILY ON THE BOUNDARY LINE.

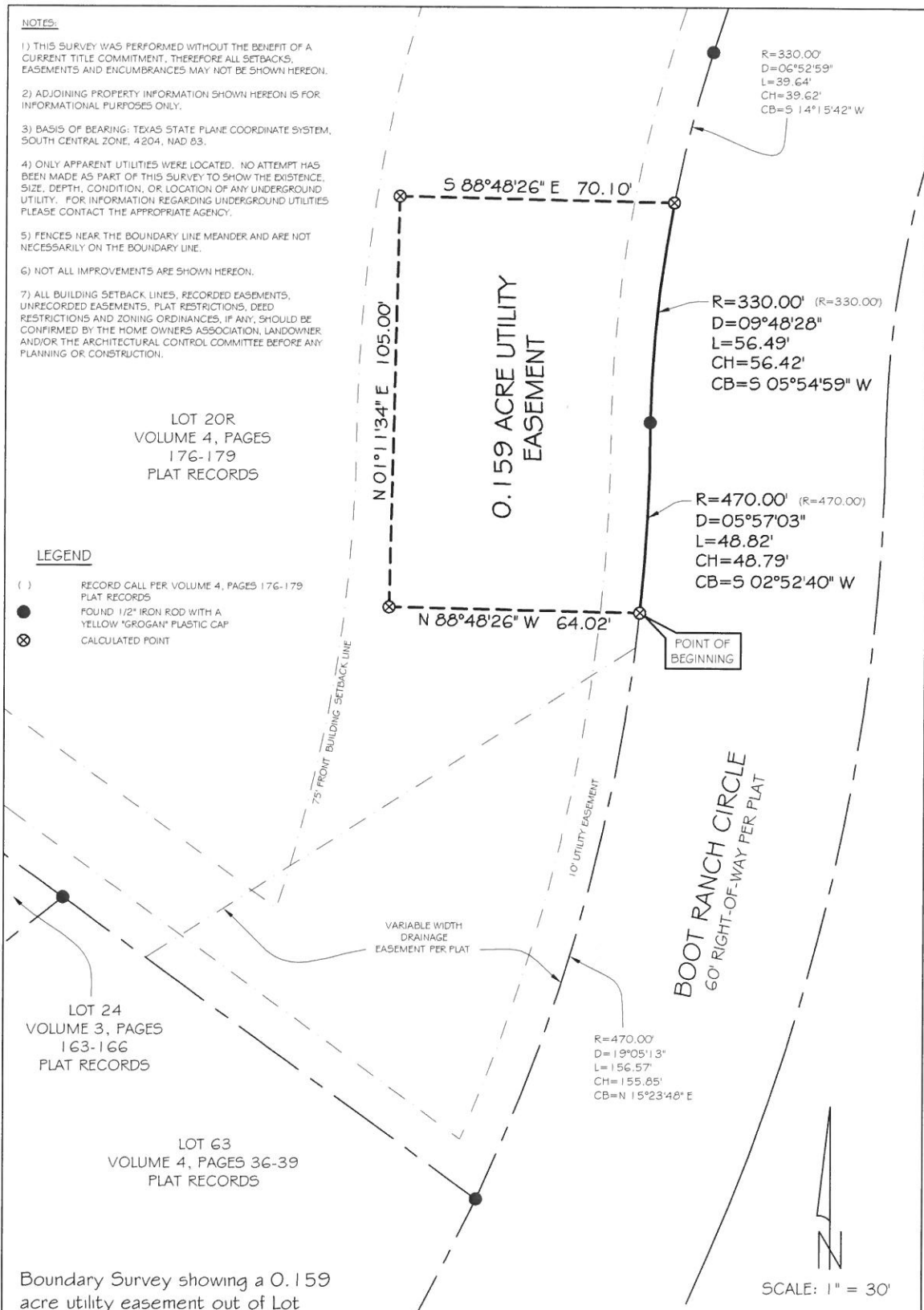
6) NOT ALL IMPROVEMENTS ARE SHOWN HEREON.

7) ALL BUILDING SETBACK LINES, RECORDED EASEMENTS, UNRECORDED EASEMENTS, PLAT RESTRICTIONS, DEED RESTRICTIONS AND ZONING ORDINANCES, IF ANY, SHOULD BE CONFIRMED BY THE HOME OWNERS ASSOCIATION, LANDOWNER AND/OR THE ARCHITECTURAL CONTROL COMMITTEE BEFORE ANY PLANNING OR CONSTRUCTION.

LOT 20R
VOLUME 4, PAGES
176-179
PLAT RECORDS

LEGEND

- () RECORD CALL PER VOLUME 4, PAGES 176-179 PLAT RECORDS
- FOUND 1/2" IRON ROD WITH A YELLOW "GROGAN" PLASTIC CAP
- ⊗ CALCULATED POINT



Boundary Survey showing a 0.159 acre utility easement out of Lot 20R, Boot Ranch Phase I Subdivision recorded in Volume 4, Pages 176-179, Plat Records, Gillespie County, Texas.

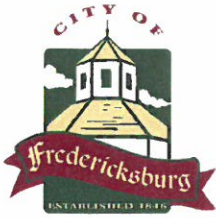
PFEIFFER LAND SURVEYING
918 ADLER STREET
BOERNE, TX 78006
830-249-3385
FIRM NO. 10193761



I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND THAT THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THIS SURVEY.

Wes Rexrode

Wes Rexrode - Pfeiffer Land Surveying
Registered Professional Land Surveyor No. 6001
Boerne, Texas 78006 Ph. 830 - 249 - 3385
DATE: MARCH 27, 2018 JOB NUMBER: 94-15



CITY COUNCIL MEMO

DATE: January 21, 2020

TO: Mayor and City Council

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

SUBJECT: Amendment No. 2 to Boot Ranch Water and Sewer Service Agreement

Summary:

Boot Ranch has requested the City amend the Agreement to include 37.217 acres, known as the Muncey Tract, to the original Water and Sewer Agreement Service Agreement.

Recommendation:

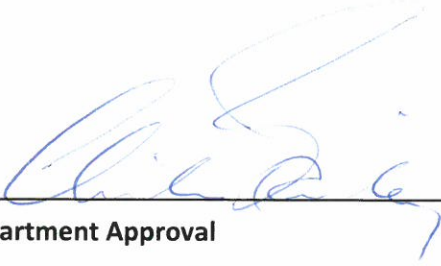
Consider amending Agreement with Boot Ranch to include an additional 37.217 acres to the development.

Background / Analysis:

Boot Ranch has requested the City amend the Agreement to include an additional 37.217 acres, known as the Muncey Tract, to the Boot Ranch Development known in the Agreement as the "Project Tract". Boot Ranch is not requesting any additional equivalent dwelling units (EDU) or water and wastewater demand as part of this Amendment.

Attachments:

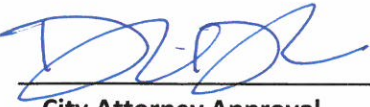
Second Amendment to Water and Sewer Service Agreement



Department Approval



City Manager Approval



City Attorney Approval

STATE OF TEXAS §

COUNTY OF GILLESPIE §

**SECOND AMENDMENT TO WATER AND SEWER AGREEMENT UTILITY
CONSTRUCTION CONTRACT**

This Second Amendment to Water and Sewer Agreement Utility Construction Contract (this "**Second Amendment**") is dated as of May __, 2019, by and between Boot Ranch Holdings, LLC, a Delaware limited liability company, successor in interest to TX 77 Boot Ranch Circle, LLC ("**Boot Ranch**" or "**Developer**") and City of Fredericksburg ("**City**"). Capitalized terms used herein and not otherwise defined have the meaning set forth in the Original Contract and the First Amendment, as defined herein.

W I T N E S S E T H:

WHEREAS, the City and Boot Ranch Development, L. P. a Texas Limited Partnership ("**Original Developer**"), predecessor in interest to TX 77 Boot Ranch Circle, LLC, entered into that certain WATER AND SEWER AGREEMENT UTILITY CONSTRUCTION CONTRACT ("**Original Contract**"), dated April 6, 2005, a copy of which is attached hereto as Exhibit "A" and made a part hereof. Capitalized terms used herein and not otherwise defined have the meanings set forth in the Original Contract; and

WHEREAS, the City and TX 77 Boot Ranch Circle, LLC entered into that certain AMENDMENT TO WATER AND SEWER AGREEMENT UTILITY CONSTRUCTION CONTRACT ("First Amendment"), dated December 20th, 2012, a copy of which is attached hereto as Exhibit "B" and made a part hereof; and

WHEREAS, Boot Ranch has made a request of the City to amend the Original Contract and the First Amendment and the City has agreed to amend the Original Contract and First Amendment as hereafter set forth.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The definition of the "Project Tract", as set forth in the Original Contract and as amended in the First Amendment shall include that certain 37.217 acre tract of land out of the H. Roos Survey No. 311, Abstract No. 594 and the J. Triebs Survey No. 718, Abstract No. 234, Gillespie County, Texas, said 37.217 acre tract being more particularly described on Exhibit "C", attached hereto and made a part hereof for all purposes.

2. NOTICES:

Any notice, request, demand, report, certificate or other instrument which may be required or permitted to be furnished to or served upon the parties shall be deemed sufficiently given or furnished to or served if in writing and deposited in the United States mail, registered or certified, return receipt requested, addressed to such party at the addresses set forth below:

IF TO CITY OF FREDERICKSBURG:

Kent Myers, City Manager,
City of Fredericksburg
126 West Main Street
Fredericksburg, Texas 78624

With copy to:

Daniel Jones, City Attorney, City of Fredericksburg
126 West Main Street
Fredericksburg, Texas 78624

IF TO DEVELOPER:

Boot Ranch Holdings, LLC
2242 Good Hope Road
Prosper, Texas 75078

With copy to:

Gordon E. Sauer
P.O. Box 836
Fredericksburg, Texas 78624

3. The parties hereby acknowledge, except as set forth herein, nothing contained in this Second Amendment shall be deemed to amend or modify in any respect the terms of the Original Contract or First Amendment and such terms shall remain in full force and effect as modified hereby. If there is any inconsistency between the Original Contract or First Amendment and this Second Amendment, the terms of this Second Amendment control and prevail.
4. This Second Amendment contains the entire agreement between the parties with respect to its subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein.
5. This Second Amendment shall be binding upon and inure to the benefit of Developer and the City and their successors and permitted assigns.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

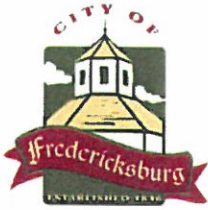
**IN WITNESS OF WHICH, THIS SECOND AMENDMENT HAS BEEN EXECUTED IN
DUPLICATE ON THE ____ DAY OF MAY, 2019.**

CITY OF FREDERICKSBURG

By: _____
Kent Myers, City Manager

BOOT RANCH HOLDINGS, LLC

By: _____
Name: _____
Title: _____



CITY COUNCIL MEMO

DATE: January 21, 2020

TO: Mayor and City Council

FROM: Andrea Schmidt, Parks & Recreation Director

SUBJECT: Award bid for Marktplatz Pavilion and Arbor project

Summary:

Several maintenance projects at Marktplatz were included in this year's budget. Three of those projects were the repairs and repainting of Oktoberfest Halle, Kinder Halle and the arbors. A total of \$98,000 was budgeted for these three projects in the Parks Department's budget. These were bid out together as one project.

The repairs to the pavilions included replacing some rotting wood on the roof decking. A pre-bid meeting was held in December that four contractors attended. During the pre-bid meeting, the contractors agreed they would have to get to the rotting wood by removing part of the roof. This roof material could not be reused and a new piece of galvanized roofing would be replaced instead. This new piece would look bright and shiny and not match the rest of the roof. We spoke to the original roofing contractor and he suggested replacing the entire roofs on the two pavilions with galvalume so as not to have a patchwork appearance. We also spoke to John Klein and he agreed with the original roof contractor's suggestion to replace the roofs.

Replacing the roofs was not included in the original estimates but after discussion with City Staff including the Historic Preservation Officer, it was decided to add replacing the roofs on the two pavilions to the bid.

Two bids were received. The low bidder is Hill Country Home and Ranch from Harper at \$162,682.00. The other bid was from Concord Commercial Services Inc. from Balch Springs, Texas, at \$294,748.00.

The low bid was over the budgeted amount by \$63,682. In this year's Parks Department budget \$150,000 was approved as a place holder for Oak Crest Park improvements. None of these funds have been spent or committed at this time. Staff is recommending reallocating \$63,683 from this project to the Marktplatz pavilion and arbor project.

There are no special events at Marktplatz in February and none the first three weeks of March. The hope is to have a preconstruction meeting in the next 7 days so work can be completed before the first events in March. If this does not occur, there is some availability during the summer months when special events are limited.

Recommendation:

Consider awarding the bid for the Marktplatz Pavilion and Arbor project to Hill Country Home and Ranch in the amount of \$161,682.00.

Background / Analysis:

Marktplatz has many maintenance projects that are currently needed. The two pavilions have not been repainted in years and having rotting wood on the roof decking. The arbors are also showing significant deterioration to the joints and need to be re-welded as well as repainted. The full extent of damage to the wood decking will not be known until the existing roof is removed. Included in the bid is replacing up to 350 square feet of the roof decking. If additional unforeseen damage and or deteriorated wood material is found, then a change order will be needed to cover the extra work.

Attachments:

Hill Country Home and Ranch bid



Department Approval



City Manager Approval



City Attorney Approval



dba Hill Country Home & Ranch

P.O. Box 65 Harper, Texas 78631

Company Representative

Eddie Dungan – Project Manager 830-890-0782

William Cowser Site Manager – Safety 210-417-6224

Bid Proposal

PAVILION & ARBOR PROJECT AT MARKTPLATZ

Project: Pavilion & Arbor Project at Marktplatz

Date: December 18, 2019

City of Fredricksburg

Attn: Andrea Schmidt

126 West Main St.

Fredricksburg, Texas 78624

Client: City of Fredricksburg

Scope Of Work:

The Oktoberfest, Kinder Haller and Arbors Repairs/Repaint Project at Marktplatz will include the following:

1. All arbors on Market Square repaired and repainted. Sand and grind off all rust and loose paint on all iron work. Apply metal to metal caulking where needed. Re-weld all splits in metal. Apply one coat primer where needed and apply two top finish coats. Two colors to be used on the arbors. Poles and parts of the beams shall be 2 colors. Remove and Replace Roofs.
2. Oktoberfest and Kinder Halle repairs and repainted. Power wash and prep all beams, trusses and posts on Oktoberfest and Kinder Halle. Power, prep wood (tongue & groove) ceiling on Oktoberfest and Kinder Halle. Replace any rotten wood on the ceilings of Oktoberfest and Kinder Halle. Repair tongue and groove roof decking to be completed. All iron beams, trusses, and posts in Oktoberfest and Kinder Halle to be sanded, spot primed and two coats of DTM coating applied. Apply one coat primer and two top coats. Two colors to be used at the Pavilions – poles and beams.
3. Protect surfaces from paint over spray.
4. Shall include all labor, material, equipment including all rentals and any other necessary incidentals needed to complete the installation.

5. Provide list of all subcontractors providing workers to the project at the pre-construction meeting and provide updated list as changes occur.
6. Any motorized equipment that must be placed on the grass at Marktplatz will need to use protective mats provided by the City.
7. Work shall be completed during the months of January, February, March, June, July or August. Contractor will work with City Staff on specific schedule to avoid impacting special events as much as possible. All work must be completed by August 31, 2020. ****Based on present schedule of events, General Contractor will work to complete the Scope of Work on a 7 day work week, to be finalized during pre-construction meeting.**

Quality:

All work shall be performed in a good condition and utilize workmanship like manor per industry standards and shall follow the drawings and specifications listed in the bid packet. Reference: Marktplatz As Built pdf pages 7,8,9, MP Plan, Arbors etc. presentation on November 19, 2019, MP Projects bid addendum dated November 26, 2019. Daly Construction dba Hill Country Home & Ranch will offer UPGRADED paint as referenced in the attachments to this bid.

Acknowledgement:

Project Owner acknowledges that he/she has read and received a legible Copy Of This Agreement signed by General Contractor, including Terms And Conditions, before any work has been performed, and that He/She has read and received a Legible Copy Of Every Other Document that General Contractor Project/Owner Has Signed During The Negotiation.

Guarantee:

General Contractor hereby Guarantees that the work shall be free from defects in Labor For One (1) Year From The Date Of Completion Of The Project. Painting will be 4-Year Workmanship Guarantee. Roofing is a 10-Year Workmanship Guarantee.

Building Codes:

All Work Performed Under This Agreement Shall Comply with Applicable City Of Fredricksburg Building Codes. Any Additional Work Required by The Building Code Department Beyond The Agreement Of This Contract Is Not The Responsibility Of The General Contractor.

Change Orders:

Owner May, From Time To Time During The Progress Of Work, Request Changes In The Work Specified Above. If The Owner Agrees To An Appropriate Increase In The Contract Amount Because Of The Requested Change(S), The Work Shall Be Performed. Additional Charges For The Changes Are Due And Payable Upon Completion to the work being performed, with payment to be received no later Than The Next Scheduled Contract Payment. Owners Are Prohibited from Soliciting General Contractors Employees & Or Sub-Contractors & Vendors, In The Event That Such Agreements Are Made By Owner With General Contractor Vendors, Employees Or Subcontractors on the job, Those Agreements Are Not Recognized & Are NOT Part Of This Proposal. All Work That The Owner /Customer Has Agreed To Perform As Part Of This Project But That Has Not Been Performed By Owner In Keeping With Schedule Work Sequences & Dates Of Completion, Shall Be Performed By General Contractor At Additional Costs As Part Of This Agreement.

Inclusions:

PAINTING AND ROOFING

This will be to repair damaged wood, painting and roofing of Kendra and Oktoberfest Halle and the Arbors in Market Platz Square. Work to be performed; Repairs of wood and metal, sanding, grinding, welding, priming, painting and roofing. This is based on provided scopes of work but not limited to.

REPAIR DAMAGED WOOD & REPAIRS TO PAVILION

This is to remove and replaced damaged wood that was visible and pointed out during pre-bid meetings from underneath on Kendra and Oktoberfest Halle. This is approximately 200 square feet. While all care has been taken to account for all damage, we cannot see underneath the roofing. Please NOTE: this bid does not reflect any other damage other than that we can see. Any and all unforeseen damage will be negotiated at Time & Materials + 30% O&P. Also, we will begin welding repairs at day 2.

PAINTING OF PAVILIONS

Painting of Pavilions (2) and Arbors (900 LF) Painting of Pavilions and Arbors will begin with pressure washing, sanding, grinding, welding, rust mitigation, priming and using an epoxy process to help reduce rust re-occurrence. This meets or exceeds given specifications.

ROOFING

Oktoberfest and Kendra Halle, Galvlume at 24 gauge. This includes tear off and haul off of debris of existing roofing, repair of damaged wood up to a total of 350 SF, Ice and Water Shield and NEW 26 Gauge Galvalume. Panels will be 17 ¾ inches with a 1" rib. Also, with additional safety equipment that we are requiring of our sub-contractors. **Additional unforeseen damaged and or deteriorated wood material will be addressed on a time and material basis with our standard O&P to be negotiated prior to signing of contract if awarded project.

Exclusions:

- Permits
- Changes To The Scope Of Work
- Clear Unimpeded Access To The Work Site
- Dumpsters
- Generator(s)
- Damage To Our Scope Of Work By Others
- All Items Not Clearly Listed In The "Inclusion" Part Of This Proposal Will Be Considered Excluded From This Proposal

TOTAL BID: \$161,682.00

References and Qualifications:

Allen Dehnert
Retired Major General US National Guard
Allen.dehnert@tx.rr.com
512-632-1647

Lila Rosin
Comptroller
Rosin Group Engineering
lila@rosingroup.com
210-394-4471

Jenese Rogers
United States Postmaster
US Postal Service
830-285-2972

Verification of Insurance:
City of Fredricksburg has been sent Additional Insured as requested.
All State Insurance
Brian Thomas
830-257-3992

Please see attachments:
Reference UPGRADED Paint at no additional charge.

NOTE: Daily on-site Project Manager Eddie Dungan. Daily site manger William Cowsert. We have secured the highest quality team for this project. As a local company we will ensure the integrity, and historic value of the MARKTPLATZ and will have the highest respect to ensure the level of safety to visitors who visit the City of Fredricksburg.

Metal Prep before Spot Prime



PRO

TM

113.11

URETHANE ALKYD ENAMEL

B54W00151 Extra White
B54T00154 Ultradeep Base
B54B00155 Black
B54R00158 Safety Red
B54Y00157 Safety Yellow

As of 05/12/2017, Complies with:			
OTC	Yes	LEED® 09 NC CI	No
OTC Phase II	No	LEED® 09 CS	No
SCAQMD	No	LEED® 09 H	No
CARB	No	LEED® v4 Emissions	No
CARB SCM 2007	No	LEED® v4 VOC	No
Canada	Yes	MPI	

CHARACTERISTICS

Pro Industrial Urethane Alkyd Enamel is a high gloss coating intended for interior/exterior use in industrial environments. It is easy to brush, roll or spray. Provides performance comparable to silicone alkyds.

- Modified with urethane resin for increased exterior durability
- Resistant to chipping and flaking
- Resists premature yellowing compared to conventional alkyds
- Abrasion resistance
- Appropriate for interior and exterior applications
- Excellent application characteristics
- Suitable for use in USDA inspected facilities

Color: Most Colors

Recommended Spread Rate per coat:

Wet mils: 3.5 - 7.0

Dry mils: 2.0 - 4.0

Coverage: ~231 - 462 sq ft/gal

Note: Brush or roll application may require multiple coats to achieve maximum film thickness and uniformity of appearance.

Drying Time @ 4.0 mils wet 50% RH:

45°F 77°F 120°F

To touch: 4 hrs 2½ hrs 30 min

Tack free: 10 hrs 4 hrs 2 hrs

To recoat: 36 hrs 18 hrs 8 hrs

To cure: 7 days 7 days 5 days

Drying time is temperature, humidity, and film thickness dependent.

Finish: 75°+@60° Gloss

Flash Point: 103°F, TCC

Shelf Life:

36 months, unopened extra white & ultradeep.
12 months package colors. Store indoors at 40°F to 100°F.

Tinting with Blend-A-Color or MaxiToner:

Base oz/gal Strength

Extra White 0-6 100%

Ultradeep 4-12 100%

B54W00151 (may vary by color)

VOC (less exempt solvents): Unreduced:

326 g/L - 2.72 lb/gal

As per 40 CFR 59.406 and SOR/2009-284, s.12

Volume Solids: 58% ± 2%

Weight Solids: 72% ± 2%

Weight per Gallon: 9.75 lb

RECOMMENDED SYSTEMS

Steel (alkyd primer):

1 ct. Kem Bond HS Primer

1-2 cts. Pro Industrial Urethane Alkyd

Aluminum:

1 ct. DTM Wash Primer

1-2 cts. Pro Industrial Urethane Alkyd

Galvanized Metal:

1 ct. Galvite HS

1-2 cts. Pro Industrial Urethane Alkyd

Concrete Block:

1 ct. Heavy Duty Block Filler

1-2 cts. Pro Industrial Urethane Alkyd

Interior Plaster and Poured Concrete:

1 ct. Loxon Concrete & Masonry Primer

1-2 cts. Pro Industrial Urethane Alkyd

Drywall:

1 ct. ProMar 200 Zero VOC Latex Primer

1-2 cts. Pro Industrial Urethane Alkyd

Wood Floors (Foot Traffic):

1-2 cts. Pro Industrial Urethane Alkyd

System Tested: (unless otherwise indicated)

Substrate: Steel

Surface Preparation: SSPC-SP10

1 ct. Kem Bond HS Primer

1 ct. Pro Industrial Urethane Alkyd Enamel

Abrasion

Method: ASTM D4060, C517 wheel,

1000 cycles, 1 kg load

Result: 175 mg loss

Flexibility

Method: ASTM D522, 180° bend, 1/4"

mandrel

Result: Passes

Adhesion

Method: ASTM D4541

Result: 392 psi

Humidity Resistance

Method: ASTM D4548, 500 hours

Result: Rating 10 per ASTM D610 for Rusting; Rating 10 per ASTM D714 for Blistering

Direct Impact Resistance

Method: ASTM D2794

Result: 60 in. lbs.

Pencil Hardness

Method: ASTM D3363

Result: B

Dry Heat Resistance

Method: ASTM D2485

Result: 200°F (93°C) (discolors)

Salt Fog Resistance

Method: ASTM B117, 500 hours

Result: Rating 10 per ASTM D610 for Rusting; Rating 10 per ASTM

PRO INDUSTRIAL™
URETHANE ALKYD ENAMEL



SHERWIN-WILLIAMS

SURFACE PREPARATION

WARNING! Removal of old paint by sanding, scraping or other means may generate dust or fumes that contain lead. Exposure to lead dust or fumes may cause brain damage or other adverse health effects, especially in children or pregnant women. Controlling exposure to lead or other hazardous substances requires the use of proper protective equipment, such as a properly fitted respirator (NIOSH approved) and proper containment and cleanup. For more information, call the National Lead Information Center at 1-800-424-LEAD (in US) or contact your local health authority.

Surface must be clean, dry, and in sound condition. Remove all oil, dust, grease, dirt, loose rust, and other foreign material to ensure adequate adhesion.

Iron & Steel - Minimum surface preparation is Hand Tool Clean per SSPC-SP2. For better performance, use Commercial Blast Cleaning per SSPC-SP6/NACE 3, blast clean all surfaces using a sharp, angular abrasive for optimum surface profile (2 mils / 50 microns). Prime any bare steel within 8 hours or before flash rusting occurs.

Aluminum (Untreated) - Remove all oil, grease, dirt, oxide and other foreign material by Solvent Cleaning per SSPC-SP1. Primer required.

Galvanized Steel (Untreated) - Allow to weather a minimum of six months prior to coating. Solvent Clean per SSPC-SP1. When weathering is not possible, or the surface has been treated with chromates or silicates, first Solvent Clean per SSPC-SP1 and apply a test patch. Allow paint to dry at least one week before testing adhesion. If adhesion is poor, brush blasting per SSPC-SP16 is necessary to remove these treatments. Primer required. Rusty galvanizing requires a minimum of Hand Tool Cleaning per SSPC-SP2, prime the area the same day as cleaned.

Masonry and Concrete—For surface preparation, refer to SSPC-SP13/NACE 6 or ICRI No. 310.2, CSP 1-3. Surfaces should be thoroughly clean and dry. Concrete and mortar must be cured at least 28 days @ 75°F (24°C). Remove all loose mortar and foreign material. Surface must be free of laitance, concrete dust, dirt, form release agents, moisture curing membranes, loose cement and hardeners. Fill bug holes, air pockets and other voids. Weathered masonry and soft or porous cement board must be brush blasted or power tool cleaned to remove loosely adhering contamination and to get to a hard, firm surface. Laitance must be removed. Brick must be allowed to weather for one year prior to surface preparation and painting. Primer required.

Wood - Surface must be clean, dry, and sound. Paint as soon as possible. No painting should be done immediately after a rain or during foggy weather. Knots and pitch streaks must be scraped, sanded and spot primed. All nail holes or small openings must be properly caulked. Sand to remove any loose or deteriorated surface wood and to obtain a proper surface profile. Self priming.

Previously Painted Surfaces - If in sound condition, clean the surface of all foreign material. Smooth, hard or glossy coatings and surfaces should be dulled by abrading the surface. Apply a test area, allowing paint to dry one week before testing adhesion. If adhesion is poor, or if this product attacks the previous finish, removal of the previous coating may be necessary. If paint is peeling or badly weathered, clean surface to sound substrate and treat as a new surface as above. Recognize that any surface preparation short of total removal of the old coating may compromise the service length of the system.

APPLICATION PROCEDURES

Apply paint at the recommended film thickness and spreading rate as indicated on front page. Application of coating below minimum recommended spreading rate will adversely affect coating performance.

SAFETY PRECAUTIONS

Refer to the SDS sheets before use. **FOR PROFESSIONAL USE ONLY.**

DANGER: Rags, steel wool, other waste soaked with this product, and sanding residue may spontaneously catch fire if improperly discarded. Immediately place rags, steel wool, other waste soaked with this product, and sanding residue in a sealed, water-filled, metal container. Dispose of in accordance with local fire regulations.

APPLICATION

Refer to the SDS before using

Temperature: 40°F minimum
120°F maximum
(air, surface, and material)
At least 5°F above dew point
Relative humidity: 85% maximum

The following is a guide. Changes in pressures and tip sizes may be needed for proper spray characteristics. Always purge spray equipment before use with listed reducer. Any reduction must be compatible with the existing environmental and application conditions.

Reducer/Clean Up
Mineral Spirits, R1K4* or Xylene, R2K4

Airless Spray
Pressure..... 1800 psi minimum
Hose..... 3/8" ID
Tip..... .017" - .019"
Filter..... 60 - 100 mesh
Reduction..... As needed up to 10% by volume

Conventional Spray
Gun..... Binks 95
Fluid Nozzle..... 66
Air Nozzle..... 63PB
Atomization Pressure..... 50 psi
Fluid Pressure..... 20-25 psi
Reduction..... As needed up to 10% by volume

Brush
Brush..... Natural Bristle
Reduction..... As needed up to 10% by volume
Roller
Cover
1/4 - 3/8"..... lambswool or synthetic cover
Reduction..... As needed up to 10% by volume

* To maintain VOC compliance of 340 g/l, only a 2% reduction of Mineral Spirits, R1K4 is allowed.

CLEANUP INFORMATION

Clean spills, spatters & tools with compliant cleanup solvent. After cleaning, flush spray equipment with compliant cleanup solvent to prevent rusting of the equipment. Follow manufacturer's safety recommendations when using solvents.

HOTW B54W00151 05/12/2017 17 326
FRC, SP

The information and recommendations set forth in this Product Data Sheet are based upon tests conducted by or on behalf of The Sherwin-Williams Company. Such information and recommendations set forth herein are subject to change and pertain to the product offered at the time of publication. Consult your Sherwin-Williams representative or visit www.paintdocs.com to obtain the most current version of the PDS and/or an SDS.



Protective & Marine Coatings

ACROLON™ 218 HS ACRYLIC POLYURETHANE

PART A	B65-600	GLOSS SERIES
PART A	B65-650	SEMI-GLOSS SERIES
PART B	B65V600	HARDENER

Revised: November 8, 2019

PRODUCT INFORMATION

5.22

PRODUCT DESCRIPTION

ACROLON 218 HS is a polyester modified, aliphatic, acrylic polyurethane formulated specifically for in-shop applications. Also suitable for industrial applications. A fast drying, urethane that provides color and gloss retention for exterior exposure.

- Can be used directly over organic zinc rich primers (epoxy zinc primer and moisture cure urethane zinc primer)
- Color and gloss retention for exterior exposure
- Fast dry
- Outstanding application properties

PRODUCT CHARACTERISTICS

Finish:	Gloss or Semi-Gloss
Color:	Wide range of colors available
Volume Solids:	65% ± 2%, mixed, may vary by color
Weight Solids:	78% ± 2%, mixed, may vary by color
VOC (EPA Method 24):	Unreduced: <300 g/L; 2.5 lb/gal mixed Reduced 10% with R7K15: <340 g/L; 2.8 lb/gal mixed Reduced 9% with MEK, R6K10: <340 g/L; 2.8 lb/gal
Mix Ratio:	6:1 by volume, 1 gallon or 5 gallon mixes premeasured components

Recommended Spreading Rate per coat:

	Minimum	Maximum
Wet mils (microns)	4.5 (112.5)	9.0 (225)
Dry mils (microns)	3.0 (75)	6.0 (150)
~Coverage sq ft/gal (m²/L)	175 (4.3)	346 (8.5)
Theoretical coverage sq ft/gal (m²/L) @ 1 mil / 25 microns dft	1040 (25.5)	

NOTE: Brush or roll application may require multiple coats to achieve maximum film thickness and uniformity of appearance.

Drying Schedule @ 6.0 mils wet (150 microns):

	@ 35°F/1.7°C	@ 77°F/25°C 50% RH	@ 120°F/49°C
To touch:	4 hours	1 hour	20 minutes
To handle:	18 hours	9 hours	4 hours
To recoat:			
minimum:	18 hours	8 hours	6 hours
maximum:	3 months	3 months	3 months
To cure:	14 days	7 days	5 days
Pot Life:	4 hours	2 hours	45 minutes
(reduced 5% with Reducer R7K15)			
Sweat-in-Time:		None	

Drying time is temperature, humidity, and film thickness dependent. Paint temperature must be at least 40°F (4.5°C) minimum.

Shelf Life:	Part A* - 36 months, unopened Part B - 24 months, unopened Store indoors at 40°F (4.5°C) to 100°F (38°C).
*Aluminum (Part A, Rex # B65SW655) has a shelf life of 24 months.	
Flash Point:	55°F (13°C), Seta, mixed
Reducer/Clean Up:	
Spray:	Reducer R7K15, MEK R6K10, R7K111, Reducer #58
Brush / Roll:	Reducer #132, Reducer #58, R7K111

RECOMMENDED USES

Specifically formulated for in-shop applications. For use over prepared metal and masonry surfaces in industrial environments such as:

- Structural steel
- Tank exteriors
- Rail cars and locomotives
- Pipelines
- Conveyors
- Ships
- Bridges
- Wind Towers - onshore and offshore
- Offshore platforms - exploration and production
- Suitable for use in USDA inspected facilities
- Conforms to AWWA D102 Outside Coating Systems #4 (OCS-4), #5 (OCS-5) & #6 (OCS-6)
- Acceptable for use in high performance architectural applications
- Acceptable for use over and/or under Loxon S1 and Loxon H1 Caulking
- A component of INFINITANK
- Over FIRETEX® hydrocarbon systems
- Suitable for use in the Mining & Minerals Industry

PERFORMANCE CHARACTERISTICS

Substrate*: Steel

Surface Preparation*: SSPC-SP10/NACE 2

System Tested*:

- 1 ct. Macropoxy 646 @ 6.0 mils (150 microns) dft
- 1 ct. Acrolon 218 HS Gloss @ 4.0 mils (100 microns) dft

*unless otherwise noted below

Test Name	Test Method	Results
Abrasion Resistance¹	ASTM D4060, CS17 wheel, 1000 cycles, 1 kg load	43 mg loss
Adhesion³	ASTM D4541	1976 psi
Corrosion Weathering³	ASTM D5894, 27 cycles, 9072 hours	Rating 10 per ASTM D610, for rusting; Rating 10 per ASTM D714, for blistering
Direct Impact Resistance¹	ASTM D2794	50 in. lb.
Dry Heat Resistance¹	ASTM D2485, Method A	200°F (93°C)
Flexibility¹	ASTM D522, 180° bend, 1/8" mandrel	Passes
Humidity Resistance²	ASTM D4585, 100°F (38°C), 1500 hours	Rating 10 per ASTM D610, for rusting; Rating 10 per ASTM D714, for blistering
Pencil Hardness	ASTM D3363	3H
Salt Fog Resistance³	ASTM B117, 15,000 hours	Rating 10 per ASTM D610, for rusting; Rating 10 per ASTM D714, for blistering

Meets the requirements of SSPC Paint No. 36, Level 3 for white and light colors. Dark colors may require a clear coat.

Complies with ISO 12944-5 C5I and C5M requirements.

Footnotes:

¹ Finish coat only tested

² Primer Zinc-Clad II Plus
Intermediate Macropoxy 646

Finish Acrolon 218 HS
³ Primer Zinc-Clad III HS



Protective & Marine Coatings

ACROLON™ 218 HS ACRYLIC POLYURETHANE

PART A	B65-600	GLOSS SERIES
PART A	B65-650	SEMI-GLOSS SERIES
PART B	B65V600	HARDENER

Revised: November 8, 2019

PRODUCT INFORMATION

5.22

RECOMMENDED SYSTEMS

		Dry Film Thickness / ct.	
		Mils	(Microns)
Steel:			
1 ct.	Macropoxy 646	5.0-10.0	(125-250)
1-2 cts.	Acrolon 218 HS Polyurethane	3.0-6.0	(75-150)
Steel:			
1 ct.	Zinc Clad II Plus	3.0-5.0	(75-125)
1 ct.	Macropoxy 646	5.0-10.0	(125-250)
1-2 cts.	Acrolon 218 HS Polyurethane	3.0-6.0	(75-150)
Steel:			
1 ct.	Zinc Clad IV	3.0-5.0	(75-125)
1-2 cts.	Acrolon 218 HS Polyurethane	3.0-6.0	(75-150)
Steel:			
1 ct.	Corothane I-GalvaPac Zinc Primer	3.0-4.0	(75-100)
1-2 cts.	Acrolon 218 HS Polyurethane	3.0-6.0	(75-150)
Steel:			
1 ct.	Epoxy Mastic Aluminum II	6.0	(150)
1-2 cts.	Acrolon 218 HS Polyurethane	3.0-6.0	(75-150)
Steel:			
1 ct.	Recoatable Epoxy Primer	4.0-6.0	(100-150)
1-2 cts.	Acrolon 218 HS Polyurethane	3.0-6.0	(75-150)
Concrete/Masonry:			
1 ct.	Kem Cati-Coat HS Epoxy Filler/Sealer	10.0-20.0	(250-500)
1-2 cts.	Acrolon 218 HS Polyurethane	3.0-6.0	(75-150)
Aluminum/Galvanizing:			
1 ct.	DTM Wash Primer	0.7-1.3	(18-32)
1-2 cts.	Acrolon 218 HS Polyurethane	3.0-6.0	(75-150)

FIRETEX ONLY:

Finish Coat for FIRETEX Hydrocarbon Systems:

1 ct. Acrolon 218 HS Polyurethane*

*Consult FIRETEX PFP Specialist for recommended dft range

The systems listed above are representative of the product's use, other systems may be appropriate.

DISCLAIMER

The information and recommendations set forth in this Product Data Sheet are based upon tests conducted by or on behalf of The Sherwin-Williams Company. Such information and recommendations set forth herein are subject to change and pertain to the product offered at the time of publication. Consult your Sherwin-Williams representative to obtain the most recent Product Data Information and Application Bulletin.

SURFACE PREPARATION

Surface must be clean, dry, and in sound condition. Remove all oil, dust, grease, dirt, loose rust, and other foreign material to ensure adequate adhesion.

Refer to product Application Bulletin for detailed surface preparation information.

Minimum recommended surface preparation:

- * Iron & Steel: SSPC-SP6/NACE 3, 1-2 mil (25-50 micron) profile
- * Galvanizing: SSPC-SP1
- * Concrete & Masonry: SSPC-SP13/NACE 6, or ICRI No. 310.2R, CSP 1-3

* Primer required

Surface Preparation Standards				
Condition of Surface	ISO 8501-1	Swedish Std.	SSPC	NACE
White Metal	BS7079:A1	SS055900	SP5	1
Near White Metal	Sa 3	Sa 3	SP 10	2
Commercial Blast	Sa 2.5	Sa 2.5	SP 6	3
Brush-Off Blast	Sa 2	Sa 2	SP 7	4
Hand Tool Cleaning	Sa 1	Sa 1	SP 2	-
Rusted	CSi 2	CSi 2	SP 2	-
Pitted & Rusted	CSi 3	CSi 3	SP 3	-
Rusted	CSi 2	CSi 2	SP 2	-
Power Tool Cleaning	CSi 3	CSi 3	SP 3	-
Pitted & Rusted	CSi 3	CSi 3	SP 3	-

TINTING

Tint Part A with Maxitoner Colorants.

- * Extra white tints at 100% tint strength
- * Ultradeep base tints at 150% tint strength

Five minutes minimum mixing on a mechanical shaker is required for complete mixing of color.

APPLICATION CONDITIONS

Temperature:	35°F (1.7°C) minimum, 120°F (49°C) maximum (air and surface) 40°F (4.5°C) minimum, 120°F (49°C) maximum (material) At least 5°F (2.8°C) above dew point
Relative humidity:	85% maximum

Refer to product Application Bulletin for detailed application information.

ORDERING INFORMATION

Packaging:	1 gallon (3.78L) mix: 5 gallon (18.9L) mix:
Part A:	.86 gal (3.25L) 4.29 gal (16.2L)
Part B:	.14 gal (0.53L) 0.71 gal (2.7L)
(premeasured components)	
Weight:	11.2 ± 0.2 lb/gal ; 1.3 Kg/L mixed, may vary with color

SAFETY PRECAUTIONS

Refer to the MSDS sheet before use.

Published technical data and instructions are subject to change without notice. Contact your Sherwin-Williams representative for additional technical data and instructions.

WARRANTY

The Sherwin-Williams Company warrants our products to be free of manufacturing defects in accord with applicable Sherwin-Williams quality control procedures. Liability for products proven defective, if any, is limited to replacement of the defective product or the refund of the purchase price paid for the defective product as determined by Sherwin-Williams. NO OTHER WARRANTY OR GUARANTEE OF ANY KIND IS MADE BY SHERWIN-WILLIAMS, EXPRESSED OR IMPLIED, STATUTORY, BY OPERATION OF LAW OR OTHERWISE, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



Protective & Marine Coatings

ACROLON™ 218 HS ACRYLIC POLYURETHANE

PART A	B65-600	GLOSS SERIES
PART A	B65-650	SEMI-GLOSS SERIES
PART B	B65V600	HARDENER

Revised: November 8, 2019

APPLICATION BULLETIN

5.22

SURFACE PREPARATIONS

Surface must be clean, dry, and in sound condition. Remove all oil, dust, grease, dirt, loose rust, and other foreign material to ensure adequate adhesion.

Iron & Steel

Remove all oil and grease from surface by Solvent Cleaning per SSPC-SP1. Minimum surface preparation is Commercial Blast Cleaning per SSPC-SP6/NACE 3. For better performance, use Near White Metal Blast Cleaning per SSPC-SP10/NACE 2. Blast clean all surfaces using a sharp, angular abrasive for optimum surface profile (1-2 mils / 25-50 microns). Prime any bare steel the same day as it is cleaned or before flash rusting occurs.

Aluminum

Remove all oil, grease, dirt, oxide and other foreign material by Solvent Cleaning per SSPC-SP1. Primer required.

Galvanized Steel

Allow to weather a minimum of six months prior to coating. Solvent Clean per SSPC-SP1. When weathering is not possible, or the surface has been treated with chromates or silicates, first Solvent Clean per SSPC-SP1 and apply a test patch. Allow paint to dry at least one week before testing adhesion. If adhesion is poor, brush blasting per SSPC-SP7 is necessary to remove these treatments. Rusty galvanizing requires a minimum of Hand Tool Cleaning per SSPC-SP2, prime the area the same day as cleaned or before flash rusting occurs. Primer required.

Concrete and Masonry

For surface preparation, refer to SSPC-SP13/NACE 6, or ICRI No. 310.2R, CSP 1-3. Surfaces should be thoroughly clean and dry. Concrete and mortar must be cured at least 28 days @ 75°F (24°C). Remove all loose mortar and foreign material. Surface must be free of laitance, concrete dust, dirt, form release agents, moisture curing membranes, loose cement and hardeners. Fill bug holes, air pockets and other voids with Steel-Seam FT910. Primer required.

Follow the standard methods listed below when applicable:

ASTM D4258 Standard Practice for Cleaning Concrete.
ASTM D4259 Standard Practice for Abrading Concrete.
ASTM D4260 Standard Practice for Etching Concrete.
ASTM F1869 Standard Test Method for Measuring Moisture Vapor Emission Rate of Concrete.
SSPC-SP 13/NACE 6 Surface Preparation of Concrete.
ICRI No. 310.2R Concrete Surface Preparation.

Surface Preparation Standards

Condition of Surface	ISO 8501-1 BS7079:A1	Swedish Std. SIS055900	SSPC	NACE
White Metal	Sa 3	Sa 3	SP 5	1
Near White Metal	Sa 2.5	Sa 2.5	SP 10	2
Commercial Blast	Sa 2	Sa 2	SP 6	3
Brush-Off Blast	Sa 1	Sa 1	SP 7	4
Hand Tool Cleaning	CS 1	CS 1	SP 2	-
Pitted & Rusted	DS 1	DS 1	SP 2	-
Rusted	CS 3	CS 3	SP 3	-
Power Tool Cleaning	DS 3	DS 3	SP 3	-

APPLICATION CONDITIONS

Temperature: 35°F (1.7°C) minimum, 120°F (49°C) maximum (air and surface)
40°F (4.5°C) minimum, 120°F (49°C) maximum (material)
At least 5°F (2.8°C) above dew point

Relative humidity: 85% maximum

APPLICATION EQUIPMENT

The following is a guide. Changes in pressures and tip sizes may be needed for proper spray characteristics. Always purge spray equipment before use with listed reducer. Any reduction must be compliant with existing VOC regulations and compatible with the existing environmental and application conditions.

Reducer/Clean Up:

Spray.....Reducer R7K15, MEK, Reducer #58, or R7K111
Brush/RollReducer #132, R7K132, Reducer #58, or R7K111

If reducer is used, reduce at time of catalyzation.

Airless Spray

Pressure.....2500 - 2800 psi
Hose.....3/8" ID
Tip......013" - .017"
Filter.....60 mesh
Reduction.....As needed up to 10% by volume with R7K15 or R7K111, or up to 9% with MEK, R6K10*

Conventional Spray

GunBinks 95
Cap63P
Atomization Pressure.....50 - 70 psi
Fluid Pressure.....20 - 25 psi
Reduction.....As needed up to 10% by volume with R7K15 or R7K111, or up to 9% with MEK, R6K10*

Brush

Brush.....Natural Bristle
Reduction.....As needed up to 10% by volume*

Roller

Cover3/8" woven with solvent resistant core
Reduction.....As needed up to 10% by volume*

If specific application equipment is not listed above, equivalent equipment may be substituted.

* Note: Reducing more than maximum recommended level will result in VOC exceeding 340g/L



Protective & Marine Coatings

ACROLON™ 218 HS ACRYLIC POLYURETHANE

PART A	B65-600	GLOSS SERIES
PART A	B65-650	SEMI-GLOSS SERIES
PART B	B65V600	HARDENER

Revised: November 8, 2019

APPLICATION BULLETIN

5.22

APPLICATION PROCEDURES

Surface preparation must be completed as indicated.

Mix contents of each component thoroughly with low speed power agitation. Make certain no pigment remains on the bottom of the can. Then combine six parts by volume of Part A with one part by volume of Part B (premeasured components). Thoroughly agitate the mixture with power agitation. Re-stir before using.

If reducer is used, add only after both components have been thoroughly mixed.

Apply paint at the recommended film thickness and spreading rate as indicated below:

Recommended Spreading Rate per coat:

	Minimum	Maximum
Wet mils (microns)	4.5 (112.5)	9.0 (225)
Dry mils (microns)	3.0 (75)	6.0 (150)
~Coverage sq ft/gal (m ² /L)	175 (4.3)	346 (8.5)
Theoretical coverage sq ft/gal (m ² /L) @ 1 mil / 25 microns dft	1040 (25.5)	

NOTE: Brush or roll application may require multiple coats to achieve maximum film thickness and uniformity of appearance.

Drying Schedule @ 6.0 mils wet (150 microns):

	@ 35°F/1.7°C	@ 77°F/25°C 50% RH	@ 120°F/49°C
To touch:	4 hours	1 hour	20 minutes
To handle:	18 hours	9 hours	4 hours
To recoat:			
minimum:	18 hours	8 hours	6 hours
maximum:	3 months	3 months	3 months
To cure:	14 days	7 days	5 days
Pot Life:	4 hours	2 hours	45 minutes
(reduced 5% with Reducer R7K15)			
Sweat-in-Time:	None		
<i>Drying time is temperature, humidity, and film thickness dependent.</i>			
Paint temperature must be at least 40°F (4.5°C) minimum.			

Application of coating above maximum or below minimum recommended spreading rate may adversely affect coating performance.

CLEAN UP INSTRUCTIONS

Clean spills and spatters immediately with Reducer #132, R7K132. Clean tools immediately after use with Reducer #132, R7K132. Follow manufacturer's safety recommendations when using any solvent.

DISCLAIMER

The information and recommendations set forth in this Product Data Sheet are based upon tests conducted by or on behalf of The Sherwin-Williams Company. Such information and recommendations set forth herein are subject to change and pertain to the product offered at the time of publication. Consult your Sherwin-Williams representative to obtain the most recent Product Data Information and Application Bulletin.

PERFORMANCE TIPS

Stripe coat all crevices, welds, and sharp angles to prevent early failure in these areas.

When using spray application, use a 50% overlap with each pass of the gun to avoid holidays, bare areas, and pinholes. If necessary, cross spray at a right angle.

Spreading rates are calculated on volume solids and do not include an application loss factor due to surface profile, roughness or porosity of the surface, skill and technique of the applicator, method of application, various surface irregularities, material lost during mixing, spillage, overthinning, climatic conditions, and excessive film build.

Excessive reduction of material can affect film build, appearance, and adhesion.

Do not apply the material beyond recommended pot life.

Do not mix previously catalyzed material with new.

In order to avoid blockage of spray equipment, clean equipment before use or before periods of extended downtime with Reducer #15, R7K15 or MEK, R6K10.

Mixed coating is sensitive to water. Use water traps in all air lines. Moisture contact can reduce pot life and affect gloss and color.

Quick-Thane Urethane Accelerator is acceptable for use. See data page 5.97 for details.

E-Z Roll Urethane Defoamer is acceptable for use. See data page 5.99 for details.

If maximum recoat time is exceeded, a light abrasion may be necessary to roughen the surface to promote adhesion before recoating.

When over coating for maintenance or covering graffiti, solvent clean with MEK or similar solvent/cleaner prior to overcoating.

Refer to Product Information sheet for additional performance characteristics and properties.

SAFETY PRECAUTIONS

Refer to the MSDS sheet before use.

Published technical data and instructions are subject to change without notice. Contact your Sherwin-Williams representative for additional technical data and instructions.

WARRANTY

The Sherwin-Williams Company warrants our products to be free of manufacturing defects in accord with applicable Sherwin-Williams quality control procedures. Liability for products proven defective, if any, is limited to replacement of the defective product or the refund of the purchase price paid for the defective product as determined by Sherwin-Williams. NO OTHER WARRANTY OR GUARANTEE OF ANY KIND IS MADE BY SHERWIN-WILLIAMS, EXPRESSED OR IMPLIED, STATUTORY, BY OPERATION OF LAW OR OTHERWISE, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



Primer

125.20

KEM KROMIK® UNIVERSAL METAL PRIMER

B50NZ0006 BROWN
B50WZ0001 OFF WHITE
B50AZ0006 GRAY

As of 01/16/2018. Complies with:			
OTC	No	LEED® 09 NC, CI	No
OTC Phase II	No	LEED® 09 CS	No
SCAQMD	No	LEED® 09 S	No
CARB	No	LEED® v4 Emissions	No
CARB SCM 2007	No	LEED® v4 VOC	No
Canada	No	MPI	Yes

CHARACTERISTICS

KEM KROMIK UNIVERSAL METAL PRIMER is a rust inhibiting, modified phenolic alkyd resin primer designed for use over iron and steel substrates. Can be used as a universal primer under high performance topcoats. Suitable as a barrier coat over conventional coatings which would normally be attacked by strong solvents in high performance coatings.

Features:

- High film build to protect sand blasted steel
- Corrosion resistant
- Universal, can be topcoated with epoxies and urethanes
- Exterior/interior metal primer
- Suitable for use in USDA inspected facilities

For use on properly prepared:

- Steel

Recommended for use in:

- Shopcoat primer
- Maintenance primer
- Structural steel
- Machinery
- Marine vessels
- Barrier coating
- Hand rail
- Storage tanks
- Bar joists
- Steel pipe

Tinting:

DO NOT TINT

Shelf Life:

36 months, unopened

Finish:

Flat

White B50WZ0001

(may vary by base)

VOC(less exempt solvents) 389 g/L - 3.24 lb/gal
(as per 40 CFR 59.406 and SOR/2009-264, s. 12)

Volume Solids: 55 ± 2%

Weight Solids: 75 ± 2%

Weight per Gallon: 12.86 lb/gal ± .2 lb

Flash Point: 80°F PMCC

Brown B50NZ0006

(may vary by base)

VOC(less exempt solvents) 409 g/L - 3.24 lb/gal
(as per 40 CFR 59.406 and SOR/2009-264, s. 12)

Volume Solids: 53 ± 2%

Weight Solids: 73 ± 2%

Weight per Gallon: 12.62 lb/gal ± .2 lb

Flash Point: 80°F PMCC

SPECIFICATIONS

Color: White, Brown & Gray

Recommended Spread Rate per coat: White B50WZ0001 (varies by base)

wet mils: 6.0 - 8.0
dry mils: 3.3 - 4.4
coverage: 267 - 200 sq ft/gal approximate

Theoretical coverage: 882 sq ft/gal @ 1 mil dry

Drying Schedule @ 6.0 mils wet, 50% RH:

	@ 40°F/4.5°C	@ 77°F/25°C	@ 110°F/43°C
To touch:	2 hours	30 minutes	15 minutes
Tack handle:	2.5 hours	1 hours	20 minutes
To recoat: with itself & alkyls	2.5 hours	1 hours	45 minutes
To recoat:	36 hours	16 hours	16 hours
To cure:	7 days	7 days	7 days

* Recoat with hot solvents or high performance coatings. For maximum adhesion, acrylic topcoats require 48 - 72 hours drying of primer. Drying and recoat times are temperature, humidity, and film thickness dependent.

RECOMMENDED SYSTEMS

Steel:

1ct. Kem Kromik Universal Primer

1-2 cts. Topcoat

Acceptable Topcoats:

Acrolon 218 HS Polyurethane

Hi-Solids Polyurethane

Industrial Enamel

Macropoxy HS Epoxy

Metallex Semi-Gloss Enamel

Pro Industrial Acrylic

Pro Industrial DTM Acrylic

Pro Industrial Waterbased Epoxy

Pro Industrial Waterbased Alkyd-Urethane

Pro Industrial Multi-Surface Acrylic

Pro Industrial Pre-Catalyzed Epoxy & Urethane

Pro Industrial Urethane Alkyd Enamel

Pro Industrial Waterbased Acrolon 100

Sher-Cryl

Silver-Brite Aluminum

Steel Master 9500

Tile-Clad HS Epoxy

The systems listed above are representative of the product's use, other systems may be appropriate. Other topcoats may be appropriate.

System: (unless otherwise indicated)

Substrate: Steel

Surface Preparation: SSPC-SP6/NACE 3

Primer: 1ct. Kem Kromik Universal Metal Primer, @ 3.0 - 4.4 mils dft/ct.

Adhesion¹:

Method: ASTM D3359

Result: 4B

Corrosion Resistance¹:

Method: ASTM D5894, 1008

Result: Pass

Dry Heat Resistance:

Method: ASTM D2485

Result: 200°F

Flexibility¹:

Method: ASTM D522,

1/4" mandrel

Result: Pass

Fineness of grind²:

Method: Hegman

Result: 4 Hegman minimum

Sag Test²:

Method: ASTM D4400

Result: 12 mils minimum

Viscosity²: 84-94 KU

Water Resistance¹:

Result: Pass

¹ 1ct. Kem Kromik Primer 4.5-5 WFT² Standard test based on Certificate of Analysis



SHERWIN-WILLIAMS.

KEM KROMIK® UNIVERSAL METAL PRIMER

SURFACE PREPARATION

WARNING! Removal of old paint by sanding, scraping or other means may generate dust or fumes that contain lead. Exposure to lead dust or fumes may cause brain damage or other adverse health effects, especially in children or pregnant women. Controlling exposure to lead or other hazardous substances requires the use of proper protective equipment, such as a properly fitted respirator (NIOSH approved) and proper containment and cleanup. For more information, call the National Lead Information Center at 1-800-424-LEAD (in US) or contact your local health authority.

Iron & Steel- Minimum surface preparation is Hand Tool Clean per SSPC-SP2. Remove all oil and grease from surface by Solvent Cleaning per SSPC-SP1. For better performance, use Commercial Blast Cleaning per SSPC-SP6/NACE 3, blast clean all surfaces using a sharp, angular abrasive for optimum surface profile (2 mils). Prime any bare steel within 8 hours or before flash rusting occurs.

Previously Painted Surfaces - If in sound condition, clean the surface of all foreign material. Smooth, hard or glossy coatings and surfaces should be dulled by abrading the surface. Apply a test area, allowing paint to dry one week before testing adhesion. If adhesion is poor, additional abrasion of the surface and/or removal of the previous coating may be necessary. Retest surface for adhesion. If paint is peeling or badly weathered, clean surface to sound substrate and treat as a new surface as above. Recognize that any surface preparation short of total removal of the old coating may compromise the service length of the system. Other substrates may or may not be appropriate. If a specific substrate is not listed above, consult your Sherwin-Williams representative for more information.

As a "Barrier" Coat - If it is necessary to topcoat a previously painted surface with chemically resistant or strong solvent topcoats, Kem Kromik Universal Metal Primer can be used as a barrier coat to help reduce lifting. Apply a coat of Kem Kromik Universal Metal Primer to a small area to test for adhesion or bleeding. If there is evidence of either poor adhesion or bleeding, clean surface to bare steel and apply recommended system.

APPLICATION PROCEDURES

Apply paint at the recommended film thickness and spreading rate as indicated on front page. Application of coating above maximum or below minimum recommended spreading rate may adversely affect coating performance. Spreading rates are calculated on volume solids and do not include an application loss factor due to surface profile, roughness, or porosity of the surface, skill, and technique of the applicator, method of application, various surface irregularities, material lost during mixing, spillage, over thinning, climatic conditions, and excessive film build.

SAFETY PRECAUTIONS

Refer to the SDS sheets before use. **FOR PROFESSIONAL USE ONLY**

Published technical data and instructions are subject to change without notice. Contact your Sherwin-Williams representative for additional technical data and instructions.

PERFORMANCE TIPS

Mix paint thoroughly to a uniform consistency with slow speed agitation prior to use. Stripe coat crevices, welds, and sharp angles to prevent early failure in these areas. When using spray application, use a 50% overlap with each pass of the gun to avoid holidays, bare areas, and pinholes. If necessary, cross spray at a right angle. Not recommended for immersion service or exposure to acids, alkalis, or strong solvents. Intimate contact with the steel surface and primer is necessary for adequate rust inhibition and adhesion.

For maximum adhesion, acrylic topcoats require 48 - 72 hours drying of primer.

APPLICATION

Refer to the SDS sheet before use

Temperature: 40°F(4.5°C) minimum
120°F(49°C) maximum
(Air, surface, and material)
At least 5°F above dew point
Relative humidity: 85% maximum

The following is a guide. Changes in pressures and tip sizes may be needed for proper spray characteristics. Always purge spray equipment before use with listed reducer. Any reduction must be compatible with the existing environmental and application conditions.

Reducer Not recommended
Clean Up Xylene, R2K4

Airless Spray

Pressure 1800-3000 psi
Hose 1/4" ID
Tip015-.019"
Filter 60 mesh

Conventional Spray

Gun Binks 95
Fluid Nozzle 63C
Air Nozzle 63BP
Atomization Pressure 50 PSI
Fluid Pressure 15-20 PSI

Brush Natural Bristle

Roll 3/8" woven with solvent resistant core

If specific application equipment is not listed above, equivalent equipment may be substituted

CLEANUP INFORMATION

Clean spills, spatters & tools with compliant cleanup solvent. After cleaning, flush spray equipment with compliant cleanup solvent to prevent rusting of the equipment. Follow manufacturer's safety recommendations when using solvents.

DANGER: Rags, steel wool, other waste soaked with this product, and sanding residue may spontaneously catch fire if improperly discarded. Immediately place rags, steel wool, other waste soaked with this product, and sanding residue in a sealed, water-filled, metal container. Dispose of in accordance with local fire regulations.

HOTW	01/16/2018	B50NZ0006	38 409
HOTW	01/16/2018	B50WZ0001	39 389
HOTW	01/16/2018	B50AZ0006	20 386

SP

The information and recommendations set forth in this Product Data Sheet are based upon tests conducted by or on behalf of The Sherwin-Williams Company. Such information and recommendations set forth herein are subject to change and pertain to the product offered at the time of publication. Consult your Sherwin-Williams representative or visit www.paintdocs.com to obtain the most current version of the PDS and/or an SDS.



CITY COUNCIL MEMO

DATE: January 15, 2020
TO: Mayor and City Council
FROM: Shelley Goodwin, City Secretary TMRC
SUBJECT: HOT Funding-Local Organizations

Summary:

At Tuesday's Council meeting an initial discussion is scheduled on the applications submitted by local organizations for HOT funds.

Recommendation:

It is recommended that the City Council review the applications and ask the applicant question so that you have a clear understanding of what is being requested before you approve the HOT funding requests.

Background / Analysis:

Several days ago, the Council was provided with a notebook that includes the 38 applications that were submitted for HOT funds this year. Please bring your folder to the Council meeting so that you can refer to this information during the Council discussion.

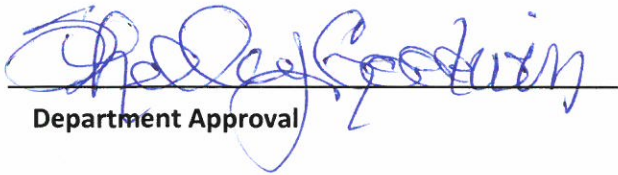
Attached to this memo is a spread sheet that includes the amount of funding that has been requested by each organization and the funding that they received over the past three years. As noted on this attachment, a total of \$610,134 had been requested this year with \$480,000 in funds remaining to be allocated.

The City Attorney is in the process of reviewing the funding requests to ensure that they comply with State law. He will provide the Council with his recommendations prior to the meeting.

The purpose of Monday's meeting is for the Council to gain a clear understanding of what is being requested by the different organizations. So, please feel to ask questions of the applicants who will be present at the meeting. At the next City Council meeting, we will schedule additional discussion and approval of the HOT fund allocation for this year.

Attachments:

Spread Sheet on HOT Funding Requests.



Department Approval



City Manager Approval

	Organization	City amount awarded 2016	City amount awarded 2017	City amount awarded 2018	City amount awarded 2019	City 2020 requested amount	% of total	City 2020 approved	% of Approved	County amount awarded 2016	County amount awarded 2017	County amount awarded 2018	County amount awarded 2019
1	Admiral Nimitz	125,000	125,000	125,000	130,000	\$130,000	21%		0%		7,500	10,000	10,000
2	Fredericksburg Food and Wine Fest					\$10,000	2%		0%				
3	Pedernales Creative Arts Alliance/Oktobefest					\$10,000	2%		0%				
4	Optimist-Hill Country Run	7,000	5,000	5,000	5,000	\$5,000	1%		0%	1,500	1,500	1,500	1,500
5	Friends of Gillespie County Country School	64,800	47,641	61,730	20,590	\$58,279	10%		0%	39,000	37,500	25,000	44,800
6	German Choirs of Fredericksburg	4,000	2,500	2,500	2,500	\$4,000	1%		0%				
7	July 4th Celebration	5,000	4,500	5,000	4,500	\$5,000	1%		0%				
8	Chamber-Christmas Parade	10,000	10,000	12,000	12,000	\$12,000	2%		0%	5,000	7,500	9,000	7,200
9	Mom Center				2,000	\$2,000	0%		0%				5,000
10	Fredericksburg Band Boosters-Stan Kenton Legacy Orchestra					\$4,000	1%		0%				
11	Jazz Festival					\$5,000	1%		0%				
12	Friday Haus					\$6,200	1%		0%				
13	SystemsGo	2,500	3,000	3,500	3,500	\$3,500	1%		0%				
14	Fredericksburg Music Club, Inc.			3,150	5,000	\$5,800	1%		0%				1,275
15	Tennis Assoc				2,000	\$3,600	1%		0%				
16	Fredericksburg Art Guild	4,500	4,000	4,400	4,500	\$6,100	1%		0%				
17	Pedernales Creative Arts Alliance/Oktobefest-Glockenspiel					\$50,000	8%		0%				
18	Boys & Girls Club-Mah Jongg			1,500	1,500	\$3,000	0%		0%	1,500			
19	Hill Country Film Society	6,500	6,500	8,000	8,000	\$8,000	1%		0%				
20	Holy Ghost Lutheran Church			1,500	1,000	\$1,000	0%		0%				
21	Fredericksburg Community Orchestras			3,000	3,000	\$3,000	0%		0%			2,000	
22	Hill Country Antiques Tractor and Engine Club, Inc.	6,000	6,000	3,000	3,000	\$3,000	0%		0%	3,000	2,250	2,000	2,000
23	Gillespie County Fair & Festivals Association, Inc	40,000	45,000	45,000	45,000	\$45,000	7%		0%	12,000	13,000	14,000	14,000
24	Die Kunstler von Fredericksburg	2,500	3,000	3,000	4,200	\$4,200	1%		0%	1,000	1,500	1,500	1,500
25	Friends of Enchanted Rock	8,000		5,000	4,500	\$2,500	0%		0%				
26	Texas Hill Country Higher Education Development Foundation					\$5,000	1%		0%				

Future Agenda Items

City Council

February 3, 2020 Regular Meeting

City Council = Red

3rd and 17th Regular Meetings @ 6p.m.

Planning & Zoning = Green

Historic Review Board = Purple

Board of Adjustment = Blue

City Events = Yellow

February 11th at 2 p.m. Joint meeting (City Council, HRB and P&Z)

February 14th -Last day to file as a candidate for office

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

Consent

1. 1-16-20 City Council Work Session Minutes
2. 1-21-20 City Council Regular Meeting Minutes

Ordinances

1. Calling the May 2, 2020 General Election

Resolutions:

Public Hearing

Approvals-Misc.

1. Possible Joint Election Agreement or Contract with the County to run the May 2, 2020 General Election
2. Approval of City Manager's Performance Goals
3. Changes to the City Council Rules and Procedure

Presentations, Discussions and Updates:

1. City Attorney presentation on Civil Enforcement on Code Violations
2. Update on Stormwater/Vegetation Management Program
3. Report and discussion on future plans for City Hall, Police Station and Fire Station.

Executive Session

February 17, 2020 Regular Meeting

Consent

1. 2-3-20 City Council Regular Meeting Minutes
2. 2-11-20 City Council Joint Meeting Minutes (P&Z and HRB)

Ordinances

Resolutions

Public Hearing

Approvals-Misc.

Presentations, Discussions and Updates:

Executive Session