

X. Regular Agenda

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| Agenda Section | Regular Agenda |
| Section Number | X.A |
| Subject | Consider, discuss and act upon a contract with TLC NetCon for IT services. |
| To | Mayor and Council Members |
| From | Ben White, City Manager |
| Date | September 10, 2019 |
| Attachment(s) | Contract |
| Related Link(s) | http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php |
| Consideration and Discussion | <ul style="list-style-type: none"> • City Council discussion as required |
| Action | <ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action |

Information Technology Services Agreement

This Agreement is made and entered into as of the day of October 1, 2019 (the "Effective Date") and ending on September 30, 2020 (the "Termination Date") by and between TLC NetCon Inc., a Texas corporation ("TLC"), and City of Farmersville ("Client").

TLC Services. Upon the terms and subject to the conditions of this Agreement, which includes all the Schedules attached hereto, TLC will provide to Client the Information Technology services set forth or described in Schedule A attached hereto (collectively, the "Services"). Client agrees that TLC is responsible only for providing the Services, and TLC is not responsible for providing any services or performing any tasks not specifically set forth in Schedule A hereto.

Confidentiality. The parties acknowledge that in the course of performing their responsibilities under this Agreement they each may be exposed to or acquire information that is proprietary to or confidential to the other party or third parties. The parties agree to hold such information in strictest confidence,

Payment. Client shall pay TLC within ten (10) days after the date of an invoice: unless otherwise specified in Appendix A.

Limitation of Liability. TLC SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE AGGREGATE LIABILITY OF TLC FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM, INCLUDING TLC OBLIGATION TO INDEMNIFY AND HOLD HARMLESS, UNDER THIS AGREEMENT, SHALL BE LIMITED TO: (i) THE PROJECT SERVICE FEES PAID TO TLC BY CLIENT FOR THE PROJECT SERVICES IF THE CAUSE OF ACTION OR CLAIM ARISES OUT OF OR RELATES TO THE PROJECT SERVICES; OR (ii) THE ADMINISTRATIVE SERVICE FEES PAID TO TLC BY CLIENT FOR THE ADMINISTRATIVE SERVICES CORRESPONDING TO THE INITIAL TERM OR THE RENEWAL PERIOD DURING WHICH THE CAUSE OF ACTION OR CLAIM ACCRUED IF THE CAUSE OF ACTION OR CLAIM ARISES OUT OF OR RELATES TO THE ADMINISTRATIVE SERVICES.

Termination. In addition to the express rights of TLC to terminate this Agreement set forth herein, TLC and Client shall also have the right to terminate this Agreement and cancel any unfilled portion of it given 90 days written notice.

Hiring of Employees. Both parties agree not to engage in any attempt to hire, or to engage as independent contractors, the others employees or independent contractors for the period ending one year after the expiration or earlier termination of this Agreement, except as may be otherwise agreed to in writing by both parties.

Independent Contractor.

- (a) TLC and any all TLC personnel, in performance of this Agreement are acting as independent contractors and not employees or agents of Client.
- (b) Client acknowledges that in performance of the Services, TLC is not engaging in any management role with respect to Client, TLC is not exercising any form of operating control over Client, and that any such management or operational activities of Client shall be deemed to be conducted by Client alone.

Entire Agreement. This Agreement, including all attachments, Exhibits and/or Schedules hereto, evidences the complete understanding and agreement of the parties with respect to the subject matter hereof and supersedes and merges all previous proposals of sale, Communications, representations, understandings and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a writing subscribed to by authorized representatives of both parties.

Amendments, No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of each of the parties.

Force Majeure. Neither party shall be liable to the other for any delay or failure to performance of the services or obligations set forth in this Agreement due to causes beyond its reasonable control including, without limitation, acts of God, natural or human-caused disasters such as flood and fire, civil disturbances, labor disputes, compliance with governmental regulations or other authority, or the inability of freight forwarders or carriers to complete shipments in accordance with TLC instructions.

Governing Law. This Agreement and performance hereunder shall be governed by tile laws of the State of Texas without giving effect to principles of conflict of laws of such state or international treaties. TLC and Client hereby agree on behalf of themselves and any person claiming by or through them that the sole jurisdiction and revenue for any litigation arising from or relating to this Agreement shall be an appropriate federal or state court located in Collin County, Texas.

IN WITNESS WHEREOF, the parties have caused This Agreement to be executed by their duly authorized representatives as of the date first written above.

TLC:

CLIENT:

TLC NetCon, INC.

City of Farmersville

By: _____
(Signature)

By: _____
(Signature)

Name: Tony Linton

Name: Randy Rice

Title: CEO

Title: Mayor

Date: _____

Date: _____

Appendix A

CUSTOMER: City of Farmersville
Attn: Benjamin L. White
DATE: September 15, 2019
PHONE NUMBER: 972-782-6151
FAX NUMBER: 972-782-6604

SALES PERSON: Tony Linton

Monthly Desktop/Laptop Computer support

Number of systems: 67
Support unit price: \$50.00
Sub-Total: \$3350.00

| Monthly Server support: | Physical | Virtual |
|-------------------------|-----------|----------|
| Number of systems: | 10 | 5 |
| Unit price of: | \$100.00 | \$50.00 |
| Sub-total: | \$1000.00 | \$250.00 |

Total monthly price: \$4600.00

Monthly Service

Includes: -Help Desk
(Phone and Web based remote support)
-On Site Support (Scheduled and non-scheduled maintenance during TLC regular business hours: 8 - 5, M-F)
-Structured Administration based upon industry standards
-Scheduled Auditing (Data integrity, backup recovery. etc)
-Reporting - Monthly executive ~
(Includes Status of network, Audit results, # Incidents, # Problems, network performance)
-Install Service Packs / Updates
-Antivirus maintenance / Updates
-Workstation maintenance (Antivirus updates, Windows Updates. etc.)
-Server maintenance (Antivirus updates. Windows Updates, Backups, etc.)
-Restoring software from customer installation media after hardware failure
-Installation of hardware shipped from manufacturer under manufacturer's warranty

- Complete managed network support for your business
- Provide up to date and accurate enterprise level configuration diagrams including IP addresses, Administrative passwords, and user passwords
- Basic hardware and software upgrades
- File Restoration

Monthly Service

Does Not Include:

- Server installation and configuration
- Project implementation
- Cost of computer hardware
- Service or maintenance on printers, copiers, etc.
- Non-scheduled maintenance due to client over sight, negligence, or malicious intent
- Major upgrades of hardware or software involving new equipment or applications

User new system installation and migration of an existing system will be billed at a flat rate of \$125.00

New server installation including migration from an existing server will be billed at a flat rate of \$500.00

All uncovered work will be billed at regular hourly rate of \$125.00 per hour and major projects will be billed at an amount agreed upon by TLC and Client.

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| Agenda Section | Regular Agenda |
| Section Number | X.B |
| Subject | Consider, discuss and act upon Resolution #R-2019-0910-001 and contract #228989 regarding the purchase of a 2019 Freightliner M2-106 Altec Digger Derrick DM47 TR electric truck. |
| To | Mayor and Council Members |
| From | Ben White, City Manager |
| Date | September 10, 2019 |
| Attachment(s) | 1. R-2019-0910-001 2. Contract |
| Related Link(s) | http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php |
| Consideration and Discussion | City Council discussion as required |
| Action | <ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action |

**CITY OF FARMERSVILLE
RESOLUTION # R-2019-0910-001**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE , TEXAS, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT, AND RELATED INSTRUMENTS, WITH ALTEC CAPITAL SERVICES, L.L.C., AND DETERMINING OTHER MATTERS IN CONNECTION WITH THE LEASE PURCHASE OF A 2019 FREIGHTLINER M2-106 ALTEC DIGGER DERRICK DM47 TRN TRUCK (THE "EQUIPMENT") FOR THE ELECTRIC UTILITY DEPARTMENT

WHEREAS, the City of Farmersville (hereinafter "Lessee") has determined that a true and very real need exists for the acquisition of a 2019 Freightliner M2-106 Altec Digger Derrick DM47 TRN Truck (the "Equipment") described in the proposed Equipment Lease/Purchase Agreement (the "Agreement") by and between Altec Capital Services, L.L.C., as Lessor, and Lessee, as lessee, presented to this meeting and attached hereto as Exhibit "A" and incorporated herein by reference for all purposes allowed by law; and

WHEREAS, Lessee has taken the necessary steps, including those relating to any applicable legal bidding requirements, to arrange for the acquisition of the Equipment; and

WHEREAS, Lessee reasonably anticipates that it and its subordinate units will not issue tax-exempt obligations in the face amount of more than \$10,000,000 during the current calendar year; and

WHEREAS, Lessee proposes to enter into the Agreement with Altec Capital Services, L.L.C. substantially in the proposed form presented to this meeting.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, THAT:

Section 1. It is hereby found and determined that the terms of the Agreement in the form presented to this meeting and incorporated in this resolution, are in the best interests of Lessee for the acquisition of the Equipment.

Section 2. The Agreement is hereby approved. The Mayor of Lessee and any other officer of Lessee who shall have power to execute contracts on behalf of Lessee be, and each of them hereby is, authorized to execute, acknowledge and deliver the Agreement with any changes, insertions and omissions therein as may be approved by the officers who execute the Agreement, such approval to be conclusively evidenced by such execution and delivery of the Agreement. The City Secretary of Lessee and any other officer of Lessee who shall have power to do so be, and each of them hereby is, authorized to affix the official seal of Lessee to the Agreement and attest the same.

Section 3. The proper officers of Lessee be, and each of them hereby is, authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and the Agreement.

Section 4. Lessee hereby designates the Agreement as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 5. The project to which the original expenditure(s) relates can be generally described as maintenance of electric utility equipment and services. The original expenditure(s) will be made from Lessee's general operating account. The maximum principal amount of the obligations expected to be issued for the project is Two Hundred Fourteen Thousand One Hundred Thirty-Nine Dollars (\$ 214,139.00). This resolution is being entered into on or before, or not later than 60 days after, the date on which the original expenditure(s) to be reimbursed will or have been paid. This resolution is intended to be a declaration of official intent within the meaning of Treasury Regulations Section 1.150-2.1

Section 6. The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the Equipment Lease/Purchase Agreement by and between Altec Capital Services, L.L.C., as Lessor, and Lessee, as Lessee, is the same as presented at said meeting of the governing body of Lessee, excepting only such changes, insertions and omissions as shall have been approved by the officers who executed the same.

Section 7. This Resolution shall take effect immediately from its passage.

DULY PASSED by the City Council of the City of Farmersville on this ____ day of September, 2019.

APPROVED:

Jack Randall Rice, Mayor

ATTEST:

Sandra Green, City Secretary

September 10, 2019

ALTEC CAPITAL
SERVICES, L.L.C. 33
Inverness Center Parkway
Suite 200
Birmingham, AL 35242

Re: Equipment Lease/Purchase Agreement dated as of October 01, 2019 between
ALTEC CAPITAL SERVICES, L.L.C., as
Lessor, and **City of Farmersville, Texas**,
as Lessee Lease Number 228989

Essential Use of Equipment.

Gentlemen:

This letter is to confirm and affirm that the personal property (the "Equipment"¹) subject to the above -referenced Agreement is essential to the governmental functions of Lessee.

The Equipment will be used by Lessee for the purpose of performing one or more of Lessee's governmental functions consistent with the permissible scope of Lessee's authority and not in any trade or business carried on by any person other than Lessee.

Very truly yours,

City of Farmersville, Texas

Jacks Randall Rice, Mayor

EQUIPMENT LEASE/PURCHASE AGREEMENT

THIS EQUIPMENT LEASE/PURCHASE AGREEMENT ("Agreement") is made as of **October 01, 2019** by and between ALTEC CAPITAL SERVICES, L.L.C. ("Lessor") and **CITY OF FARMERSVILLE, TEXAS** ("Lessee").

In consideration of the mutual covenants, terms and conditions hereinafter contained, Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the property (hereinafter, together with all replacements and accessions thereto, referred to as the "Equipment") generally described in the Preliminary Description of Equipment attached hereto and to be more specifically described in the Certificate of Acceptance, in the form attached, to be executed and delivered pursuant hereto, subject to the terms and conditions set forth herein.

This Agreement is made upon the following terms and conditions:

(1) **TERM.** (a) Commencement of Term. This Agreement shall be effective, and the parties' obligations hereunder shall arise, as of the date hereof. The term of lease under this Agreement shall commence on the date on which the Equipment is accepted by Lessee, as indicated on the Certificate of Acceptance (the "Commencement Date"), and shall terminate on the last business day of Lessee's then current fiscal budget period (such period being hereinafter referred to as the "Original Term"). (b) Renewal of Term. Subject to the provisions of Section 10 hereof and sub-part (e) of this Section, the Original Term will be automatically and successively renewed at the end of the Original Term under the same terms and conditions for successive renewal periods ("Renewal Terms"), with the last of such Renewal Terms to end on the last day of the Full Lease Term, as specified on the Schedule of Payments executed by Lessee and attached hereto (the "Schedule"). (c) Termination of Term. The term of lease will terminate upon the earliest to occur of any of the following events: (1) The expiration of the Original Term or any Renewal Term and the nonrenewal thereof in accordance with the terms and conditions of this Agreement; (2) The purchase of the Equipment by Lessee under the provisions of Sections 8(c) or 10 of this Agreement; (3) A default by Lessee and Lessor's election to terminate this Agreement under Section 13; or (4) The payment by Lessee of all rental payments to be paid by Lessee hereunder with respect to the Equipment. (d) Continuation of Lease Term by Lessee. Lessee intends, subject to the provisions of sub-part (e) of this Section, to continue the term of the lease hereunder through the Original Term and all Renewal Terms for the Full Lease Term and to pay the rental payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all rental payments for the Full Lease Term can be obtained and further intends to do all things lawfully within its power to obtain and maintain funds from which the rental payments may be made. (e) Nonappropriation. In the event sufficient funds are not appropriated for the payment of all rental payments required to be paid in the next succeeding Renewal Term, then Lessee may terminate this Agreement at the end of the Original Term or the then current Renewal Term, as the case may be, and Lessee shall not be obligated to make payment of the rental payments provided for in this Agreement beyond the then current term. Lessee agrees to give notice to Lessor of such termination at least sixty (60) days prior to the end of the then current term or, if nonappropriation has not occurred by that date, promptly upon the occurrence of nonappropriation. If this Agreement is terminated under this sub-part, Lessee agrees, at Lessee's sole cost and expense, peaceably to deliver the Equipment to Lessor at such location as is specified by Lessor, in the condition required by Section 5(b) hereof, on or before the effective date of termination.

(2) **RENTAL PAYMENTS.** (a) Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay rental payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee. (b) Payment of Rental Payments. Lessee shall pay rental payments exclusively from legally available funds, in lawful money of the United States of America, to Lessor in the amounts and on the rental payment due dates set forth in the Schedule without notice. In the event that any rental payment is not received by Lessor on or before the due date therefor, Lessee agrees to pay a late charge determined on the basis of accrued interest on the delinquent amount at the rate of one percent (1%) per month (or, if such rate is in excess of the maximum rate permitted by law, the maximum rate permitted by law) from the date of delinquency to the date that the rental payment is received by Lessor. (c) Interest and Principal Components. As set forth in the Schedule, a portion of each rental payment is paid as, and represents payment of, interest, and the balance of each rental payment is paid as, and represents payment of, principal. (d) Rental Payments to be Unconditional. The obligation of Lessee to make rental payments hereunder, and to perform and observe the covenants and agreements contained in this Agreement, shall be absolute and unconditional in all events, except as expressly provided in this Agreement. Lessee shall not assert any right of setoff, counterclaim, or abatement against its obligations hereunder, including (without limitation) by reason of equipment failure, disputes with the vendor(s) or manufacturer(s) of the Equipment or Lessor, accident or any unforeseen circumstances.

(3) **REPRESENTATIONS AND COVENANTS OF LESSEE.** Lessee represents, covenants and warrants to Lessor as follows: (a) Lessee is a state or political subdivision thereof within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended, (the "Code") and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such. (b) Lessee is authorized under the Constitution and laws of the state of **TX** to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder. (c) Lessee's name as indicated in the opening paragraph and on the signature page of this Agreement is its true, correct,

and complete legal name. (d) As evidenced by an attachment hereto, the execution and delivery of this Agreement by or on behalf of Lessee has been duly authorized by all necessary action of the governing body of Lessee, and Lessee has obtained such other approvals and consents as are necessary to consummate this Agreement. Lessee further represents, covenants and warrants that all requirements have been met, and procedures have occurred, necessary to ensure the enforceability of this Agreement against Lessee, and that Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition of the Equipment by Lessee hereunder. (e) Lessee shall cause to be executed and attached hereto an incumbency certificate and an opinion of its counsel in form and substance satisfactory to Lessor. (f) Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. The Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity. Lessee shall cause to be executed and attached hereto an Essential Use of Equipment Letter in form and substance satisfactory to Lessor. (g) Within one hundred fifty (150) days of the end of each fiscal year of Lessee during the term hereof, Lessee shall provide Lessor with a copy of its audited financial statements for such fiscal year. Additionally, Lessee shall provide Lessor with budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may reasonably be requested by Lessor. (h) The Equipment is, and shall remain during the period this Agreement is in force, personal property and when subject to use by Lessee under this Agreement will not be or become fixtures. (i) Lessee acknowledges that Lessor is acting only as a financing source with respect to the Equipment, which has been selected by Lessee. (j) Lessee will 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.

(4) TITLE TO EQUIPMENT; SECURITY INTEREST. (a) Title to the Equipment. During the term of this Agreement, title to the Equipment shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of a default as set forth in Section 13 hereof or nonappropriation as set forth in Section 1(e) hereof, title shall immediately vest in Lessor. (b) Security Interest. To secure the prompt payment and performance as and when due of all of Lessee's obligations under this Agreement, Lessee hereby grants to Lessor a first priority security interest in the Equipment, all replacements, substitutions, accessions and proceeds (cash and non-cash), including the proceeds of all insurance policies, thereof. Lessee agrees that with respect to the Equipment Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in TX. Lessee may not dispose of any item of the Equipment without the prior written consent of Lessor, notwithstanding the fact that proceeds constitute a part of the Equipment.

(5) USE AND MAINTENANCE. (a) Use. Lessee shall use the Equipment solely for the purpose of performing one or more governmental functions of Lessee and in a careful, proper and lawful manner consistent with the requirements of all applicable insurance policies relating to the Equipment. Lessee will not change the location of any items of the Equipment as specified in the applicable Certificate of Acceptance without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee shall not attach or incorporate the Equipment to or in any other item of equipment in such a manner that the Equipment becomes or may be deemed to have become an accession to or a part of such other item of equipment. (b) Maintenance. Lessee, at its own expense, will keep and maintain, or cause to be kept and maintained, the Equipment in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear resulting from proper use thereof alone excepted, and will provide all maintenance and service and make all repairs reasonably necessary for such purpose. All replacement parts and accessions shall be free and clear of all liens, encumbrances or rights of others and have a value and utility at least equal to the parts or accessions replaced. Lessee shall not make any material alterations to the Equipment without the prior written consent of Lessor, which consent shall not be unreasonably withheld. All additions to the Equipment which are essential to its operation, or which cannot be detached without materially interfering with such operation or adversely affecting the Equipment's value and utility, shall immediately be deemed incorporated in the Equipment and subject to the terms of this Agreement as if originally leased hereunder, and subject to the security interest of Lessor. Upon reasonable advance notice, Lessor shall have the right to inspect the Equipment and all maintenance records with respect thereto, if any, at any reasonable time during normal business hours.

Additional Provisions for Vehicles. As to any Equipment leased hereunder that constitutes motor vehicles ("Vehicles"), you further covenant and agree as follows:

(a) You shall, at your own expense, obtain in our name all registration plates and other plates, permits inspections or licenses required to be obtained in connection with the Vehicles, or related to their operation and use except for the initial registration plates which we obtain at your expense. We shall issue to you, for such purpose, appropriate limited powers of attorney or such other authority as may be necessary. You shall not, without our prior written consent, permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would subject such Vehicle to the titling or registration laws of such other state. **YOU AGREE THAT NO VEHICLE SHALL BE USED TO TRANSPORT PERSONS FOR HIRE OR HAZARDOUS SUBSTANCES.**

(b) At any time that you are required to return the Vehicle to us, you shall, at your expense, deliver the Vehicle to the nearest Altec facility within the United States which we specify.

(c) Each Vehicle shall not have more than the average miles per year recorded on its odometer than the mileage specified for the selected Lease Term for each vehicle type and specific model as detailed on the Supplement (or, if no mileage is specified in the Supplement, each Vehicle shall not have more than twelve thousand (12,000) miles per year for each year of the applicable Lease Term) and you shall pay us, at the time of Vehicle surrender, an excess mileage charge equal to \$.35 per mile for each mile exceeding specified mileage.

(d) Ensure all Equipment and equipment operations conform to all applicable local, state, and Federal laws, health and safety guidelines. Upon return, the Equipment will be complete and operational with all components as originally supplied and will have passed D.O.T. inspections, or other appropriate agency or association requirements for operation. If applicable, an inspection sticker or certificate will be furnished to Lessor

verifying compliance with any regulatory requirements. Lessee shall satisfy all legal and regulatory conditions necessary for Lessor to sell or lease the Equipment to a third party. Lessee will keep all licenses and operating certificates required for operation of the Equipment current during the term of the Lease. Lessee will at all times use the Equipment in compliance with all applicable laws and regulations of any governmental, local and regulatory agency;

(e) Provide safe, secure storage for the Equipment for one-hundred and eighty (180) days after expiration or earlier termination of the Lease at not more than three (3) location (s) selected by Lessor;

(f) Take such action as may be required so that, upon return, each unit of Equipment must meet all of its manufacturer's specifications for performance under full-rated loads and all of the following conditions:

1). Tires: All tires shall be of the same type (original size) and manufacturer (i.e. matched) and have a minimum of fifty (50) percent remaining tread life. All front tires shall be original casing with no crossed lugs, rear tires may be either original casings or first time recapped tires and no tire shall exhibit or have flat or bald spots, dry rot, exposed cord or cuts in sidewall;

2). Any time or life-limited components including, but not limited to, power train assembly, transmissions, converters, generators, axles, wheels, pumps or other parts shall have at least fifty (50%) percent useful life remaining before the manufacturer's next recommended major overhaul, rebuild, calibration or replacement as recommended by the manufacturer and/or published in standard maintenance manuals;

3). Mechanical Power Train: Each unit of Equipment shall have passed a dynamometer test, road test and oil analysis, each conducted not more than sixty- (60) days prior to the return of the equipment, the test results shall have been provided to Lessor not more than two- (2) weeks after each test has been conducted and not less than two- (2) weeks prior to the return of the Equipment and the tests and test results shall have been reasonably acceptable to the Lessor. The engine must have at least 50% remaining mileage until the next manufacturer's scheduled "in-frame" overhaul, there shall be no cracked cylinder heads or engine blocks, the wheel horsepower must be within 80% - 85% of the rated flywheel horsepower without excess blow-by, exhaust system leakage or oil leakage and must meet current smoke emission standards. The transmission and rear axles shall be capable of pulling loads to their full rated capacity, there shall be no transmission, drive axle or wheel hub oil leaks and there shall be no "slipping" or "grabbing" clutch. Cooling and lubrication systems shall not be contaminated and there shall be no leaking between systems, no battery shall have any dead cell, cracked case or be inoperative;

4). Service Body/Digger Derrick: Lessee will ensure that the Equipment will be mechanically and structurally sound, no bowed sections, free of cracks, bends or warping that impacts the Fair Market Value and marketability of the Equipment and is capable of performing the functions for which the Equipment was originally designed. Ensure all safety equipment, covers and guards, parts and components must be in-place and operational. No safety features shall be bypassed or disconnected. All body parts shall be intact with no tears or dents in metal. Service bodies to be free of dents (or cracks on fiberglass components) or damages over \$50.00, normal wear and tear excepted. Sheet metal must be complete. All cooling, heating and lubrication systems shall not be contaminated and there shall be no leaks or leakage between systems. All gauges, indicators and controls will be in good conditions, plastic or glass coverings intact, clear and all will be in good working order. No battery shall have any dead cells, cracked case be inoperative or unable to be charged. All internal fluids, such as lube oil and hydraulic fluids, are to be filled to operating levels and all filler caps are to be secured. Digger/Derrick boom, hydraulic cylinders and all accessories and attachments shall be free of damage and capable of performing to their maximum operational designs. All drive axles and non-drive axles are to be fully functional with no slipping, grinding or grabbing, and the Equipment shall be operational in all gears, forward and reverse. If during such inspection, the authorized inspector finds any of the material or workmanship to be defective or the Equipment not meeting or exceeding the manufacturer's operating requirements, Lessee, at lessee's cost, shall repair or replace the material or defective workmanship utilizing manufacturer approved components and in accordance with the manufacturer's recommendations. After corrective measures are completed, lessee, at Lessee's cost will provide for a follow-up inspection of the Equipment by the authorized inspector as outlined in this paragraph;

5). General Condition: With respect to each unit, there must be no structural or mechanical damage; no glass shall be broken, chipped or cracked; no upholstery shall have any cuts, tears or burn marks. All rust or corrosion must be treated in a manner consistent with standard industry practices. All Equipment must have a good overall appearance and no material damage. The Equipment shall be cleaned (internal and external), free of rust and corrosion with no missing or damaged parts. Upon return, all commercial logos, advertising, graffiti, insignias and lettering shall be removed and repaired in a workmanlike manner so as to not damage the Equipment. Manufacturer's identity plates and markings shall not be removed. With respect to each unit, the total cost of necessary repairs for damage or other related costs necessary to place the Equipment in such condition as to be in complete compliance with this Lease may not exceed \$150.00;

6). Documents and Records: Written records of scheduled and other maintenance and repair work done shall be kept, dated, and signed by the appropriate authority. A service history or log will be maintained during the Lease term and a copy provided to Lessor upon request during the term of the Lease, or at Lease termination. All maintenance records, maintenance record jackets, repair jackets, repair orders, license plates, registration certificates and all other similar documents, in their entirety, must be returned to Lessor;

7). Brakes: Brake drums, linings and other brake components shall not be cracked and shall not exceed manufacturers' recommended wear limits. Brake linings shall have fifty (50) percent remaining wear;

8). Maintenance: Lessee shall strictly follow the manufacturer's recommended maintenance and service schedule, as required to validate any warranty, at Lessee's sole cost and expense. Any maintenance or repair work shall comply with the guidelines and procedures as specified by the manufacturers of the equipment and in accordance with standards in the industry. Lessee will use only original manufacturer's approved replacement parts and components in the performance or any maintenance and repair of the Equipment. Lessee will at all times maintain the Equipment in good operational condition and appearance;

9). Use: Lessee guarantees that the Equipment will not be or have been operated beyond the rated capacity as certified by the manufacturer at any time during the Lease term. Lessee will not discriminate in the use of the Equipment from any other similar equipment in its fleet;

10). Alterations: Lessee will not modify the Equipment without the prior written approval of Lessor. In any event, Lessee will not make any modifications or alterations that would impair the Equipment's use, value, marketability or manufacturer's warranty and recommendations. Lessee will not make any alterations to the Equipment that would damage or restrict the use of the

Equipment from its initial use and design and that cannot be removed without damage to the unit. Changes, modifications or additions to the Equipment mandated by Federal or state authorities will be completed by Lessee and become property of Lessor;

11). Not more than ninety- (90) days prior to return of Equipment, during regular working hours, Lessee must make the Equipment available to allow Lessor or Lessor's agent to conduct an in-depth physical inspection. Any part, component or function found not to be within the manufacturer's tolerances and operational specifications, including but not limited to engines, transmissions, clutches, drive trains, and rear axles, will be replaced or brought within those tolerances and specifications to the satisfaction of Lessor. Testing with necessary reconditioning to meet the return conditions are to be provided to Lessor two (2) weeks prior to the return of the equipment. Lessee shall obtain written certification from the manufacturers or their authorized representative that the Equipment has been returned in accordance with the terms set forth herein;

(6) **FEES; TAXES; OTHER GOVERNMENTAL AND UTILITY CHARGES; LIENS.** (a) Fees. Lessee shall be liable to reimburse Lessor for, and agrees to hold Lessor harmless from, all titling, recordation, documentary stamp and other fees arising at any time prior to or during the Full Lease Term, or upon or relating to the Equipment or this Agreement. (b) Taxes, Other Governmental Charges and Utility Charges. The parties contemplate that the Equipment will be used for a governmental purpose of Lessee and that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for net income taxes of Lessor), Lessee will pay, as the same come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied during the Full Lease Term against or with respect to the Equipment, as well as all utility and other charges incurred in the operation and use of the Equipment. (c) Liens. Lessee shall keep the Equipment free and clear of all liens, levies and encumbrances, except those created under this Agreement.

(7) **INSURANCE.** (a) Casualty Insurance. At its own expense, Lessee shall keep the Equipment insured against loss or damage due to fire and the risks normally included in extended coverage, malicious mischief and vandalism, for not less than the Full Insurable Value of the Equipment. As used herein, "Full Insurable Value" means the full replacement value of the Equipment or the Prepayment Amount applicable to the immediately preceding rental payment due date as designated on the Schedule, whichever is greater. All insurance for loss or damage shall provide that losses, if any, shall be payable to Lessor and Lessee, as their interests may appear, and Lessee shall utilize its best efforts to have all checks relating to any losses delivered promptly to Lessor. If Lessee insures similar properties against casualty loss by self-insurance, with Lessor's prior consent Lessee may satisfy its obligations with respect to casualty insurance hereunder by means of a self-insurance fund reasonably acceptable to Lessor. The Net Proceeds of the insurance required hereby shall be applied as provided in Section 8 hereof. As used herein, "Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deduction of all expenses (including attorneys' fees) incurred in the collection of such claim or award. (b) Liability Insurance. Lessee shall also carry public liability insurance, both personal injury and property damage, covering the Equipment in an amount as Lessor may from time to time reasonably require on notice to Lessee. Lessor shall be named as an additional insured with respect to all such liability insurance. With Lessor's prior consent, Lessee may satisfy its obligations with respect to liability insurance hereunder by maintaining a funded self-insurance plan. (c) Worker's Compensation. Lessee shall carry worker's compensation insurance covering all employees working on, in, near or about the Equipment, or demonstrate to the satisfaction of Lessor that adequate self-insurance is provided, and shall require any other person or entity working on, in, near or about the Equipment to carry such coverage throughout the Full Lease Term. (d) General Requirements. All insurance required under this Section 7 shall be in form and amount and with companies reasonably satisfactory to Lessor except as otherwise expressly provided herein. Lessee shall pay the premiums therefor and deliver to Lessor the policies of insurance or duplicates thereof, or other evidence satisfactory to Lessor of such insurance coverage, annually throughout the Full Lease Term. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor, that (a) it will give Lessor thirty (30) days' prior written notice of the effective date of any material alteration or cancellation of such policy; and (b) insurance as to the interest of any named additional insured or loss payee other than Lessee shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee with respect to such policy or policies.

(8) **RISK OF LOSS; DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS.** (a) Risk of Loss. Lessee assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment, defect therein, or unfitness or obsolescence thereof, shall relieve Lessee of its obligation to make rental payments or perform any other obligations hereunder. (b) Damage, Destruction and Condemnation. If prior to the termination of the Full Lease Term (1) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty; or (2) title to, or the temporary use of, the Equipment or any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to Lessee's obligations pursuant to sub-part (c) of this Section. (c) Use of Net Proceeds. Provided the Equipment is not deemed to be a total loss, Lessee shall, at its expense (subject to application of the Net Proceeds), cause the prompt repair, replacement or restoration of the affected Equipment. In the event that the Equipment is totally destroyed or damaged and Lessee is unable to make arrangements satisfactory to Lessor for the prompt replacement thereof, Lessee shall pay to Lessor, on the rental payment due date next succeeding the date of such loss, the Prepayment Amount applicable to such rental payment due date plus the rental payment due on such date and any other amounts then payable by Lessee hereunder. Upon such payment, the term of the lease and the security interest of Lessor in the Equipment shall terminate, and Lessee will acquire full and unencumbered title to the Equipment as provided in Section 10 hereof. If Lessee is not then in default hereunder, any portion of the Net Proceeds in excess of the amount required to pay in full Lessee's

obligations as set forth in this sub-part (c) shall be for the account of Lessee. Lessee agrees that if the Net Proceeds are insufficient to pay in full Lessee's obligations as set forth in this sub-part (c), Lessee shall make such payments to the extent of any deficiency.

(9) DISCLAIMER OF WARRANTIES. LESSOR, NOT BEING A SELLER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE), NOR A SELLER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO: THE FITNESS FOR USE, DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; AND ANY GUARANTY OR WARRANTY AGAINST PATENT INFRINGEMENT OR LATENT DEFECTS, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Lessor is not responsible or liable for any direct, indirect, incidental or consequential damage to or losses resulting from the installation, operation or use of the Equipment or any products manufactured thereby. All assignable warranties made by the vendor(s) or manufacturer(s) to Lessor are hereby assigned to Lessee for and during the Full Lease Term and Lessee agrees to resolve all such claims directly with the vendor(s) or manufacturer(s). Provided that Lessee is not then in default hereunder, Lessor shall cooperate fully with Lessee with respect to the resolution of such claims, in good faith and by appropriate proceedings at Lessee's expense. Any such claim shall not affect in any manner the unconditional obligation of Lessee to make rental payments hereunder.

(10) PURCHASE OF EQUIPMENT BY LESSEE/PREPAYMENT. Provided that Lessee is not then in default under this Agreement, this Agreement will terminate, the security interest of Lessor in the Equipment will be terminated, and Lessee will acquire title to the Equipment free and clear of all liens and encumbrances created by, or arising through or under, Lessor: (a) at the end of the Full Lease Term, upon payment in full of all rental payments and other amounts payable by Lessee hereunder for the Full Lease Term; or (b) on any rental payment due date, upon payment by Lessee of the then applicable Prepayment Amount as set forth on the Schedule plus the rental payment due on such date and all other amounts then due by Lessee hereunder, provided Lessee shall have given Lessor not less than thirty (30) days' prior notice of its intent to make such payment.

(11) QUIET POSSESSION. Lessor represents and covenants to Lessee that Lessor has full authority to enter into this Agreement, and that, conditioned upon Lessee performing all of the covenants and conditions hereof, as to claims of Lessor or persons claiming under Lessor, Lessee shall peaceably and quietly hold, possess and use the Equipment during the term of this Agreement subject to the terms and provisions hereof.

(12) ASSIGNMENT; SUBLEASING; INDEMNIFICATION. (a) Assignment by Lessor. This Agreement, and the rights of Lessor hereunder and in and to the Equipment and the Schedule, may be assigned and reassigned in whole or in part to one or more assignees by Lessor or its assignees at any time without the necessity of obtaining the consent of Lessee; provided, however, no such assignment or reassignment shall be effective unless and until Lessee shall have been given written notice of assignment disclosing the name and address of the assignee or its agent authorized to receive payments and otherwise service this Agreement on its behalf. Upon receipt of notice of assignment, Lessee agrees to record the same in records maintained for such purpose, and further, to make all payments as designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor or Lessor's assignees. Lessee agrees to execute all documents, including acknowledgments of assignment, which may reasonably be requested by Lessor or its assignees to protect their interests in the Equipment and in this Agreement. (b) No Sale, Assignment or Subleasing by Lessee. This Agreement and the interest of Lessee in the Equipment may not be sold, assigned, sublet or encumbered by Lessee without the prior written consent of Lessor. (c) Release and Indemnification Covenants. To the extent permitted by the laws and Constitution of the state of TX Lessee hereby assumes and agrees to indemnify, protect, save and keep harmless Lessor, its agents and employees, from and against any and all losses, damages, injuries, claims, demands and expenses, including legal expenses, of whatsoever kind and nature, arising on account of (1) the ordering, acquisition, delivery, installation or rejection of the Equipment; (2) the possession, maintenance, use, condition (including without limitation, latent and other defects whether or not discoverable by Lessor or Lessee, any claim in tort, including actions for strict liability, and any claim for patent, trademark or copyright infringement) or operation of any item of the Equipment (by whomsoever used or operated); or (3) the loss, damage, destruction, removal, return, surrender, sale or other disposition of the Equipment, or any item thereof. It is understood and agreed, however, that Lessor shall give Lessee prompt notice of any claim or liability hereby indemnified against and that Lessee shall be entitled to control the defense thereof, so long as Lessee is not in default hereunder.

(13) EVENTS OF DEFAULT AND REMEDIES. (a) Events of Default. The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events: (1) failure by Lessee to pay any rental payment or other payment required to be paid hereunder within five (5) days of the due date therefor; or (2) failure by Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed hereunder and such failure shall continue unremedied for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of such time prior to its expiration; or (3) any certificate, statement, representation, warranty or audit contained herein or heretofore or hereafter furnished with respect hereto by or on behalf of Lessee proving to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or having omitted any substantial contingent or

unliquidated liability or claim against Lessee; or (4) commencement by Lessee of a case or proceeding under the Federal bankruptcy laws or filing by Lessee of any petition or answer seeking relief under any existing or future bankruptcy, insolvency or other similar laws or an answer admitting or not contesting the material allegations of a petition filed against Lessee in any such proceeding; or (5) a petition against Lessee in a proceeding under any existing or future bankruptcy, insolvency or other similar laws shall be filed and not withdrawn or dismissed within sixty (60) days thereafter; or (6) an attachment, levy or execution is levied upon or against the Equipment or any item thereof. (b) **Remedies on Default.** Whenever any event of default shall have occurred and be continuing, Lessor shall have the right, at its sole option without any further demand or notice, to exercise any one or more of the following remedies: (1) with or without terminating this Agreement, retake possession of the Equipment or items thereof and sell, lease or sublease items of the Equipment for the account of Lessee, with the net amount of all proceeds received by Lessor to be applied to Lessee's obligations hereunder including, but not limited to, all payments due and to become due during the Full Lease Term, holding Lessee liable for the excess (if any) of (i) the rental payments payable by Lessee hereunder to the end of the Original Term or then current Renewal Term (whichever is applicable) and any other amounts then payable by Lessee hereunder (including but not limited to attorneys' fees, expenses and costs of repossession), over (ii) the net purchase price or rent and other amounts paid by a purchaser, lessee or sublessee of the Equipment pursuant to such sale, lease or sublease, provided that the excess (if any) of such amounts over the Prepayment Amount applicable to the last rental payment due date of the Original Term or Renewal Term (whichever is applicable) and the amounts referred to in clause (i) shall be paid to Lessee; (2) require Lessee at Lessee's risk and expense promptly to return the Equipment to Lessor in the manner and in the condition set forth in Section 5(b) hereof at such location as is specified by Lessor; (3) if Lessor is unable to repossess the Equipment for any reason, the Equipment shall be deemed a total loss and Lessee shall pay to Lessor the amount due pursuant to Section 8 hereof; and (4) exercise any other right, remedy or privilege which may be available to it under applicable laws of TX or any other applicable law or proceed by appropriate court action to enforce the terms of this Agreement, to recover damages for the breach of this Agreement, or to rescind this Agreement as to the Equipment. In addition, Lessee will remain liable for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor. (c) **No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. Lessor's remedies hereunder may be exercised separately with respect to items of the Equipment. 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 thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(14) **TAX COVENANTS.** (a) The parties assume that Lessor can exclude the interest component of the rental payments from federal gross income. Lessee covenants and agrees that it will (i) use a book entry system to register the owner of this Agreement so as to meet the applicable requirements of Section 149(a)(3) of the Code; (ii) timely file an IRS Form 8038-G (or, if the invoice price of the Equipment is less than \$100,000, a Form 8038-GC) with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the Code; (iii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy the IRS' guidelines for permitted management contracts, as the same may be amended from time to time; (iv) comply with all provisions and regulations applicable to excluding the interest component of the rental payments from federal gross income pursuant to Section 103 of the Code; and (v) cause to be completed, executed and delivered to Lessor a Tax Compliance Agreement and No Arbitrage Certificate substantially in the form provided by Lessor. (b) If Lessor either (i) receives notice, in any form, from the Internal Revenue Service; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and approved by Lessee, which approval Lessee shall not unreasonably withhold, that Lessor may not exclude the interest component of any rental payment from federal gross income because Lessee breached a covenant contained herein, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the 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 component of all rental payments due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after-tax yield on the transaction evidenced by this Agreement (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding rental payment due date in such amount as will maintain such after-tax yield to Lessor. (c) Lessee has not issued, and reasonably anticipates that it and its subordinate entities will not issue, tax-exempt obligations (including this Agreement) in the amount of more than \$10,000,000 during the current calendar year; hereby designates this Agreement as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); and agrees that it and its subordinate entities will not designate more than \$10,000,000 of their obligations as "qualified tax-exempt obligations" during the current calendar year.

(15) **LESSOR'S RIGHT TO PERFORM FOR LESSEE.** If Lessee fails to perform or comply with any of its agreements contained herein, Lessor shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any out of pocket expenses and other reasonable expenses of Lessor incurred in connection with the performance of or compliance with such agreement, together with interest thereon at the rate of twelve percent (12%) per annum (or, if such rate is in excess of the maximum rate permitted by law, the maximum rate permitted by law), shall be payable by Lessee upon demand. Within ten (10) days of receipt, Lessee shall execute, endorse and deliver to Lessor any deed, conveyance, assignment or other instrument in writing as may be required to vest in Lessor any right, title or power which by the terms hereof are expressed to be conveyed or conferred upon Lessor, including, without limitation: (a) Uniform Commercial Code financing statements (including continuation statements), real property waivers; (b) documents and checks or drafts relating to or received in payment for any loss or

damage under the policies of insurance required by the provisions of Section 7 hereof to the extent that the same relate to the Equipment; and (c) upon default or nonappropriation or times thereafter as Lessor in its sole and absolute discretion may determine, any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessor. Further, to the extent permitted by law, Lessee appoints Lessor as its attorney-in-fact for the limited purpose of, and with the full authority to, execute and file Uniform Commercial Code financing statements (including continuation statements) in the name and on behalf of Lessor, and agrees that photocopies of originally executed Uniform Commercial Code financing statements (including continuation statements) may be filed in the appropriate recordation offices as originals. In addition, the Lessee hereby authorizes the Lessor to prepare and file Uniform Commercial Code financing statements (including continuation statements) naming Lessee as debtor and Lessor as secured party without the signature of the Lessee to the extent permitted by law.

(16) **MISCELLANEOUS.** (a) **Notices.** All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, and shall be sufficiently given and served upon the other party if delivered (i) personally, (ii) by United States registered or certified mail, return receipt requested, postage prepaid, (iii) by an overnight delivery by a service such as Federal Express or Express Mail from which written confirmation of overnight delivery is available; or (iv) by facsimile with a confirmation copy by regular United States mail, postage prepaid, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing. (b) **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. (c) **Severability; Survival.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. The representations, warranties and covenants of Lessee herein shall be deemed to be continuing and to survive the closing hereunder. Each execution by Lessee of a Certificate of Acceptance shall be deemed a reaffirmation and warranty that there have been no material adverse change in the financial condition of Lessee from the date of execution hereof. The obligations of Lessee under Sections 1(e), 6, 12(c) and 14, which accrue during the term of this Agreement, shall survive the termination of this Agreement. (d) **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. (e) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of TX (f) **TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE EACH WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY TO ANY ACTION, CLAIM OR SUIT ARISING OUT OF, RELATING TO, OR BROUGHT IN CONNECTION WITH THIS LEASE.** (g) **Captions.** The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. (h) **Entire Agreement.** This Agreement constitutes the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein regarding this Agreement or the Equipment leased hereunder. Any terms and conditions of any purchase order or other document (with the exception of supplements) submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above set forth.

ALTEC CAPITAL SERVICES, L.L.C., Lessor

By: _____

Address: 33 Inverness Center Parkway, Suite 200
Birmingham, AL 35242
Phone: (205) 408-8650
Fax No: (205) 437-0197

City of Farmersville, Texas, Lessee

By: _____

Address: 205 S Main Street
Farmersville, TX 75442-2209

Phone: (972) 782-6151

Fax No.: _____

228989

DESCRIPTION OF EQUIPMENT

Attached to and made a part of that certain
Equipment Lease/Purchase Agreement dated as of

October 01, 2019

by and between ALTEC CAPITAL SERVICES, L.L.C., as Lessor,
and **City of Farmersville, Texas**, as Lessee

The items of Equipment to become subject to the Agreement can be generally described as follows:

2019 Freightliner M2-106 Altec Digger Derrick DM47 TR
VIN: 1FVACXFC9KHKM4549
SN: 0219EU3627

LOCATION OF EQUIPMENT:

205 S Main Street
Farmersville, TX 75442-2209

ANTICIPATED PURCHASE PRICE: \$214,139.00

SCHEDULE OF PAYMENTS

Attached to and made a part of that certain Equipment Lease/Purchase Agreement dated as of October 01, 2019 by and between ALTEC CAPITAL SERVICES, L.L.C., as Lessor, and City of Farmersville, Texas, as Lessee.

Commencement Date: Equipment Delivery Date as confirmed by Signature on Delivery and Acceptance .

Full Lease Term: 72 months beginning with Commencement Date.

Rental payments are payable (check one) X in advance _____ in arrears of the period to which they relate. Rental payment due dates will be based on the Commencement Date, and established in Lessor's notification to Lessee of the Commencement Date.

| | Date | Payment | Interest | Principal | Balance |
|--------------|-----------|------------|-----------|------------|------------|
| Loan | 10/1/2019 | | | | 214,139.00 |
| 1 | 10/1/2019 | 40,631.39 | 0.00 | 40,631.39 | 173,507.61 |
| 2019 Totals | | 40,631.39 | 0.00 | 40,631.39 | |
| 2 | 10/1/2020 | 40,631.39 | 9,542.92 | 31,088.47 | 142,419.14 |
| 2020 Totals | | 40,631.39 | 9,542.92 | 31,088.47 | |
| 3 | 10/1/2021 | 40,631.39 | 7,833.05 | 32,798.34 | 109,620.80 |
| 2021 Totals | | 40,631.39 | 7,833.05 | 32,798.34 | |
| 4 | 10/1/2022 | 40,631.39 | 6,029.14 | 34,602.25 | 75,018.55 |
| 2022 Totals | | 40,631.39 | 6,029.14 | 34,602.25 | |
| 5 | 10/1/2023 | 40,631.39 | 4,126.02 | 36,505.37 | 38,513.18 |
| 2023 Totals | | 40,631.39 | 4,126.02 | 36,505.37 | |
| 6 | 10/1/2024 | 40,631.39 | 2,118.21 | 38,513.18 | 0.00 |
| 2024 Totals | | 40,631.39 | 2,118.21 | 38,513.18 | |
| Grand Totals | | 243,788.34 | 29,649.34 | 214,139.00 | |

Lessee
City of Farmersville, Texas

By: _____

Date: _____

CERTIFICATE OF ACCEPTANCE

The undersigned, as Lessee under the Equipment Lease/Purchase Agreement dated as of October 01, 2019 (the "Agreement") with ALTEC CAPITAL SERVICES, L.L.C. ("Lessor"), hereby certifies:

1. The items of the Equipment, as such term is defined in the Agreement, fully and accurately described on the Equipment List attached hereto have been delivered and installed at the location(s) set forth therein.
2. A present need exists for the Equipment which need is not temporary or expected to diminish in the near future. The Equipment is essential to and will be used by the Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority.
3. The estimated useful life of the Equipment based upon the manufacturer's representations and Lessee's projected needs is not less than the term of lease with respect to the Equipment.
4. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate.
5. The Equipment is covered by insurance in the types and amounts required by the Agreement.
6. No event of default, as such term is defined in the Agreement, and no event which with the giving of notice or lapse of time, or both, would become an event of default, has occurred and is continuing on the date hereof.
7. Based on the foregoing, Lessor is hereby authorized and directed to fund the acquisition of the Equipment set forth on the Equipment List by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices.
8. The following documents are attached hereto and made a part hereof:
 - (a) Equipment List
 - (b) Original Invoice(s)
 - (c) Copies of Certificate(s) of Origin designating Altec Capital Trust as lienholder if any part of the Equipment consists of motor vehicles, and evidence of filing
 - (d) Copy of Application for Titling

If Lessee paid an invoice prior to the commencement date of the Agreement and is requesting reimbursement for such payment, also attach a copy of evidence of such payment together with a copy of Lessee's Declaration of Official Intent and other evidence that Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. §1.150-2.

City of Farmersville, Texas
Lessee

By: _____
Date: _____

INCUMBENCY CERTIFICATE

I do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of City of Farmersville, Texas, a body corporate and politic duly organized and existing under the laws of the state of TX, that I have custody of the records of such entity, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of such entity 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 enter into that certain Equipment Lease/Purchase Agreement dated as of October 01, 2019 (the "Agreement") between such entity and ALTEC CAPITAL SERVICES, L.L.C. and is duly authorized to execute Certificates of Acceptance, Requisition Requests, and other documents relating to the Agreement.

| <u>NAME</u> | <u>TITLE</u> | <u>SIGNATURE</u> |
|-------------|--------------|------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

IN WITNESS WHEREOF, I have duly executed this Certificate and affixed the seal of City of Farmersville, Texas hereto this ____ day of _____, 2019.

[SEAL]

(Secretary/Clerk)
(OTHER THAN THE PERSON SIGNING THE DOCUMENTS)



Certificate of Coverage

| | | |
|-------------------------------------|--|--|
| TMLIRP Contract Number: 4694 | Member: Farmersville Ms. Daphne Hamlin Finance Director 205 S Main St Farmersville, Texas 75442-2209 | Company Affording Coverage: Texas Municipal League Intergovernmental Risk Pool (TMLIRP) PO Box 149194 Austin, TX 78714-9194 (512) 491-2300 or (800) 537-6655 Fax: (512) 491-2404 |
|-------------------------------------|--|--|

| |
|--|
| Certificate Holder: Altec Capital Services, LLC and Altec Capital Trust and/or its assigns and successors 33 Inverness Center Parkway, Suite 200 Birmingham, AL 35242 |
|--|

This is to certify that the coverages listed below have been provided to the member and are in effect at this time. Notwithstanding any requirements, terms, or conditions of any other contract or agreement with respect to which this certificate may be issued or may pertain, the coverage afforded by TMLIRP described herein is subject only to the terms, exclusions and additions of TMLIRP's coverage contracts between TMLIRP and its member(s).

Coverage is continuous until canceled.

| General Liability Effective Date: 10/1/2019 Anniversary Date: 10/1/2020 Limits of Liability (Each Occurrence): \$2,000,000 Sudden Events Involving Pollution (Each Occurrence): \$2,000,000 Annual Aggregate: \$4,000,000 Deductible per Occurrence: \$0 | Real & Personal Property Effective Date: _____ Anniversary Date: _____ Limits of Coverage: _____ Deductible per Occurrence: _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|-----------------|-----|-------|---------------------------------------|-------------------|-----|-----------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Law Enforcement Liability Effective Date: _____ Anniversary Date: _____ Limits of Liability (Each Occurrence): _____ Annual Aggregate: _____ Deductible per Occurrence: _____ | Mobile Equipment Effective Date: _____ Anniversary Date: _____ Limits of Coverage: _____ Deductible per Occurrence: _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Errors and Omissions Liability Effective Date: _____ Anniversary Date: _____ Limits of Liability (Each Wrongful Act): _____ Annual Aggregate: _____ Deductible per Occurrence: _____ | Boiler & Machinery - Broad Form Effective Date: _____ Anniversary Date: _____ Per Accident Limit: _____ Deductible per Occurrence: _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Auto Liability Effective Date: 10/1/2019 Anniversary Date: 10/1/2020 Limits of Liability (Each Occurrence): \$1,000,000 Deductible per Occurrence: \$0 | <table border="1"><thead><tr><th>Year/Make/Model</th><th>VIN</th><th>Value</th></tr></thead><tbody><tr><td>2019 Freightliner M2-106 Altec Digger</td><td>1FVACXFC9KHKM4549</td><td>ACV</td></tr><tr><td>Derrick DM47 TR</td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></tbody></table> | Year/Make/Model | VIN | Value | 2019 Freightliner M2-106 Altec Digger | 1FVACXFC9KHKM4549 | ACV | Derrick DM47 TR | | | | | | | | | | | | | | | | | | | | | | | |
| Year/Make/Model | VIN | Value | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2019 Freightliner M2-106 Altec Digger | 1FVACXFC9KHKM4549 | ACV | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Derrick DM47 TR | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Auto Physical Damage Effective Date: 10/1/2019 Anniversary Date: 10/1/2020 Limits of Liability: ACV or Agreed Value as scheduled Collision Deductible: \$1,000 Comprehensive Deductible: \$1,000 | <table border="1"><thead><tr><th>Yes</th><th>No</th></tr></thead><tbody><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></tbody></table> | Yes | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Yes | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Loss Payee: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Loan Number: _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| DESCRIPTION: Evidence of Coverage - SN: 0219EU3627 - Lease #228989 |
|--|

Cancellation: Should any of the above described coverages be canceled before the anniversary date thereof, TMLIRP will endeavor to mail 30 days written notice to the above named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon TMLIRP.

Authorized Representative: Michael Kuykendall

Date Issued:

8/30/2019

**COVERED PARTY – OWNER, LESSOR OR LIENHOLDER
LOSS PAYABLE CLAUSE - AUTOMOBILE PHYSICAL DAMAGE**

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

Entity Name : Farmersville
Entity ID : 4694
Effective Date : 10/1/2019

AUTOMOBILE LIABILITY

It is understood that pursuant to Part IV-A., Section II, paragraph D., of the Liability Coverage Document, coverage is extended to the owner, lessor or lienholder designated below because such coverage is required by **contract**. However, coverage is extended only with respect to liability arising out of the operation, use, loading, unloading, or maintenance of the **automobiles** designated below.

AUTOMOBILE PHYSICAL DAMAGE

Loss or damage to the **automobile(s)** described in this endorsement shall be paid as interest may appear to the **fund member** and the loss payee named below. The interest of the loss payee shall not become invalid because of acts or omissions of the **fund member**. However, the **Fund** reserves the right to cancel this self-insurance as permitted by the Interlocal Agreement and the cancellation will terminate this agreement as to the loss payee's interest. The **Fund** will give the same advance notice of cancellation to the loss payee as is given to the **fund member**.

In the event the **Fund** pays the loss payee the **Fund** shall, to the extent of payment, be subrogated to the loss payee's right of recovery.

Owner/Lessor/Lienholder : Altec Capital Services, LLC and Altec Capital Trust and/or its assigns and successors
Address : 33 Inverness Center Parkway, Suite 200
City, State & ZIP : Birmingham, AL 35242

Designated Automobile(s)

| Year | Make | Model | VIN |
|------|--------------|--|-------------------|
| 2019 | Freightliner | M2-106 Altec Digger Derrick DM47 TR | 1FVACXFC9KHKM4549 |

TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL

EL201-A
06/02/06

INDEMNIFICATION UNDER CONTRACT

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and clarifies such coverage as is afforded by the provisions of the coverage shown below:

- ☒ **GENERAL LIABILITY**
- ☒ **AUTOMOBILE LIABILITY**
- ☐ **LAW ENFORCEMENT LIABILITY**
- ☐ **AIRPORT (GENERAL LIABILITY HAZARDS) PREMISES LIABILITY**

Entity Name : Farmersville
Entity ID : 4694
Effective Date : 10/1/19

It is agreed that coverage is provided for the liability assumed by the **Fund Member** to indemnify the person or organization named below under a contract between such person or organization and the **Fund Member**, but such coverage shall not exceed the limits of coverage set forth in the **Declarations**.

Person or Organization : Altec Capital Services, LLC and Altec Capital Trust and/or its assigns and successors
Address : 33 Inverness Center Parkway, Suite 200
City, State & Zip Code : Birmingham, AL 35242

Description

2019 Freightliner M2-106 Altec Digger Derrick DM47 TR, VIN: 1FVACXFC9KHKM4549 -
SN: 0219EU3627 - Lease #228989

TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL

Texas Sales and Use Tax Exemption Certification

This certificate does not require a number to be valid.

| | |
|--|---|
| Name of purchaser, firm or agency City of Farmersville | |
| Address (Street & number, P.O. Box or Route number) 205 S Main | Phone (Area code and number) 972-782-6151 |
| City, State, ZIP code Farmersville, TX 7542 | |

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: **Altec Capital**

Street address: **33 Inverness Center Parkway, Suite 200** City, State, ZIP code: **Birmingham, AL 35242**

Description of items to be purchased or on the attached order or invoice:


Vehicle/Pole Truck

Purchaser claims this exemption for the following reason:

Municipality

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

| | | | |
|--------------|---|------------------|------------|
| sign here | Purchaser | Title | Date |
| |  | Finance Director | 08-06-2019 |

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

**This certificate should be furnished to the supplier.
Do not send the completed certificate to the Comptroller of Public Accounts.**

Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

Part I Reporting AuthorityIf Amended Return, check here ☐

| | | |
|---|------------|---|
| 1 Issuer's name City of Farmersville, TX | | 2 Issuer's employer identification number (EIN) 972-782-6151 |
| 3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) Daphne Hamlin | | 3b Telephone number of other person shown on 3a 972-782-6151 |
| 4 Number and street (or P.O. box if mail is not delivered to street address) 302 S Main | Room/suite | 5 Report number (For IRS Use Only) 3 |
| 6 City, town, or post office, state, and ZIP code Farmersville, TX 75442 | | 7 Date of issue 10/1/2019 |
| 8 Name of issue City of Farmersville, TX Lease Purchase 228989 | | 9 CUSIP number |
| 10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) Daphne Hamlin | | 10b Telephone number of officer or other employee shown on 10a 972-782-6151 |

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

| | | | | |
|----|--|----|----------------|-----------|
| 11 | Education | 11 | | |
| 12 | Health and hospital | 12 | | |
| 13 | Transportation | 13 | | |
| 14 | Public safety | 14 | | |
| 15 | Environment (including sewage bonds) | 15 | | |
| 16 | Housing | 16 | | |
| 17 | Utilities | 17 | | |
| 18 | Other. Describe ► 2019 FRTL M2-106, Altec DC47-TR Digger, VIN 1FVACXFC9KHKM4549 | 18 | 214,139 | 00 |
| 19 | If obligations are TANs or RANs, check only box 19a | | | |
| | If obligations are BANs, check only box 19b | | | |
| 20 | If obligations are in the form of a lease or installment sale, check box | | | |

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
|----|-------------------------|----------------------|---|-------------------------------|---------------|
| 21 | 10/31/25 | \$ 214,139.00 | \$ | 6 years | 5.50 % |

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

| | | | | |
|----|--|----|--|--|
| 22 | Proceeds used for accrued interest | 22 | | |
| 23 | Issue price of entire issue (enter amount from line 21, column (b)) | 23 | | |
| 24 | Proceeds used for bond issuance costs (including underwriters' discount) | 24 | | |
| 25 | Proceeds used for credit enhancement | 25 | | |
| 26 | Proceeds allocated to reasonably required reserve or replacement fund | 26 | | |
| 27 | Proceeds used to currently refund prior issues | 27 | | |
| 28 | Proceeds used to advance refund prior issues | 28 | | |
| 29 | Total (add lines 24 through 28) | 29 | | |
| 30 | Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | 30 | | |

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

| | | |
|----|---|-------|
| 31 | Enter the remaining weighted average maturity of the bonds to be currently refunded | years |
| 32 | Enter the remaining weighted average maturity of the bonds to be advance refunded | years |
| 33 | Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) | |
| 34 | Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY) | |

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2011)

Part VI Miscellaneous

- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) **35**
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) **36a**
- b** Enter the final maturity date of the GIC ▶ _____
- c** Enter the name of the GIC provider ▶ _____
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units **37**
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ☐ and enter the following information:
- b** Enter the date of the master pool obligation ▶ _____
- c** Enter the EIN of the issuer of the master pool obligation ▶ _____
- d** Enter the name of the issuer of the master pool obligation ▶ _____
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☐
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐
- 41a** If the issuer has identified a hedge, check here ☐ and enter the following information:
- b** Name of hedge provider ▶ _____
- c** Type of hedge ▶ _____
- d** Term of hedge ▶ _____
- 42** If the issuer has superintegrated the hedge, check box ▶ ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ▶ ☐
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box ▶ ☐
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ☐ and enter the amount of reimbursement ▶ _____
- b** Enter the date the official intent was adopted ▶ _____

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative _____ Date _____ **Daphne Hamlin**
Type or print name and title

Paid Preparer Use Only

| | | | | |
|----------------------------|----------------------|------|---|------|
| Print/Type preparer's name | Preparer's signature | Date | Check <input type="checkbox"/> if self-employed | PTIN |
| Firm's name ▶ | Firm's EIN ▶ | | | |
| Firm's address ▶ | Phone no. | | | |

| | |
|------------------------------|--|
| Agenda Section | Regular Agenda |
| Section Number | X.C |
| Subject | Consider, discuss and act upon an interlocal agreement between the City of Farmersville and Collin County for animal control services. |
| To | Mayor and Council Members |
| From | Ben White, City Manager |
| Date | September 10, 2019 |
| Attachment(s) | Interlocal Agreements |
| Related Link(s) | http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php |
| Consideration and Discussion | City Council discussion as required |
| Action | <ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Approve with Updates <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action |

**AMENDMENT TO FIRST AMENDED INTERLOCAL AGREEMENT FOR THE
FACILITY CONSTRUCTION AND USE OF AN ANIMAL SHELTER IN COLLIN
COUNTY**

This Amendment to the First Amended Interlocal Agreement for the Facility Construction and Use of an Animal Shelter in Collin County ("Amendment") is entered into by and among the parties, Collin County, the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the Town of Prosper (sometimes hereinafter collectively referred to as "Parties" or individually referred to as "Party") through their duly authorized officers or employees.

RECITALS

WHEREAS, the Parties entered into an Interlocal Agreement for the Facility Construction and Use of an Animal Shelter in Collin County in 2006; and

WHEREAS, the Parties entered into that certain First Amended Interlocal Agreement for the Facility Construction and Use of an Animal Shelter in Collin County dated to be effective as of September 26, 2006 ("Agreement"), which Agreement specifically superseded and replaced all prior agreements between the parties regarding the construction and use of the Shelter in Collin County; and

WHEREAS, the Parties now desire to amend the Agreement as set forth in this Amendment and to agree as set forth herein.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Incorporation of Recitals.** The recitals that appear above are found by the Parties to be true and correct in all respects and are incorporated into this Amendment by reference.
2. **Defined Terms.** Any term not defined herein shall be deemed to have the same meaning ascribed to it under the Agreement.
3. **Amendment to Section 4, "Initial Term/Renewal Term."** Section 4, entitled "Initial Term/Renewal Term," of the Agreement is hereby amended by deleting Sections 4.01 and 4.02 replacing said sections in their entirety with new Sections 4.01 and 4.02 to read as follows:

4.01 Initial Term. This Agreement shall commence on November 14, 2006 and shall continue for an initial term of seventeen (17) years, unless terminated earlier as provided in this Agreement or by law.

4.02. Automatic Renewal Term(s). Unless terminated in accordance with this Agreement or by law or modified because of additional construction,

this Agreement will automatically renew for a "Renewal Term" following the Initial Term, unless a Party expressly declines automatic renewal. The duration of the Renewal Term shall be for a period of five (5) years, upon the same terms and conditions contained in this Agreement or as modified by subsequent agreements between the Parties, and shall automatically renew and continue for additional Renewal Terms until such time as the Parties explicitly determine not to renew this Agreement. A Party may decline to automatically renew this Agreement at any time during or after the Initial Term, provided that such Party notifies all other Parties in writing of its intent to decline automatic renewal three hundred sixty-five (365) days prior to the automatic renewal date."

4. **Amendments to Section 9, "Operation of Facilities"**. Section 9, entitled "Operation of Facilities," of the Agreement is hereby amended by and through the amendment of the following Sections:

- (a) **Section 9.01, "Operating Committee Authority," is hereby deleted in its entirety and replaced with a new Section 9.01 that is also entitled "Operating Committee Authority" to read as follows:**

"9.01 Operating Committee Authority. The Operating Committee shall be entitled to make nonbinding recommendations regarding: (a) ongoing operational issues, including scheduling, replacement of furniture and equipment, problems associated with breakage of personal property and fixtures, and related issues; and (b) the annual apportionment of Shelter Operating Expenses among the Parties and for making any adjustments that will result in a true apportionment of costs based on the actual benefit to and use by each Party of the Shelter."

- (b) **Sections 9.10.2, entitled "Maintenance and Operation Payments," and 9.10.2.1, entitled "Adjusted Maintenance and Operation Payments," are hereby deleted in their entirety and replaced with a new Section 9.10.2 that is also entitled "Maintenance and Operation Payments" and a new Section 9.10.2.1 entitled "Adjusted Maintenance and Operation Payments," which Sections shall read as follows:**

"9.10.2 Maintenance and Operation Payments. A portion of each Party's Quarterly Payment shall be designated as Maintenance and Operation Payments for the Shelter, such payments being derived from the Shelter Operating Expenses incurred as a result of the operation of the Shelter. For the period beginning on the Effective Date of this Agreement and ending upon the termination of this Agreement, the Maintenance and Operation Payments due by each Party will be shared on a pro-rata basis on the basis of the Parties' respective populations as set forth in the North Central Texas Council of Government population estimates. The Maintenance and Operation Payments due from any Party not included in

the North Central Texas Council of Government population estimates will be based on a flat fee at rates set by the County.

9.10.2.1 Adjusted Maintenance and Operation Payments. The estimated Maintenance and Operation Payments that are anticipated to be due by each Party for the first year of Shelter operations are fully set forth in the Shelter Operations Budget, attached as "Exhibit B". Following the expiration of the first year of Shelter operations, the amount of each Party's subsequent Maintenance and Operation Payments will be adjusted on an annual basis in accordance with the greater of (.1) changes in the North Central Texas Council of Government population estimates or (.2) the Animal Intake Rates by each Party, as applicable, and calculated on the actual Shelter Operating Expenses incurred in connection with the operation of the Shelter."

- (c) **A new Section 9.10.4 entitled "Shelter Capital Improvements Fund Payments," including Sections 9.10.4.1, 9.10.4.2, and Sections 9.10.4.2.1 through 9.10.4.2.3 are hereby adopted to read as follows:**

"9.10.4 Shelter Capital Improvements Fund Payments. On at least an annual basis the Operating Committee, with the assistance of the Parties, shall evaluate the physical condition of the Shelter to identify any permanent structural changes that need to be made to the Shelter or physical aspects of the Shelter that need restoration which will either enhance the Shelter's use as an animal shelter or increase its useful life as an animal shelter (collectively, "Capital Improvements"). If the Operating Committee determines that Capital Improvements are necessary, the Operating Committee shall prepare a written plan and estimated budget for the proposed Capital Improvements and forward such plan and estimated budget to the Commissioners Court for its consideration. The Commissioners Court will have the final authority on whether or not to move forward with the Capital Improvements recommended by the Operating Committee, but in making such decisions may solicit input from the other Parties' governing boards as to their willingness to budget and appropriate funding so as to share proportionately in the costs of the proposed Capital Improvements.

If approved by the Commissioners Court and the governing boards of the other Parties, each Party hereto agrees to pay on an annual basis a new Shelter Capital Improvements Fund Payment for the purpose of funding (either up front or over time) the costs of necessary Capital Improvements that are identified and approved by both the Operating Committee and the Commissioners Court.

For those Capital Improvements that are initially approved by the Operating Committee and the Commissioners Court, the total annual amount of Capital Improvements Fund Payments due and payable by the respective Parties shall be subject to approval by the governing boards of the Parties. Capital Improvements Fund Payments shall be allocated on a proportionate basis to the Parties in accordance with the terms and conditions described herein. No portion of a Party's Shelter Capital Improvements Fund Payment shall be used to pay depreciation, interest or principal payments on mortgages or other debt costs, if any. In addition, no portion of a Party's Shelter Capital Improvements Fund Payment shall be used to pay for any expenditure save and except the specific Capital Improvements recommended by the Operating Committee and approved by the governing boards of the Parties.

Each Party warrants that, as of the Effective Date of the Amendment establishing this Section, it has appropriated and has committed funds in the amount of its approved Shelter Capital Improvements Fund Payment requirements to the extent such payments will become due during the Party's current fiscal year. Each Party further warrants that it will make every reasonable effort in the future to appropriate and commit funds in the amount of its anticipated Shelter Capital Improvements Fund Payment that will become due during any subsequent fiscal year subject to the Party's right to terminate this Agreement pursuant to Section 10.12.

Each Party hereby covenants and agrees to pay promptly when due all approved Shelter Capital Improvements Fund Payments, all adjustments to such payments, and any other charges payable to the County under the provisions of this Agreement. Each Party agrees that any approved Shelter Capital Improvements Fund Payment due to the County which is not paid on or before the due date shall bear interest at the rate of interest prescribed by the Texas Prompt Payment Act (Tex. Gov't Code § 2251.025) from the date due until paid.

All Party payments received shall be expended by County solely for reimbursement of costs for Capital Improvements that have been initially approved by both the Operating Committee and the Commissioners Court, and thereafter approved by the Parties respective governing boards. County shall track receipts and expenditures through its existing project code system (or any similar tracking system) to enable the Parties to verify that all Party payments received are expended by the County solely for reimbursement of the Capital Improvements. County shall maintain a separate Shelter Capital Improvements Fund Payments account for the Shelter.

9.10.4.1 Calculation of Shelter Capital Improvements Fund Payments for approved Capital Improvements. Beginning on the Effective Date of the Amendment establishing this Section, the Shelter Capital Improvements Fund Payments due from each Party will be shared on a pro-rata basis, calculated on the basis of the Parties' respective populations as set forth in the North Central Texas Council of Government population estimates. The Shelter Capital Improvements Fund Payments due from any Party not included in the North Central Texas Council of Government population estimates will be based on a flat fee at rates set by the County.

9.10.4.2 Adjusted Shelter Capital Improvements Fund Payments. The estimated Shelter Capital Improvements Fund Payments that are anticipated to be due by each Party for the year following the Effective Date of the Amendment establishing this Section are set forth in "Exhibit G," attached hereto. On the first anniversary of the Effective Date of the Amendment establishing this Section and for each subsequent year thereafter, the amount of each Party's Shelter Capital Improvements Fund Payments will be adjusted on an annual basis in accordance with changes in the North Central Texas Council of Government population estimates, and calculated based on the actual Capital Improvements costs incurred.

9.10.4.2.1 Review. Each year the County shall review and compare the total budgeted amount of the Shelter Capital Improvements expenses to the actual Shelter Capital Improvements expenses that were incurred by the County during the preceding fiscal year. Such review shall be conducted and all calculations computed by January 31st. The County will rely on the County Auditor's closing financial statements to determine the actual Shelter Capital Improvements expenses that were incurred by the County during the preceding fiscal year.

9.10.4.2.2 Surplus. If the aggregate Shelter Capital Improvements Fund Payments as budgeted and collected for the preceding fiscal year are greater than the Shelter Capital Improvements expenses for that fiscal year, the County shall promptly notify each Party of the overage and of such Party's proportionate share of the overage. The overage amounts shall be credited to the Parties in accordance with such Party's proportionate share of the payments it made to the County as compared to the preceding year's overage, with such credits beginning on May 1st of the subsequent fiscal year. In no event shall a Party be entitled to a

proportionate share of the Overage if the Party did not pay money to the County that contributed to the Overage.

9.10.4.2.3 Deficit. If the Shelter's aggregate Shelter Capital Improvements Fund Payments as budgeted and collected for the preceding fiscal year are less than the Shelter Capital Improvements expenses for that fiscal year, the County shall promptly notify each Party of the deficit and of such Party's proportionate share of the total amount of such deficit. Each Party shall thereafter pay to the Shelter Capital Improvements fund account such Party's proportionate share of the preceding year's deficit as an additional payment due hereunder within thirty (30) days of the date of an invoice from the County reflecting the amount due by such Party subject to the availability of funds for such purpose."

5. **Amendment to Section 10, "Termination"**. Section 10, "Termination," of the Agreement is hereby amended by deleting Section 10.12, "By a City," and replacing said section with a new Section 10.12 also entitled "By a City" to read as follows:

"10.12 By a City. Any City that is a Party to this Agreement may voluntarily terminate its rights and obligations under this Agreement, if at any time such City determines that adhering to the Agreement is no longer in its best interest. To invoke its right to terminate this Agreement, a City must give at least one hundred eighty (180) days' notice of its intent to terminate its rights and obligations under the Agreement to all other Parties."

"10.12.1 No Refund of Shelter Operating Expense. No prior payments shall be refunded to any City that voluntarily terminates its rights and obligations under this Agreement to the extent that such prior payments have been committed to and used exclusively in accordance with the terms of this Agreement for Shelter Operating Expenses incurred as a result of the operation of the Shelter. If, however, a surplus of money exists in the Shelter Operations Budget at the end of the then applicable fiscal year, a proportionate share of such overage based on the contributions of the then participating Parties shall be refunded to any City that voluntarily terminates its rights and obligations under this Agreement for the then-current fiscal year under Section 9.10.2."

"10.12.2 Refund of Shelter Capital Improvements Fund Payment. Any City that is a Party to this Agreement and voluntarily terminates its rights and obligations under this Agreement shall have refunded to it on or before the date of termination any and all

payments made by such City to the Shelter Capital Improvements Fund Payment account to the extent that such money has (a) NOT been previously refunded to said City as an overage under Section 9.10.4.2.2 herein-above, (b) NOT actually been expended for one or more specific Capital Improvements recommended for approval by the Operating Committee and approved by the governing boards of the Parties, or (3) NOT been committed for expenditure by a fully executed written contract entered into before the City's notice of termination and which fully executed written contract is for one or more specific Capital Improvements recommended for approval by the Operating Committee and approved by the governing boards of the Parties.

Notwithstanding the foregoing and anything contained herein to the contrary, any City that is a Party to this Agreement and voluntarily terminates its rights and obligations under this Agreement shall have no further responsibility or liability for any additional payments to the Shelter Capital Improvements Fund Payment following the effective date of such City's termination of this Agreement."

6. **Ratification.** The Parties hereby ratify and confirm that all of the terms, provisions, covenants and conditions of the Agreement remain in full force and effect, except as amended in this Amendment.
7. **Controlling Agreement.** To the extent that any provision contained in this Amendment conflicts with the Agreement, the provision contained in this Amendment shall supersede and control over the conflicting provision contained in the Agreement.
8. **Entire Agreement/ Amendment.** This Amendment and the Agreement contain the entire agreement of the Parties with respect to the matters contained herein. This Amendment may not be modified or terminated except by the written agreement of the Parties.
9. **Authority to Execute.** The individuals executing this Amendment on behalf of the respective Parties below represent that all appropriate and necessary action has been taken to authorize the individual who is executing this Amendment to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Amendment in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Amendment and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
10. **Counterparts.** This Amendment may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment. An electronic mail or facsimile signature will

also be deemed to constitute an original if properly executed and delivered to the other Parties.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Amendment and caused this Amendment to be effective when all the Parties have signed it. The date this Amendment is signed by the last Party to sign it (as indicated by the date associated with that Party's signature below) will be deemed the effective date of this Amendment ("Effective Date").

COLLIN COUNTY, TEXAS

CITY OF ANNA, TEXAS

By: _____

By: _____

BY: _____
NAME: _____

BY: _____
NAME: _____

Name: _____
Title: _____

Name: _____
Title: _____

TITLE: City Manager
Date: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

Attest: _____
Title: _____

CITY OF CELINA, TEXAS

CITY OF FARMERSVILLE, TEXAS

By: _____

By: _____

BY: _____
NAME: _____

BY: _____
NAME: _____

Name: _____

Name: _____

Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

CITY OF FRISCO, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

CITY OF LOWRY CROSSING, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

TOWN OF FAIRVIEW, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager

Date: _____

Attest: _____
Title: _____

CITY OF MELISSA, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager

Date: _____

CITY OF MCKINNEY, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager

Date: _____

Attest: _____
Title: _____

CITY OF PRINCETON, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager

Date: _____

Attest: _____
Title: _____

Attest: _____
Title: _____

CITY OF PROSPER, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

EXHIBIT G

FY 2020 Animal Shelter Billing Worksheet

| Larger Entities / Original Entities | | | | | | | |
|--|---------------------|---------------------------------------|------------------------------------|---------------------------------------|---------------------------------|--|--------------------------|
| | % of Charges | FY20 Budgeted M&O and Per. | FY20 Capital Contribution** | FY20 Total Cost before Adjust. | Less FY18 Fees Collected | Less Adjustments for FY18 Budget vs. Actual | FY20 Total Billed |
| Anna | 2.47% | \$ 28,662 | \$ 1,481 | \$ 30,143 | \$ 1,413 | \$ 4,509 | \$ 28,720 |
| Celina | 1.56% | \$ 18,066 | \$ 933 | \$ 18,999 | \$ 891 | \$ 2,842 | \$ 18,106 |
| Fairview | 2.72% | \$ 31,615 | \$ 1,634 | \$ 33,248 | \$ 1,559 | \$ 4,973 | \$ 30,689 |
| Farmersville | 1.00% | \$ 11,638 | \$ 601 | \$ 12,240 | \$ 574 | \$ 1,831 | \$ 9,834 |
| Frisco | 32.03% | \$ 371,907 | \$ 19,216 | \$ 391,123 | \$ 18,338 | \$ 58,507 | \$ 344,279 |
| McKinney | 37.97% | \$ 440,869 | \$ 22,779 | \$ 463,648 | \$ 21,738 | \$ 69,355 | \$ 372,544 |
| Melissa | 1.38% | \$ 15,981 | \$ 826 | \$ 16,807 | \$ 788 | \$ 2,514 | \$ 13,505 |
| Princeton | 1.91% | \$ 22,235 | \$ 1,149 | \$ 23,383 | \$ 1,096 | \$ 3,498 | \$ 18,789 |
| Prosper | 2.80% | \$ 32,483 | \$ 1,678 | \$ 34,162 | \$ 1,602 | \$ 5,110 | \$ 27,450 |
| Collin County | 16.17% | \$ 187,777 | \$ 9,702 | \$ 197,480 | \$ 9,259 | \$ 29,540 | \$ 168,681 |
| TOTAL | 100.00% | \$ 1,161,232 | \$ 60,000 | \$ 1,221,232 | \$ 57,258 | \$ 182,679 | \$ 981,275 |

| FY20 Billing Breakout | |
|------------------------------|---------------------|
| Total Billed: | \$ 1,183,352 |
| Smaller Entities: | \$ 22,120 |
| TOTAL for Original: | \$ 1,161,232 |

| Adjust for FY18 Budget vs. Actual | |
|--|-------------------|
| FY18 Billed | \$ 878,047 |
| FY18 Actual | \$ 695,368 |
| Total +/- back | \$ 182,679 |

| Smaller Entities / Added Later | | | | | | | |
|---------------------------------------|---------------------|---------------------------------------|------------------------------------|---------------------------------------|---------------------------------|--|--------------------------|
| | % of Charges | FY20 Budgeted M&O and Per. | FY20 Capital Contribution** | FY20 Total Cost before Adjust. | Less FY18 Fees Collected | Less Adjustments for FY18 Budget vs. Actual | FY20 Total Billed |
| Lavon | | | | \$ 3,100 | | | \$ 3,100 |
| Lucas | | | | \$ 14,970 | | | \$ 14,970 |
| Nevada | | | | \$ 1,550 | | | \$ 1,550 |
| Weston | | | | \$ 2,500 | | | \$ 2,500 |
| TOTAL | | | | \$ 22,120 | | | \$ 22,120 |

Grand Total: \$ 1,003,415

Grand Total is the total billed amount for the larger and smaller entities combined



Contract Amendment THIRTEEN (13)

Office of the Purchasing Agent
Collin County Administration Building
2300 Bloomdale Rd, Ste 3160
McKinney, TX 75071
972-548-4165

Vendor: City of Farmersville
205 S. Main St.
Farmersville, TX 75452

Effective Date 10/01/2019
Contract No. 10103-09
Contract Interlocal Agreement for the Facility
Construction and Use of an Animal Shelter
in Collin County

| | | | |
|-----------------------------|-----------|-----------------|------------------------|
| Awarded by Court Order No.: | | | <u>2006-891-09-26</u> |
| Contract Amendment No.: | <u>1</u> | Court Order No. | <u>2007-1009-11-13</u> |
| Contract Amendment No.: | <u>2</u> | Court Order No. | <u>2008-887-10-14</u> |
| Contract Amendment No.: | <u>3</u> | Court Order No. | <u>2009-585-08-10</u> |
| Contract Amendment No.: | <u>4</u> | Court Order No. | <u>2010-834-10-11</u> |
| Contract Amendment No.: | <u>5</u> | Court Order No. | <u>2011-686-09-19</u> |
| Contract Amendment No.: | <u>6</u> | Court Order No. | <u>2013-013-01-07</u> |
| Contract Amendment No.: | <u>7</u> | Court Order No. | <u>2013-963-11-18</u> |
| Contract Amendment No.: | <u>8</u> | Court Order No. | <u>2014-993-12-15</u> |
| Contract Amendment No.: | <u>9</u> | Court Order No. | <u>2016-020-01-04</u> |
| Contract Amendment No.: | <u>10</u> | Court Order No. | <u>2017-035-01-23</u> |
| Contract Amendment No.: | <u>11</u> | Court Order No. | <u>2017-827-10-09</u> |
| Contract Amendment No.: | <u>12</u> | Court Order No. | <u>2018-999-11-19</u> |
| Contract Amendment No.: | <u>13</u> | Court Order No. | |

YOU ARE DIRECTED TO MAKE THE FOLLOWING AMENDMENT TO THIS CONTRACT

Agreement shall be in effect from October 1, 2019, continuing through and including September 30, 2020 at the below rate:

Total amount for fiscal year 2020: \$ 9,835.00

Except as provided herein, all terms and conditions of the contract remain in full force and effect and may only be modified in writing signed by both parties.

ACCEPTED BY:

CITY OF FARMERSVILLE

205 S. Main St.
Farmersville, TX 75452

SIGNATURE

TITLE:

DATE:

ACCEPTED AND AUTHORIZED BY
AUTHORITY OF COLLIN COUNTY
COMMISSIONERS' COURT

Collin County Administration Building
2300 Bloomdale Rd, Ste 3160
McKinney, Texas 75071

Michalyn Rains, CPPO, CPPB

Purchasing Agent

DATE:

RECEIVED
PURCHASING AGENT

06 NOV 20 PM 1:25

**FIRST AMENDED INTERLOCAL AGREEMENT
FOR THE FACILITY CONSTRUCTION AND USE OF
AN ANIMAL SHELTER IN COLLIN COUNTY**

This First Amended Interlocal Agreement for the Facility Construction and Use of an Animal Shelter in Collin County ("Agreement") is entered into between the parties, Collin County, the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the City of Prosper (sometimes hereinafter collectively referred to as "Parties" or individually referred to as "Party") through their duly authorized officers or employees, and this Agreement shall be effective on the date it is executed by all Parties hereto ("Effective Date"). This Agreement supersedes and replaces all prior agreements between the parties regarding the construction and use of the animal shelter in Collin County.

RECITALS

WHEREAS, Collin County ("County"), the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the City of Prosper (sometimes hereinafter collectively referred to as "Cities" or individually referred to as "City") have identified a need to construct and operate an animal shelter in the County for their mutual benefit; and

WHEREAS, the Parties desire to cooperate in designing, constructing, operating and maintaining an animal shelter in accordance with Texas law and in a manner intended to realize greater efficiencies in the expenditure of limited public funds; and

WHEREAS, the Parties have agreed to cooperate in the financing of the construction, maintenance and operation of an animal shelter; and

WHEREAS, the Parties have each adopted a resolution supporting the creation of an animal shelter in Collin County to assist in the sheltering and care of the Parties' homeless domestic animals; and

WHEREAS, the Parties believe at this time it is necessary, appropriate, and in their mutual best interests to express in this Agreement their respective duties, responsibilities, and covenants by and between each Party with respect to the animal shelter; and

WHEREAS, this Agreement is an interlocal agreement authorized and governed by Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act; and

WHEREAS, each Party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function that it is authorized to perform individually under the applicable statutes of the State of Texas and/or (as applicable) its charter; and

WHEREAS, each Party has agreed that any compensation to be paid to any other Party as set forth in this Agreement is an amount that fairly compensates the performing Party for the services or functions described herein, and such compensation shall be paid from current revenues available to the paying Party;

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

TERMS:

1. **Definitions.** For purposes of this Agreement and all other agreements, contracts and documents executed, adopted or approved pursuant to this Agreement, the following terms shall have the meaning prescribed to them within this section unless the context of their use dictates otherwise:
 - (a) **Agreement**—this Agreement together with all attachments and schedules appended hereto.
 - (b) **Cities**—the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the City of Prosper.
 - (c) **County**—Collin County, Texas.
 - (d) **Contract Documents**—the drawings and specifications prepared by the County's architect and engineer for the construction of the Shelter.

- (e) ***Design and Construction Account***—the account containing funding for the design and construction of the Shelter. The funds in this account shall be used solely for design, construction and certification of the Shelter and not for operations and/or maintenance or related activities.
- (f) ***Operating Committee***—the joint advisory committee comprised of permanent and rotating members as more fully described in Section 9.02 of this Agreement.
- (g) ***Quarterly Payment***—Payments made to the County by each Party on a quarterly basis, comprised of: (1) the Party's payment for the rent and use of the Shelter ("Rental Payments"); and (2) the Party's payment for the operation and maintenance of the Shelter ("Maintenance and Operation Payments").
- (h) ***Shelter***—The animal shelter facility, including all buildings and structures located on the Shelter Site, utilized for purposes of housing and/or treating animals on behalf of the Parties.
- (i) ***Shelter Construction Account***—the depository account established and maintained by the County for the purpose of holding funds for the design, construction, furnishing and certification of the Shelter.
- (j) ***Shelter Construction Budget***—the document attached hereto as "Exhibit A", setting forth the proposed budget for all design and construction services, materials, fees and expenses to be incurred in connection with the design, construction, and certification of the Shelter.
- (k) ***Shelter Operations Budget***—the document attached hereto as "Exhibit B", setting forth the annual proposed budget for the operation of the Shelter once it is placed into operation.
- (l) ***Shelter Operating Account***—the depository account established and maintained by the County for the purpose of holding funds for the operation and maintenance of the Shelter following completion of construction.
- (m) ***Shelter Operating Expenses***—the actual expenses for services necessary for conducting programs or services at the Shelter, such as building system services, utilities, animal services, custodial services, upkeep of the grounds, maintenance, security and those items enumerated in Paragraph 9.10.3 of this Agreement.

- (n) ***Shelter Services***—the scope of services to be provided at the Shelter, as further described and shown on the attached “Exhibit C”.
 - (o) ***Shelter Site***—that tract of land provided by the County upon which the Shelter is to be constructed, as further described and shown on the attached “Exhibit D”.
 - (p) ***Utilities***—services provided by a public utility, including water, sanitary sewer, electric and gas. Other services such as telephone, cable television and other communications services are specifically excluded.
2. **Parties.** The Parties to this Agreement (“Parties”) are Collin County, the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the City of Prosper.
3. **Incorporation of Recitals.** The recitals that appear above are found by the Parties to be true and correct in all respects and are incorporated into this Agreement by reference.
4. **Initial Term/Renewal Term.**
- 4.01 **Initial Term.** This Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years, unless terminated earlier as provided in this Agreement or by law.
- 4.02 **Automatic Renewal Term(s).** Unless terminated in accordance with this Agreement or by law or modified because of additional construction, this Agreement will automatically renew for a term following the Initial Term, unless a Party expressly declines automatic renewal. The duration of the renewal term shall be for a period of (1) year, upon the same terms and conditions as this Agreement or as modified by subsequent agreements between the Parties, and shall continue from year to year until such time as the Parties explicitly determine not to renew this Agreement. A Party may decline to automatically renew this Agreement at any time during or after the Initial Term, provided that such Party notifies all other Parties in writing of its intent to decline automatic renewal one-hundred eighty days (180) prior to the automatic renewal date.

5. Shelter Site Plan/Utilization of Real Property.

5.01' Shelter Site. The parties have identified County-owned property ("Shelter Site") on which to locate the Shelter. The County will allow the Shelter Site to be used for construction and operation of the Shelter without reimbursement from the Cities for such use. The County will retain its title and ownership in the Shelter Site during the term of this Agreement and following termination. No other party, person and/or entity shall have any legal rights, title or interest in the Shelter Site.

5.02 Site Plan. A master plan of the Shelter Site is attached as "Exhibit D" and incorporated herein. It is contemplated by the Parties that the Shelter will be located on the Shelter Site.

6. Shelter Budget/Shelter Account.

6.01 Shelter Construction Budget. The costs of design and construction of the Shelter will be derived from the Shelter Construction Budget. The Parties adopt the "Shelter Construction Budget" attached hereto as "Exhibit A" as inclusive of all services, materials, fees and expenses to be incurred in connection with the design, construction, and certification of the Shelter. The Parties agree that the Shelter Construction Budget is reasonable and necessary to effect the design, construction, and certification of the Shelter. Costs and/or expenses not related to the design and/or construction of the Shelter (e.g. operations and maintenance expenses, furnishings, special equipment) and not included in the Shelter Construction Budget shall be borne by the party incurring the cost or expense, and shall not be chargeable to the Shelter Construction Budget. The Operating Committee shall make recommendations to the Parties' respective governing boards regarding any modifications and/or amendments to the Shelter Construction Budget which are determined to be necessary and in the Parties' mutual interest. All modifications and/or amendments to the Shelter Construction Budget shall be effective upon approval in writing by the Parties. Any modification and/or amendment to the Shelter Construction Budget shall be null and void, absent evidence of the Parties' written approval of such modification and/or an amendment.

6.02 Design and Construction Funding by the County. The County, at its sole expense, agrees to provide start-up funding, including funds for legal and ancillary expenses, in an amount not to exceed TWO MILLION SEVEN-HUNDRED FIFTY THOUSAND DOLLARS (\$2,750,000) to be used for the design, construction and

certification of the Shelter, and the start-up funds shall be included in the Shelter Construction Budget. The Shelter Construction Budget is attached hereto as "Exhibit A". The Parties agree that the County will receive partial repayment for the start-up funds contributed for the design and construction of the Shelter through Rental Payments as described in section 9.10.1 of this Agreement. The County warrants that it has appropriated and committed funds in the amount of TWO MILLION SEVEN-HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$2,750,000.00) as start-up funds for the Shelter Construction Budget to be used for design, construction and certification of the Shelter. The start-up funds will be deposited in the Design and Construction Account and shall be used solely for the design, construction and certification of the Shelter. Such funds shall be kept and maintained separately from the operating and maintenance funds set aside for the operation and maintenance of the Shelter. It is anticipated that the start-up funds provided by the County shall be sufficient to cover the costs of the design, construction and certification of the Shelter. Following completion of construction and certification of the Shelter by applicable authorities, any remaining funds contained in the Shelter Construction Budget shall be returned to the County, or if other parties have contributed to the Shelter Construction Budget, then to such parties on a pro-rated basis, based upon their original contributions to the Shelter Construction Budget.

7. Shelter Design.

7.01 The Shelter Architect/Engineer. The County agrees to engage a professional architect/engineer to design Shelter construction documents. Although the County shall retain the architect/engineer, the Parties agree that the Operating Committee shall serve as a consultant in an advisory capacity to the architect/engineer in all matters involving the design, development or construction of the Shelter. The County shall be responsible for the payment of the professional fees and expenses of the architect/engineer, and such fees and expenses shall be paid from the Design and Construction Account. Shelter design and contract documents shall be prepared by the County's architect/engineer and shared with the members of the Operating Committee for recommendations and comment prior to commencement of construction.

7.02 Shelter Design and Contract Document Modifications. The County may unilaterally make modifications to the Shelter design and contract documents, including approval of written change orders, if the changes: (1) do not cumulatively

result in an increase in the Shelter Construction Budget by more than 3% of the guaranteed maximum construction price; or (2) do not have a substantial and adverse impact on cost efficiencies for the Shelter. If the cumulative total of the proposed changes are greater than 3% of the guaranteed maximum construction price, or if any proposed change has a substantial and adverse impact on cost efficiencies for the Shelter, consent by a majority of the members of the Operating Committee will be required, which approval shall not be unreasonably withheld. Copies of documents memorializing changes in the design and contract documents shall be circulated by the County to the members of the Operating Committee. A copy of the Shelter's proposed building design is attached hereto as Exhibit F.

8. **Construction.**

8.01 **Fixed Construction Budget.** The Parties agree to adopt a construction budget and schedule. The County agrees to engage a construction manager "at risk" to construct the Shelter in accordance with the contract documents approved by the Parties. The County shall use reasonable efforts to diligently prosecute completion of the Shelter and shall endeavor to complete the Shelter within the fixed construction budget and on schedule. To ensure that costs of the Shelter will not exceed the construction budget, the County will utilize the construction manager "at risk" method of construction. The County will work to make construction of the Shelter as cost effective as possible. In soliciting proposals for construction of the Shelter, the County shall comply with all applicable procurement laws and/or regulations.

8.02 **Construction.** The County shall enter into such construction agreements as are necessary to construct the Shelter in accordance with the construction documents. The County shall observe all state laws and County policies regarding the construction of the Shelter, including bond requirements, prevailing wages and other legal requirements.

8.02.1 **Indemnification Agreement Concerning Liability Arising out of the Shelter's Construction.** To the extent allowed by law, the County agrees to indemnify, hold harmless, save and defend the Cities, their agents and employees against any and all suits, causes of action, claims of any character, type or description, occurrences, damages, losses, expenses, costs, liabilities, judgments for bodily injury or death, or damage to property arising out of the construction of the Shelter.

- 8.02.2 Additional Construction.** Prior to the expiration of the Initial Term, the Operating Committee shall consider the need for the construction of additional space for the Shelter. The Operating Committee shall make a recommendation to the Parties as to whether additional space for the Shelter should be constructed at the end of the Initial Term.
- 8.03 Inspections and Reports.** Each Party shall have the right to inspect the progress of the work and shall have reasonable access to the Shelter Site during normal business hours, subject to complying with safety requirements imposed by the construction contractor. Each Party shall receive copies of reports provided to the County by the construction contractor concerning the Shelter construction.
- 8.04 Construction Cost Information.** Within thirty (30) days following the receipt from the construction contractor of the construction completion documents ("as built") the County shall provide the Parties with an accounting of the expenditures from the Shelter Construction Account, reflecting the total cost of design and construction of the Shelter, including those arising from any change orders and/or design modifications.
- 8.05 Ownership Vested In The County.** Notwithstanding any other provision in this Agreement, upon final acceptance of the Shelter by the County, the ownership of all building improvements on the Shelter Site, including the Shelter and fixtures affixed thereon, shall vest in the County, including all construction warranties. Per this Agreement, upon completion of construction, each other Party shall be granted a non-exclusive use of the Shelter and Shelter Site during the term of this Agreement and during any renewal terms.

9. **Operation of Facilities.**

- 9.01' **County Authority.** Until the County has recouped 85% of its funds initially expended in the design, construction and certification of the Shelter, the County, through the Commissioners Court, shall be empowered to make all decisions regarding ongoing operational issues including scheduling, replacement of furniture and equipment, problems associated with breakage of personal property and fixtures and related issues. In addition, the County will be responsible for annually examining the apportionment of Shelter Operating Expenses among the Parties and for making any adjustments that will result in a true apportionment of costs based on the actual benefit to and use by each Party of the Shelter.

Once the County has recouped 85% of its funds initially expended in the design, construction and certification of the Shelter (through recoupment of such costs from Rental Payments), the decision-making authority regarding the items set forth in the previous paragraph above will be transferred to the Operating Committee. At such time, the Commissioners Court of Collin County shall remain empowered to make recommendations to the Operating Committee regarding ongoing operational issues including scheduling, replacement of furniture and equipment, problems associated with breakage of personal property and fixtures and related issues. Notwithstanding the transfer of authority on those matters, the County will continue to retain the authority for annually examining the apportionment of Shelter Operating Expenses and for making any adjustments that will result in a true apportionment of costs based on the actual benefit to and use by each Party.

- 9.02 **Operating Committee.** A joint committee ("Operating Committee") will be formed for purposes of advising the Parties in connection with the operation of the Shelter. The Operating Committee shall be comprised of permanent and rotating members. For the first two (2) years of this Agreement, each Party shall have one permanent member on the Operating Committee. Thereafter, the permanent members will be representatives from each Party that has paid at least 15% of the Shelter Operating Expenses for the prior two years. In addition, the Operating Committee shall have at least one (1) rotating member chosen biannually through a chance drawing of representatives nominated by the Parties from those Cities who do not pay at least 15% of the Shelter Operating Expenses. The rotating member on the Operating Committee is intended to be for purposes of allowing other local government users of the Shelter who do not pay at least 15% of the Shelter Operating Expenses to have representation on the Operating Committee.

9.02.1 Meetings. The Operating Committee, shall at the first meeting of the calendar year, elect one of its members as chairperson who shall serve for two (2) years or until he/she is reelected or a successor is elected, provided however, that no individual shall be a chairperson for more than two (2) consecutive terms. The Operating Committee shall also elect from its membership a vice-chairperson and a secretary, all of whom shall serve for two (2) years or until they are reelected or their successors are elected. The Operating Committee shall meet at least two (2) times a year at the call of the chairperson at such times and places as determined by the Operating Committee.

9.02.2 Duties and Responsibilities. The Operating Committee will be responsible for examining and providing recommendations to the Parties regarding virtually all aspects of the operations of the Shelter, including the financing of such operations. In addition, the Operating Committee shall review the apportionment of Shelter Operating Expenses to each Party. The Operating Committee shall also make recommendations to the Parties regarding the efficient utilization of public funds for the maintenance, operation and continued use of the Shelter to the Parties' collective benefit. The Operating Committee shall further have the power and duty to prepare appropriate studies necessary to determine various public services and facilities required to meet current and long-term community and Shelter needs and to prepare strategic plans designed to meet those needs. Upon recommendation by the Operating Committee, the strategic plan or plans, in whole or in part, or amendments thereto, may be adopted by the governing bodies of the participating governmental units served by the Operating Committee.

9.03 Shelter Operation By City. If during the term of this Agreement any Party, other than the County, desires to operate the Shelter, including providing employees for the operation thereof, it shall express such request in writing to all other Parties along with a proposed plan for the operation of the Shelter. Upon receipt of the Party's written request, the County shall enter into negotiations with that Party for purposes of transferring operational control of the Shelter to that Party on mutually agreeable terms and conditions; however, nothing herein shall require the County to transfer operational control of the Shelter on terms and conditions the County finds to be detrimental to its and/or the Shelter's long term interest and/or viability.

- 9.04 **Identification of Personal Property.** Personal property located at the Shelter Site shall be inventoried, identified and marked in accordance with policies and procedures of each Party.
- 9.05 **Use Of Shelter Facilities.** While the Parties to this Agreement have priority rights to use the Shelter facilities, it is agreed that non-parties to this Agreement may deliver animals to the Shelter on a space-available basis. In such event the non-parties shall be charged a flat fee, as determined by the County with the advice and recommendation of the Operating Committee, for use of the Shelter. All fees collected from any non-party user of the Shelter shall be deposited in the Shelter Operating Account.
- 9.06 **Housing Limitations.** There will not be a limit to the number of animals delivered by any Party. If the Shelter reaches capacity it will stop accepting animals. If the Shelter reaches capacity, the County will use reasonable efforts to place any of the Party's excess animals in alternate Shelter locations.
- 9.07 **Shelter Workers.** Unless otherwise agreed to by the Parties, the persons employed to work at the Shelter shall be County employees, subject to the exclusive direction and control of the County. The County shall be responsible for all wages, benefits and taxes associated with all of the Shelter workers. The County will designate a lead employee at the Shelter as the Shelter Manager, who from time to time shall report to the Operating Committee in order to assist the Operating Committee in carrying out its duties in accordance with this Agreement. Actions of the Shelter workers will not create any liability to the Cities.
- 9.08 **Shelter Services.** The scope of services to be provided at the Shelter is more fully defined in "Exhibit C". If at any time a Party believes that the County, or any City operating the Shelter, has failed to adequately provide appropriate Shelter Services, that Party shall provide written notice of the alleged deficiency to all other Parties to this Agreement. Once notified, the County, or City operating the Shelter, shall have a reasonable amount of time, which shall be no more than six (6) months, to address the complaining Party's claim. The failure of the County, or City operating the Shelter, to appropriately address a Party's complaint concerning inadequate Shelter Services, after notice and an opportunity to cure, shall be treated as a material breach of this Agreement pursuant to Section 10.

9.09 **Shelter Operations Budget.** As provided in more detail in the "Shelter Operations Budget," attached as "Exhibit B", the Parties understand and agree that it is expected that the anticipated expense for operating the Shelter for the first year of operations will be approximately FOUR HUNDRED SIXTY THOUSAND DOLLARS AND NO CENTS (\$460,000.00). The Parties agree that the anticipated expense for the first year of Shelter operation is reasonable and necessary in order to operate and maintain the Shelter. The Parties agree to share in this expense on a proportionate basis in accordance with the terms and conditions as further described herein. All subsequent Shelter Operations Budgets shall be determined each year by the Operating Committee with the assistance of the Parties; however, any Shelter Operations Budget recommended by the Operating Committee shall be subject to approval by the governing boards of the Parties.

9.10 **Payments of Parties For Rental and Use of The Shelter.** Following the completion of construction and the opening of the Shelter, each Party agrees to pay up front and in advance on a quarterly basis, a Quarterly Payment, ("Quarterly Payment") consisting of: (1) the Party's payment for the rent and use of the Shelter ("Rental Payment"); and (2) the Party's payment for the Party's proportion of the Shelter Operating expenses of the Shelter ("Maintenance and Operation Payment") as set forth in the Shelter Operations Budget.

Each Party warrants that, as of the Effective Date of this Agreement, it has appropriated and has committed funds in the amount of its Quarterly Payment requirements for both the Rental Payment and the Maintenance and Operation Payments to the extent such payments will become due during the Party's current fiscal year. Each Party further warrants that it will make every reasonable effort in the future to appropriate and commit funds in the amount of its aggregate anticipated Quarterly Payments that will become due during any subsequent fiscal year. The total contributions of each Party to be paid into the Shelter Operating Account through Quarterly Payments made by the Parties during the first year of the Shelter's operation are more fully set forth in "Exhibit B".

Each Party hereby covenants and agrees to pay promptly when due all Quarterly Payments, all adjustments to such payments, and any other charges payable to the County under the provisions of this Agreement. Each Party further covenants and agrees that all such Quarterly Payments due and owing or other charges due and unpaid as of the date of termination of this Agreement shall be deemed due and payable on such termination date.

Each Party agrees that any Quarterly Payment due to the County which is not paid on or before the due date shall bear interest at the rate of interest prescribed by the Texas Prompt Payment Act (Tex. Gov't Code Ann. § 2251.025) from the date due until paid.

All Party payments received shall be expended by County solely for reimbursement of the County's permanent improvement fund, maintenance and operational costs of the Shelter. County shall track receipts and expenditures through its existing project code system (or any similar tracking system) to enable the Parties to verify that all Party payments received are expended by the County solely for reimbursement of the County's permanent improvement fund, maintenance and operational costs of the Shelter. County shall not be required to maintain a separate fund or separate accounting method for the Shelter.

9.10.1 Rental Payments. A portion of each Quarterly Payment shall be designated as Rental Payment for the Shelter. The Rental Payment due by each Party will be based on the cost of the design, construction and certification of the Shelter (excluding the value of the Shelter Site) amortized over the anticipated lifespan of the Shelter – being ten (10) years in length. Each Party's Rental Payment for any given year during the term of this Agreement shall not be fixed, but shall be calculated on a pro-rata basis based upon population, utilizing the North Central Texas Council of Government population estimates as more fully set forth in the Shelter Construction Budget, attached as "Exhibit A". For any Party who is not included in the North Central Texas Council of Government population estimates, the Rental Payments due from that Party will be based on a flat fee amount at rates set by the County.

9.10.1.1 Adjusted Rental Payments. The amount of each Party's Rental Payments subsequent to the first year of the Initial Term of this Agreement will be adjusted in accordance with changes in the North Central Texas Council of Government population estimates ("Adjusted Rental Payments"). Each year, upon recommendation of the Operating Committee and in accordance with the mechanism for determining Adjusted Rental Payments, as set forth in the Shelter Operations Budget attached hereto as "Exhibit B", the County will provide notice to each Party of the Parties' Adjusted Rental Payments for the following year. Following the initial year of Shelter operations, the County will provide the Parties with notice of the amounts of

the Adjusted Rental Payments by April 30th of each subsequent year for the duration of this Agreement.

9.10.1.2 Scheduled Payments. Each Party's Rental Payment or Adjusted Rental Payment is due as a portion of the Quarterly Payment and shall be paid to the County in advance on a quarterly basis without demand or offset at such address as the County shall, from time to time, designate in writing. The County shall collect and use the Rental Payments only as reimbursement for the amortized design, construction and certification costs of the Shelter.

9.10.1.3 Cessation of Rental Payments and Adjusted Rental Payments. Once the County has recouped its construction costs for the Shelter, the Adjusted Rental Payments due by the Parties shall cease.

9.10.2 Maintenance and Operation Payments. A portion of each Party's Quarterly Payment shall be designated as Maintenance and Operation Payments for the Shelter, such payments being derived from the Shelter Operating Expenses incurred as a result of the operation of the Shelter. The Maintenance and Operation Payments due by each Party will be shared on a pro-rata basis on the basis of the Parties' respective populations as set forth in the North Central Texas Council of Government population estimates. The Maintenance and Operation Payments due from any Party not included in the North Central Texas Council of Government population estimates will be based on a flat fee at rates set by the County.

9.10.2.1 Adjusted Maintenance and Operation Payments. The estimated Maintenance and Operation Payments that are anticipated to be due by each Party for the first year of Shelter operations are fully set forth in the Shelter Operations Budget, attached as "Exhibit B". Following the expiration of the first year of Shelter operations, the amount of each Party's subsequent Maintenance and Operation Payments will be adjusted on an annual basis in accordance with changes in the North Central Texas Council of Government population estimates and calculated on the actual Shelter Operating Expenses incurred in connection with the operation of the Shelter.

9.10.2.2 Notice of Subsequent Maintenance and Operation Payments. Each year, the County, upon recommendation of the Operating Committee, will provide notice to each Party of its estimated Maintenance and Operation Payments for the following year. The County will provide the Parties with

notice of the estimated Maintenance and Operation Payments by July 1st of each year following the first year from the date of commencement of Shelter operations.

9.10.2.3 Scheduled Payments. Each Party's Maintenance and Operation Payment, or Adjusted Maintenance and Operation Payment, is due as a portion of the Quarterly Payment and shall be paid to the County in advance without demand or offset at such address as the County shall, from time to time, designate in writing. The County shall collect and deposit the Operations and Maintenance Payments into the Operations and Maintenance Account.

9.10.2.4 Adjustments for Increased Shelter Operating Expenses. Each year the Maintenance and Operation Payments are subject to adjustment for increases in Shelter Operating Expenses attributable to the Shelter and its appurtenances, including parking facilities and the site upon which said improvements are situated. Any such adjustments for the actual increase or decrease of the Shelter Operating Expenses, in comparison to the Shelter's Base Year Operating Expenses, are to be made as follows:

9.10.2.4.1 Review. Following the first year of Shelter operations, and each year thereafter, the County shall review and compare the total budgeted amount of the Shelter's Operating Expenses to the actual operation and maintenance expenses that were incurred by the County from Shelter operations during the preceding fiscal year. Such review shall be conducted and all calculations computed by January 31st. The County will rely on the County Auditor's closing financial statements to determine the actual Shelter Operating Expenses that were incurred by the County during the preceding fiscal year.

9.10.2.4.2 Surplus. If the aggregate Maintenance and Operation Payments as budgeted and collected for the preceding fiscal year are greater than the Shelter Operating Expenses for that fiscal year, the County shall promptly notify each Party of the overage and of such Party's proportionate share of the overage. The overage amounts shall be credited to the Parties in accordance with such Party's proportionate share of the preceding year's overage, with such credits beginning on February 1st of the subsequent fiscal year.

9.10.2.4.3 Deficit. If the Shelter's aggregate Maintenance and Operation Payments as budgeted and collected for the preceding fiscal year is less than the Shelter Operating Expenses for that fiscal year, the County shall promptly notify each Party of the deficit and of such Party's proportionate share of the total amount of such deficit. Each Party shall thereafter pay into the Shelter Operating Account such Party's proportionate share of the preceding year's deficit as an additional payment due hereunder within thirty (30) days of the date of an invoice from the County reflecting the amount due by such Party.

9.10.3 Shelter Operating Expenses. In addition to the expenses specifically identified in paragraph 1, subsection (m), of this Agreement, Shelter Operating Expenses shall mean all taxes, expenses, costs and disbursements of every kind and nature which the County shall pay or become obligated to pay and which are attributable to the ownership, operation and maintenance of the Shelter and its appurtenances, the related parking facilities, and the site upon which the Shelter is situated, including, without limitation, the following:

- (a) Wages and salaries of all employees and/or agents of the Shelter engaged in the operation and maintenance of the Shelter, together with social security taxes, unemployment taxes or insurance, and any other taxes that may be levied on such wages and salaries, and the costs of any benefits approved for County employees.
- (b) All supplies and materials used in the operation, maintenance and security of the Shelter.
- (c) Cost of all water, natural gas, electricity and other utilities used to serve the Shelter and any equipment incident thereto.
- (d) Costs of all maintenance or service contracts at the Shelter and any related equipment, including alarm service and window cleaning.
- (e) Costs of landscaping and upkeep of ground area on which the Shelter and related parking facilities are situated and the private streets surrounding the Shelter and related parking facilities, including any service contracts for the maintenance thereof.

- (f) Costs of all accounting and other services attributable to the operation, management and maintenance of the Shelter and related parking facilities, including indirect costs to the extent they can be accurately identified and quantified.
- (g) Costs of repairs, replacements and general maintenance of the Shelter and related parking facilities.
- (h) All taxes, assessments and governmental charges other than taxes on income, whether federal, state, county or municipal, and other taxes and assessments on the Shelter or operation thereof.
- (i) Costs of capital improvement items, including the installation thereof, to the Shelter which are primarily for the benefit of reducing operating expenses or which are required by governmental order.

The Shelter's Maintenance and Operation Costs shall not include depreciation, interest and principal payments on mortgages or other debt costs, if any.

- 9.11 **Payments of Non-Parties.** From time to time, to the extent space is available in the Shelter and after the necessary allocation of space for all Parties hereto, the County may authorize the Shelter to accept animals from an entity not a Party to this Agreement. The payment amount due from any entity utilizing the Shelter that is not a Party to this Agreement shall be based on a per-animal-housed fee at a rate set by the County and determined with the advice and recommendation of the Operating Committee. Following the initial year of operations of the Shelter, the County shall notify the Parties of any agreement and/or arrangement wherein a non-Party is being charged a per-animal-housed-fee that is less than the lowest amount paid by a Party for the same or similar services for the most recent year for which such calculations can be made. The funds collected by the County from non-parties shall be deposited in the Shelter Operating Account and utilized solely to offset Operation and Maintenance Expenses. This provision shall not be applicable to any entity utilizing the Shelter as a result of any Party's non-appropriation of funds in accordance with Section 10.13 of this Agreement. A Party to this Agreement shall have no rights to use the Shelter after a non-appropriation by such Party's governing board that results in its failure to make the required Quarterly Payments under this Agreement.

9.12 Shelter Account Records. The County shall keep such books and records as is necessary to fully and accurately account for the deposit and disbursement of funds from the Shelter Construction Account as well as the Shelter Operating Account. Information regarding the Shelter Construction Account and Shelter Operating Account shall be made available to any Party upon request.

9.13 Nonappropriation. Notwithstanding any other provision(s) to the contrary in this Agreement, the Parties specifically recognizes that the continuation of this Agreement after the close of any given fiscal year of the Cities, which fiscal year ends on September 30th of each year, shall be subject to approval by the governing bodies of each participating City. The Parties expressly agree that this Agreement shall automatically terminate, without any penalty or liability to any participating City, in the event the governing body of such City fails to approve or appropriate funds for any continuation period of this Agreement.

9.13.1 Notice of Non-appropriation. If for any fiscal year a Party fails to appropriate or commit funds to satisfy its Quarterly Payments and/or any other financial obligations under this Agreement, such Party shall promptly give written notice to all other Parties of the non-appropriation of funds. A Party shall make a reasonable effort to ensure that funds are appropriated to fully perform its obligations under this Agreement. A Party shall provide all other Parties with at least one hundred eighty (180) days' notice of such Party's intent to not appropriate the funds necessary to satisfy its obligations under this Agreement.

9.13.2 Partial Appropriation. If for any fiscal year a Party only partially appropriates funds to satisfy its Quarterly Payments and/or any other financial obligations under this Agreement, such partial appropriation of funds shall be first credited to such Party's Rental Payments as more fully described in Section 9.10.1 of this Agreement. Any appropriated funds above such Party's Rental Payments shall then be credited to such Party's Maintenance and Operation Payments, as more fully described in Section 9.10.2 of this Agreement.

9.13.3 Loss of Rights. Any Party who fails to fully appropriate the funds necessary to cover such Party's obligations under this Agreement shall, upon the effective date of such non-appropriation, immediately lose all rights to house any animals in the Shelter or have any use thereof.

10 **Termination.** Notwithstanding any other provision, this Agreement may be terminated as provided in this section.

10.10 **Mutual Agreement.** This Agreement may be terminated by mutual agreement of all of the Parties, as evidenced by a written termination agreement.

10.11 **By the County.** If a Party fails or refuses to make its Quarterly Payments as required by this Agreement, the County, upon consultation with the Operating Committee, may terminate this Agreement as to that Party by giving notice in accordance with section 13.15 of this Agreement. A Party that receives notice of termination through this subsection will have sixty (60) days to become current with its Quarterly Payment obligation and avoid termination of its rights through this Agreement. If a Party's rights are terminated because it has failed or refused to make its Quarterly Payments as required under this Agreement, such Party shall not be entitled to a refund of any payments made prior to termination.

10.12 **By a City.** Any City that is a Party to this Agreement may voluntarily terminate its rights and obligations under the Agreement, if at any time such City determines that adhering to the Agreement is no longer in its best interest. To invoke its right to terminate the Agreement, a City must give at least one hundred eighty (180) days' notice of its intent to terminate its rights and obligations under the Agreement to all other Parties. No prior payments shall be refunded to any City that voluntarily terminates its rights and obligations under this Agreement, and all payments made prior to termination shall be exclusively used in accordance with the terms of this Agreement.

10.13 **Non-appropriation of funds.** The County may cease all operation of the Shelter and thereby terminate this Agreement if any Party fails to appropriate the funds necessary to perform its obligations under this Agreement and such non-appropriation losses cannot be mitigated adequately by efforts of the County, in consultation with the Operating Committee, and such non-appropriation results in a lack of committed funding for the continued operation of the Shelter. In such event, the County shall provide all Parties with reasonable notice of its intent to terminate this Agreement in accordance with this provision and shall provide the other Parties with a reasonable opportunity to mitigate any damages caused because of a Party's non-appropriation

of funds. No prior payments shall be refunded to any Party but shall be exclusively used for decommissioning the use of the Shelter.

- 11 **Additional Rights Upon Default.** This Agreement may be enforced in law or in equity, including a suit for specific performance and/or for damages. The Parties agree that specific performance should be an available remedy due to the difficulty in determining the damages that may accrue as a result of a material breach of the Agreement by any other Party. In the alternative, should any Party breach any of the terms of this Agreement, the non-breaching Parties to this Agreement may obtain a judgment against any breaching Party to remedy such breach. Such rights upon breach shall be supplemental to those procedures set forth in Section 12 below. The Parties hereby expressly waive their immunity from suit and for liability and/or damages in connection with any actions brought by another Party to this Agreement solely to enforce a term of this Agreement.

12 **Dispute Resolution Process.**

12.10 **Dispute Resolution Process.** Before commencing formal legal proceedings concerning any dispute arising under or relating to this Agreement, or any breach thereof, the Parties agree to observe the following procedures ("Dispute Resolution Process").

12.10.2 **Notice.** The aggrieved Party shall notify the responding Party of the dispute by way of a meeting or a writing which contains sufficient detail to clearly identify the problems giving rise to the dispute, and the responding Party shall attend said meeting or respond to the writing within a reasonable time as may be determined by the circumstances alleged.

12.10.3 **First Resolution Meeting.** After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution of the problem, the Parties shall schedule a meeting and designate representatives to attend such meeting to attempt to effect an agreed resolution of the issue.

12.10.4 **Second Resolution Meeting.** If the Parties' designated representatives reach an impasse concerning the dispute, the following representative shall meet to discuss the dispute: (a) if the Party is a City, the City Manager and/or the Mayor; (b) if the Party is the County, a County Commissioner and/or County Judge.

12.10.5 Successful Resolution. If the Parties reach an accord at any stage of the meeting, they shall reduce their agreement to writing. Such writing shall be presented for approval by the Parties' respective governing boards. If approval of the writing is obtained, such writing shall constitute an amendment to this Agreement with respect to the subject matter of the notice of the dispute. The terms and conditions of such amendment shall not supersede the terms and conditions of this Agreement with respect to any matter other than the subject matter submitted to the Dispute Resolution Process.

12.10.6 Unsuccessful Resolution. If the Parties are unable to reach a resolution of the dispute within a reasonable time, either Party may pursue such legal and equitable remedies as are available to it under Texas law.

13 Miscellaneous.

13.10 Interpretation of Agreement. Although drawn by one Party, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either Party.

13.11 Administration of Agreement. The County shall administer this Agreement on behalf of the County. The City Council of each City shall administer this Agreement on behalf of each City. Each Party may designate a new administrator on written notice to the other.

13.12 Governing law. This Agreement shall be governed by the laws of Texas without regard to the principles of conflict of laws.

13.13 Venue. Any litigation in any way relating to this Agreement shall be brought in State court in Collin County, Texas.

13.14 Non-Assignability. A Party shall not assign, sublet or transfer its interest in this Agreement without the written consent of the other Parties.

13.15 Notices. Any notice or request required to be given pursuant to the terms of this Agreement shall be in writing and mailed or delivered to the respective Parties at the address set forth for each Party below, or any other address which the respective Parties hereafter may designate in writing to the other party for such purposes, and such notice or request shall be deemed to have been duly given if (1) delivered

personally to such Party, or to an officer or duly authorized agent of such Party; or (2) served by enclosing the request or notice in a registered or certified mail, with return receipt requested, postpaid envelope properly addressed to the Party to be notified and depositing the envelope in a post office or official depository under the care and custody of the United States Postal Service; or (3) delivered by telecopy, when appropriate, addressed to the Party to be notified. Notice deposited in the mail in the manner herein above described shall be effective from and after such deposit if it is received by its intended recipient within ten (10) business days of the mailing. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For purposes of notice, the addresses of the Parties shall, until changed as herein provided, be as follows:

For Collin County, Texas:

Ron Harris, Collin County Judge
210 S. McDonald Street, Suite 626
McKinney, Texas 75069

For the City of Anna, Texas:

Kenneth L. Pelham, Mayor
101 N. Powell Parkway
Anna, Texas 75409

For the City of Celina, Texas:

Corbett Howard, Mayor
302 W. Walnut Street
Celina, Texas 75009

For the City of Farmersville, Texas:

Robbin Lamkin, Mayor
205 S. Main Street
Farmersville, Texas 75442

For the City of Frisco, Texas:

Mike Simpson, Mayor
6891 Main Street
Frisco, Texas 75034

For the City of Lowry Crossing, Texas:

Brett Mayes, Mayor
1405 S. Bridgefarmer Road
McKinney, Texas 75069

For the Town of Fairview, Texas:

Sim Israeloff, Mayor
500 S. Highway 5
Fairview, TX 75069

For the City of McKinney, Texas:

Lawrence W. Robinson, City Manager
222 N. Tennessee Street
McKinney, Texas 75069

For the City of Melissa, Texas:

David Dorman, Mayor
901 US Hwy 121
Melissa, Texas 75454

For the City of Princeton, Texas:

Bill Caldwell, Mayor
306 N. Front
Princeton, Texas 75407

For the City of Prosper, Texas:

Charles Niswanger, Mayor
113 W. Broadway

Prosper, Texas 75078

- The Parties shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice to all other Parties.

13.16 Severability. Should any provision of this Agreement or the application thereof be held invalid or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent, consistent with the intent of the Parties as evidenced by this Agreement.

13.17 Non-waiver. Failure of a Party to exercise any right or remedy in the event of default by any other Party shall not constitute a waiver of such right or remedy for any subsequent breach or default.

13.18 Authority of Signatories. The Parties represent that the individuals signing this Agreement on their behalf possess full power and authority to enter into this Agreement from their respective governing boards in compliance with the laws of the State of Texas.

13.19 Further Assurances. Each Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

13.20 Retention of Defenses. The Parties agree that neither this Agreement nor the operation or use of the Shelter by the Parties shall affect, impair or limit their respective immunities and limitations of liability to the claims of third parties, including claims predicated upon Shelter Site defects.

13.21 Modification. If the Parties desire to modify this Agreement during or after the initial term, any modifications may be either incorporated herein by written amendment or set forth in a new written agreement.

13.22 Entire Agreement. This Agreement constitutes the entire agreement of the Parties. This Agreement may not be altered or amended except by mutual written agreement as provided herein.

13.23 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies upon any person or entity other than the Parties.

DATED to be effective this the _____ day of _____, 2006.

COLLIN COUNTY, TEXAS

210 S. McDonald Street, Suite 626
McKinney, Texas 75609

BY: 
Ronald L. Harris

TITLE: County Judge

DATE: 11/28/2006

ATTEST: 

TITLE: Assistant

CITY OF ANNA, TEXAS

101 N. Powell Parkway
Anna, Texas 75409

BY: _____
Kenneth L. Pelham

TITLE: Mayor

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF CELINA, TEXAS

302 W. Walnut Street
Celina, Texas 75009

BY: _____
Corbett Howard

TITLE: Mayor

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF FARMERSVILLE, TEXAS

205 S. Main Street
Farmersville, Texas 75442

BY: 
~~Robbin Lankin~~ Paul D. Kelly

TITLE: Mayor Pro Tem

DATE: 11-14-06

ATTEST: 
Linda Aaron

TITLE: City Secretary

CITY OF FRISCO, TEXAS

6891 Main Street
Frisco, Texas 75034

BY: _____
George Purefoy

TITLE: City Manager

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF LOWRY CROSSING, TEXAS

1405 S. Bridgefarmer Road
McKinney, Texas 75069

BY: _____
Brett Mayes

TITLE: Mayor

DATE: _____

ATTEST: _____

TITLE: _____

TOWN OF FAIRVIEW, TEXAS

500 S. Highway 5
Fairview, TX 75069

BY: _____
Sim Israeloff

TITLE: Mayor

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF MCKINNEY, TEXAS

222 N. Tennessee Street
McKinney, Texas 75069

BY: _____
Lawrence W. Robinson

TITLE: City Manager

DATE: _____

ATTEST: _____

Sandra Hart, CMC

TITLE: City Secretary

CITY OF MELISSA, TEXAS

901 US Hwy 121
Melissa, Texas 75454

BY: _____
David Dorman

TITLE: Mayor

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF PRINCETON, TEXAS

306 N. Front
Princeton, Texas 75407

BY: _____
Steven Deffibaugh

TITLE: Mayor

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF PROSPER, TEXAS

113 W. Broadway
Prosper, Texas 75078

BY: _____
Charles Niswanger

TITLE: Mayor

DATE: _____

ATTEST: _____

TITLE: _____

| | |
|------------------------------|---|
| Agenda Section | Regular Agenda |
| Section Number | X.D |
| Subject | Consider, discuss and act upon approving the Economic Development Corporation Proposed Projects for Budget Year 2019-2020. |
| To | Mayor and Council Members |
| From | Ben White, City Manager |
| Date | September 10, 2019 |
| Attachment(s) | FEDC Proposed Projects |
| Related Link(s) | http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.php |
| Consideration and Discussion | City Council discussion as required. |
| Action | <ul style="list-style-type: none"> • Motion/second/vote <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Motion/second/vote to continue to a later date. _____ <ul style="list-style-type: none"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove • Move item to another agenda. _____ • No motion, no action |

Farmersville Economic Development Corp 4A
"Exhibit A"

| REVENUE | 2018-2019 Revised Budget | 2019-2020 Proposed Budget |
|---|--------------------------|---------------------------|
| Sales Tax | \$225,600.00 | \$206,000.00 |
| Interest Earned Independent Bank | \$100.00 | \$100.00 |
| Interest Earned Independent Bank CD | \$2,500.00 | \$13,250.00 |
| Interest Earned Texpool | \$20,000.00 | \$24,000.00 |
| Total Revenue: | \$248,200.00 | \$243,350.00 |
| Administration Expenses | | |
| Administration | \$1,000.00 | \$1,000.00 |
| Meeting Expenses | \$1,000.00 | \$1,000.00 |
| Dues/School/Travel | \$7,700.00 | \$7,700.00 |
| Legal Services | \$2,500.00 | \$2,500.00 |
| Office Supplies | \$200.00 | \$200.00 |
| Total Administration Expenses | \$12,400.00 | \$12,400.00 |
| Marketing/Sponsorship/Adver. | | |
| Marketing/Promotion Expenses/Adv | \$11,160.00 | \$11,160.00 |
| Chamber Sponsorship | \$1,000.00 | \$1,000.00 |
| Rotary Sponsorship | \$500.00 | \$500.00 |
| Collin College Sponsorship | \$7,500.00 | \$7,500.00 |
| Small Business Conference | \$500.00 | \$500.00 |
| Total Expenses: | \$33,060.00 | \$33,060.00 |
| Development | | |
| Facade Grant Program | \$50,000.00 | \$50,000.00 |
| Electric Substation Loan (210k) | \$210,000.00 | \$110,000.00 |
| Land Use Map/Thoroughfare Plan (36k) | \$36,000.00 | \$30,000.00 |
| Collin College Electrical Distrib. (150k) | \$15,000.00 | \$135,000.00 |
| Total Development Cost: | \$311,000.00 | \$325,000.00 |
| Total Expenditures | \$344,060.00 | \$358,060.00 |
| Revenue vs. Expenditures | \$(95,860.00) | \$(114,710.00) |
| From Reserves | \$95,860.00 | \$114,710.00 |
| Balance Budget | \$- | |

XI. Budget workshop

XII. Requests to be Placed on Future Agendas

XIII. Adjournment