

FACILITIES AGREEMENT

This Facilities Agreement (the “Agreement”) is entered into on the 1st day of October, 2019 (“Effective Date”), between the CITY OF WESTON, TEXAS, a general law municipality (“City”) and VAN BUREN ESTATES HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation, (“HOA”), concerning the energy consumption cost of certain street lights located in the City. The City and HOA may be referred to as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the HOA is the owner of certain street lighting improvements located in Van Buren Estates (the “Subdivision”), an addition to the City, Collin County, Texas, according to the plats thereof duly recorded in Volume 2018, Page 370 and Volume 2018, Page 662, Official Public Records of Collin County, Texas, said plats being incorporated herein by reference for all purposes; and

WHEREAS, the street lighting in the Subdivision consists of nineteen (19) lights in Phase I and two (2) lights in Phase II (“Street Lights”); and

WHEREAS, pursuant to the City’s Ordinance No. 2019-09-01 (the “Ordinance”), the HOA is required to pay for the energy consumption cost on standard lighting for a certain number of years following the City’s final acceptance of the Subdivision, including the Street Lights; and

WHEREAS, a condition of the City’s final acceptance of the Subdivision (“Final Acceptance”), including the Street Lights, is the execution of this Agreement as required by the Ordinance; and

WHEREAS, the City Council of the City has investigated and determined that it is in the best interest of the City to enter into and execute this Agreement for the purposes set forth herein; and

WHEREAS, the Parties desire to enter into this Agreement to facilitate the City’s final acceptance of the Subdivision, for all purposes, on the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are incorporated into the body of this Agreement.
2. Compliance with Ordinance. The City represents and warrants that the HOA’s execution of this Agreement and compliance herewith satisfies all obligations set forth in the Ordinance, and the HOA’s execution of this Agreement is sufficient consideration for the City’s Final Acceptance of the Subdivision.

3. Term; Termination. This Agreement is effective upon the execution and delivery by the Parties and shall continue until the earlier of the date of the written termination of this Agreement or September 30, 2024 (“Termination Date”). Under no circumstance shall this Agreement extend beyond the Termination Date. The HOA shall not, under any circumstance, have any liability under this Agreement from and after the Termination Date, save and except for any liabilities occurring prior to the Termination Date.
4. Energy Consumption Costs of Street Lights. The Parties acknowledge and agree that:
 - (a) the Street Lights are or will be served by Grayson Collin Electric Cooperative (“GCEC”);
 - (b) GCEC has created two (2) accounts, with the HOA named as the customer, for the service of the Street Lights, said account nos. being 203144800 for Phase I and 203144700 for Phase II (collectively, “Accounts”);
 - (c) commencing on the Effective Date and terminating upon the Termination Date, the HOA shall be responsible for payment of the monthly energy costs upon its receipt of each invoice associated with the Accounts and will tender such payment to GCEC in accordance with GCEC’s guidelines;
 - (d) upon the Termination Date, the City shall, without any additional notice or action required by the HOA or any other party, assume any and all costs associated with the Street Lights including, without limitation, the matters set forth herein. The City shall take any and all steps necessary to ensure the HOA is removed as the obligated customer on the Accounts as of the Termination Date; and
 - (e) the final invoices for the Accounts generated by GCEC shall be prorated by the Parties as of the Termination Date.
5. Reimbursement for Energy Consumption Costs Prior to the Effective Date. Within fifteen (15) days of the last to execute this Agreement, the HOA shall reimburse, or cause the reimbursement of, the City for energy consumption costs paid by the City prior to the Effective Date for the Street Lights, in the amount of Two Thousand, Two Hundred Twenty-Nine and 75/100 Dollars (\$2,229.75) (“Reimbursement”). The City represents and warrants that the Reimbursement is the full and final amount of any and all outstanding energy costs associated with the Street Lights for which the City is seeking reimbursement.
6. Notices. All notices required or permitted under this Agreement must be in writing and be served on the Parties at the addresses listed below. Unless otherwise provided, all notices must be given or served by (i) overnight delivery using a nationally recognized overnight courier, (ii) personal delivery, or (iii) e-mail sent to the e-mail address listed below with a confirmation copy delivered by another method permitted under this paragraph. Notice given by all permitted forms other than e-mail will be effective on the earlier of actual delivery to the address of the addressee or refusal of receipt by the addressee (even if the addressee refuses delivery). Notice given by e-mail will be effective on the transmission or

attempted transmission of an e-mail to the e-mail address designated as the recipient's e-mail address during normal business hours. A Party's address or e-mail address may be changed by written notice to the other Party, but a notice of change is not effective until actual receipt of the notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice will not be deemed a failure to give notice. Notices given by a Party's attorney will be deemed given by that Party. The notice addresses of the Parties are specified below until further notice:

If to Weston: Mayor
City of Weston
P.O. Box 248
301 Main Street
Weston, Texas 75097
cityhall@westontexas.org

If to the HOA: Van Buren Estates Homeowners Association, Inc.
c/o Legacy Southwest Property Management, LLC
8668 John Hickman Parkway, Suite 801
Frisco, Texas 75034

Any address for notice may be changed by written notice so given.

7. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.
8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the subject matter of this Agreement.
9. Amendment. No amendment of this Agreement shall be effective unless and until it is duly approved by each Party and reduced to a writing signed by the authorized representatives of the City and the HOA, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.
10. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties are expressly deemed performable in Collin County, Texas.
11. Venue. Venue for any suit arising hereunder shall be in Collin County, Texas.

12. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the Parties.
13. Assignability. The rights and obligations of the Parties hereunder may not be assigned without the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed, conditioned or denied.
14. Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his signature hereto is authorized to do so, and such authorization is valid and effective on the date of this Agreement.

This Agreement has been approved by the requisite vote of the City Council of the City at a duly called and posted meeting.

15. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.
16. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A signature delivered electronically will also be deemed to constitute an original if properly executed.

IN WITNESS WHEREOF each of the Parties has caused this Agreement to be executed by its duly authorized representative on the date or dates indicated below effective on the Effective Date.

VAN BUREN ESTATES HOMEOWNERS ASSOCIATION, INC.,
a Texas nonprofit corporation

By: Jon Anderson Date: 10/4/19
Jon Anderson, President

CITY OF WESTON,
a Texas general law municipality

By: Patti Harrington Date: 10-8-19
Patti Harrington, Mayor